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Australia's representative to the International Music Council



Music Council of Australia

The Secretary
Review of Trade Agreements Study
Productivity Commission
tradeagreements@pc.gov.au
February 5, 2010

Dear Sir/Madam

The Music Council of Australia appreciates the opportunity to comment on the Review of Bilateral and Regional Trade Agreements being conducted by the Productivity Commission.

The Music Council of Australia is the national peak organization for the music sector. The 50-member Council is comprised of nominees of national music organizations and distinguished individuals elected to positions covering the breadth of this diverse sector. It fulfils its mission through provision of information, research, advocacy and project management. The Music Council of Australia is the Australian affiliate to the International Music Council, based in UNESCO, Paris.

In the terms of reference for this review, Minister Sherry observes: "It is widely acknowledged that the benefits of trade liberalization are greatest if the liberalization is undertaken multilaterally". This is a position with which the Music Council concurs.

The Music Council understands the difficulties surrounding, and the slowness of, progress in concluding the Doha round of negotiations have resulted in a number of countries, Australia included, seeking trade liberalization through bilateral and regional trade agreements. However, the Music Council is gratified that Minister Sherry has confirmed that the Australian Government "is committed to reinforcing the primacy of the multilateral trading system and resisting any rise in global protectionist measures".

As is the case with the General Agreement on Trade in Services (GATS), the Music Council considers that positive list trade agreements are preferable to negative list agreements. Mark Twain helpfully observed that "forecasting can be difficult, especially when it concerns the future". The key issue here is that trade agreements

are intended to build a positive future – they are *about* the future - but in this time of rapid globalization and technological change, anticipating the future becomes increasingly difficult and according to complexity theory, to an extent impossible in principle. Positive list agreements have the advantage of confining this problem to the areas of activity named in the agreement, so delivering some measure of certainty and offering some protection from unintended consequences. Negative list agreements cover all activities other than those that are specifically excluded. To attempt to predict consequences over virtually the entire universe of activity is futile. But when a negative and unforeseen consequence does appear, governments can find their hands tied by the constraints of the all-encompassing free trade agreement (FTA).

The music sector has been among those most affected by the rapidity of technological change. Its history over recent decades has been a succession of often very expensive and supposedly strategic innovations that have failed to gain public acceptance and commercial viability while other phenomena such as telephone ring tones and P2P file sharing have had enormous and unpredicted disruptive effects both positive and negative. The sector is in upheaval.

The music and cultural sectors have a particular position regarding the position of Australia's culture in the context of free trade agreements. These agreements depend upon the principle of comparative advantage. This proposes that in a world in which trade is unconstrained, production will shift to those countries which, due to various circumstances such as easy and cheap availability of raw materials or greater expertise, can most efficiently and economically produce specific goods or services. Thus, for various reasons including the size of its domestic market, the USA is the world's largest producer and exporter of films for cinema or television showing. Its circumstances allow it to apply very large capital expenditures to production and marketing of its films, largely recover the cost from sales in the domestic market and then export product around the world at low fees. Australian television broadcasters can rent US productions for a fraction of the cost of local productions.

While this may make sense economically, it has its limitations from the cultural perspective. Australia could import its entire 24/7 television programming from the USA at much less cost than it can produce its own but this would totally undercut our desire for our own cultural identity. People are motivated by more than the desire for material wealth. Peoples of all countries are attached to particular values, ways of life, identities that are given form through their cultural activities and artefacts. Australians cannot contract with the US, however "efficient" its cultural production, to produce expressions of Australian culture. It is intrinsic to our expression of culture that it is we who do the expressing.

Energetic application of the principle of comparative advantage would deprive us of that right in areas that are of economic significance to other countries, especially large countries like the US whose wealth depends importantly on the export of its cultural productions. This was starkly apparent in the negotiation of the free trade agreement with the USA. The principle of comparative advantage is very much opposed to the desire for cultural sovereignty, as reinforced by the new UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions, to which Australia is a recent signatory. Signatories claim a right to support their own cultures. For the Australian cultural sector, this does not translate as a desire for the government to exclude cultural imports but rather to ensure that there is sufficient room in Australian cultural life for the expression of local culture.

