

SUBMISSION ON THE AUSTRALIA- UNITED STATES FREE TRADE AGREEMENT

The Friends of the ABC welcomes the opportunity to make a submission to the Select Committee on the Free Trade Agreement between Australia and the United States of America.

The Friends of the ABC wishes to address (2) (a) of the Committee's Terms of Reference, and in particular the impact of the agreement on Australia's social policies.

The scope of this submission is confined to only one of the very wide range of issues covered in the proposed Agreement, and that is its impact on the preservation of Australia's cultural identity. The Friends of the ABC believe that it is crucial for Australians to see our national character reflected in the performing and visual arts. It is through locally developed literature, film, television, radio and stage performances, directed at different audiences, in diverse regions, and from different backgrounds, that a sense of what it is to be Australian develops.

THE ABC – AND THE FUTURE OF PUBLIC BROADCASTING

Because the Agreement has a negative list structure for services, all policies not specifically listed as outside the Agreement can be affected by its provisions.

A fundamental limitation of negative listing is that it is framed in terms of present conditions; it cannot take into account innovations of the future.

In the particular case of broadcasting the future is likely to be a very different one indeed. The term 'new media' is itself indicative – of innovation, but also of uncertainty about the forms that innovation will take. What is certain, however, is that something new is upon the world of media.

The ABC Act requires the ABC to broadcast programs " that contribute to a sense of national identity and inform and entertain and reflect the cultural diversity of the Australian community".

The uniquely Australian character of its programs could be what will differentiate the ABC when changing technologies have the potential to give Australians access to a greater diversity of high quality programs. In a future of virtually borderless broadcasting the ABC's role as a producer and broadcaster of distinctively Australian content may well be what, in carrying out its charter obligations, ensures that the ABC survives.

Currently the ABC is involved in producing its own programming content, and it also sells its audiovisual products. In the future both of those activities may well expand in response to the changed media environment.

The DFAT Backgrounder asserts that "the AUSFTA will not affect the ability of either Party to provide public services, including in relation to cultural activities, such as the public broadcasters (ABC and SBS)". However, that assurance is given in the current circumstances. In the future, in the light of changing technology, it is unlikely to apply.

Public broadcasting as such is not excluded from the Agreement. It is currently protected in the Agreement by the general exclusion of subsidies and grants, and also, probably, because it is regarded as a public service. The definition of a public service excludes services provided on a commercial basis or in competition with other service providers. Despite being publicly-funded the ABC's status as a provider of a public service could be disputed if, in the future, it expands its role as vendor as well as producer of its own programs. Of course it may not be disputed, but it is important to raise the possibilities which could be created in the future.

THE ABC – PROGRAMMING TO CONTRIBUTE TO A SENSE OF NATIONAL IDENTITY.

The ABC is also required under the ABC Act to "encourage and promote the musical, dramatic and other performing arts in Australia". Apart from the material which the ABC makes itself, its ability to reflect the cultural diversity of Australia could be severely compromised if independent film, television and radio production in Australia were to be adversely affected by the Agreement.

NATIONAL IDENTITY – LOCAL CONTENT REGULATION

Of the many mechanisms used to preserve our national identity, local content regulation is only one, but it is one which Friends of the ABC consider to be adversely affected by the provisions of the proposed Agreement.

According to the DFAT Backgrounder, Australia has retained its current requirement for local content, and has ensured that it has the freedom to regulate for local content in the future – for digital multi-channelling on free-to-air TV, for subscription TV, and for 'new media' or interactive audio and/or video services.

Standing still – or going backwards

It is under Annex I that existing local content quotas are 'bound' in a 'standstill' arrangement which means that under the Agreement they remain as at present. They cannot, at any time in the future, be increased; and if any future government does reduce the quotas they cannot be raised to their former levels.

From a Government which, during the course of the negotiations, repeatedly assured the public that it would allow nothing which would detract from its ability to legislate in areas of social policy, this is not good enough. This Agreement would make it impossible for any future government to make any change to local content rules, except downwards. Furthermore an action of that kind would in turn bind governments thereafter to local content quotas no higher than that level.

The future – a restricted one

Even more worrying is the proposal for future regulation. The DFAT Backgrounder states that the Agreement has ensured 'flexibility' – but for a future which will look no different from the present broadcasting world.

- Multi-channelling

There will be a required (specified) local content quota in multi-channelled free-to-air commercial TV, but it will not provide a greater percentage (as distinct from amount) of local content, as the government claims. (If a multi-channelling broadcaster has 3 channels, then 2 of them must conform to the local content quota – which is the same percentage as now – but if the broadcaster has 15 channels then no more than 3 are required to conform to the local content requirements, therefore less than now).

But perhaps in the future, a 55% quota will look very small. If so, there will be no possibility of increasing it. Again, where is the government's ability to legislate in areas of social policy?

- Subscription TV

In the case of subscription TV the Agreement requires a (specified) percentage of expenditure on local content programming, potentially higher in the case of drama channels than in others but, again, fixed (10% up to 20% of expenditure).

- 'New media' (interactive audio and/or video services)

This is a particularly negatively-framed provision of the Agreement: it aims to ensure that Australian content is 'not unreasonably denied' to Australian consumers of these services. To demonstrate this the Government has to find that the Australian content is not readily available, and must do so in a way which according to the Agreement is 'no more trade restrictive than necessary'.

This is a particularly timid provision when the future of broadcasting is such an unknown quantity. The only certainty is that it will be a quite different broadcasting environment to today's and that it is a near future, not a distant prospect. To close off options now to a future which is impossible to predict is, as Australian Film Commission Chief Executive, Kim Dalton, suggested, "like having an inquiry about radio in 1950, agreeing to lock off on certain conditions concerning radio and not being aware of a thing called television which was about to burst on to the scene".

It is therefore recommended that:

That the United States/Australia Free Trade Agreement be amended to specify the exclusion of

- **public broadcasting, and**
- **local content regulation**

Submitted by Jill Greenwell, Secretary,
Friends of the ABC (ACT & Region) and on behalf of FABC (NSW), FABC (WA)

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