Australian governments going back to the middle of the last century have in various ways understood and acted upon the desire to maintain a vibrant Australian culture within the pressures of the international trade environment. The following is a brief history of relevant Australian government actions.

When concessions in respect of Australia's television industry were sought in the context of the General Agreement on Tariffs and Trade, then Prime Minister Robert Menzies wisely instructed the Australian delegation that Australia "would prefer to retain complete freedom of action and not enter into any commitment on the matter, particularly at a time when the television industry in Australia is in its infancy and the lines of its development are uncertain". No longer in its infancy, the lines of its development remain uncertain and new delivery platforms are coming on line at an unprecedented rate and in unpredictable ways.

Menzies' decision was a prescient one and served to protect Australia's cultural industries for half a century with bipartisan support that concessions would not be made in respect of culture in the context of trade agreements.

Australia's position was well articulated in the *Joint study into the costs and benefits of trade and investment liberalisation between Australia and Japan* which was released on 20 April 2005. That study identified those services activities where Australia has not made commitments in the GATS or has listed limitations to its GATS market access and national treatment obligations and, in respect of Australia's cultural industries, noted:

Australia reserves the right to adopt or maintain any measure with respect to the creative arts, cultural heritage and other cultural industries, including broadcasting, film and other audiovisual services, entertainment services and libraries, archives, museums and other cultural services (*Broadcasting Services Act 1992, Radiocommunications Act 1992*). Specific measures currently in place include local content quotas for television, subsidies and favourable tax treatment for Australian films, and film co-production arrangements with selected countries. Australia has made no specific commitments, and has MFN exemptions, for audiovisual services in GATS.¹

It further noted that "Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, or other movement of natural persons, including immigration, entry or temporary stay"².

These positions are supported by the Music Council. They also reflect the Australian Intervention at the CTS Special Session in Geneva in July 2001:

Australia has long recognised the essential role of creative artists and cultural organisations in reflecting the intrinsic values and characteristics of our society, and is committed to sustaining our cultural policy objectives within the context of multilateral trade agreements.³

¹ *Joint study into the costs and benefits of trade and investment liberalisation between Australia and Japan*, page 69, see online at <http://www.dfat.gov.au/geo/japan/tef-study/chapter4-1-2.pdf>

² *Joint study into the costs and benefits of trade and investment liberalisation between Australia and Japan*, page 63, see online at <http://www.dfat.gov.au/geo/japan/tef-study/chapter4-1-2.pdf>

³ Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, July 2001, Geneva

As noted, the need to maintain national independence in supporting national cultural industries was reaffirmed in 2009 with Australia's accession to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

However, Australia's cultural industries nonetheless have experience of the unintended outcomes that can arise following the negotiation of bilateral free trade agreements and the unfortunate outcomes consequential to negotiating bilateral agreements with a more powerful partner.

The Closer Economic Relations (CER) agreement with New Zealand resulted in a curious – and unexpected – outcome: Australian television productions must now be defined as being both Australian and New Zealand programs for the purposes of the Australian Content Standard with which Australia's free-to-air commercial television broadcasters must comply.

In the flurry of bilateral and regional trade agreements that has occurred in the past ten years, Australia was able to secure a comprehensive cultural exemption in the negative list Singapore-Australia Free Trade Agreement (SAFTA) and, more easily, not make any commitments in that regard in the positive list Thailand-Australia Free Trade Agreement (TAFTA). SAFTA was then considered a template agreement for treatment of Australia's cultural industries in negative list agreements, enshrining, as the exemptions did, the right of government to preserve its capacity to regulate in whatever manner, and at any time, it considered appropriate to foster its cultural sectors.

Unfortunately, negotiations with the United States were less successful. The United States is *de facto* one of the most closed markets in the world to cultural goods and services from outside its borders. Conversely, Australia is one of the world's most open cultural markets. Notwithstanding the openness of the Australian market and whilst already subject to considerable cultural domination by the United States, Australia was nonetheless forced to compromise its capacity to regulate to protect its own cultural industries. Existing measures in respect of regulating content on Australian analogue television and radio services have been frozen and subjected to ratchet provisions. The extent to which Australia is able to regulate these services in the digital environment is severely constrained and in respect of its capacity to regulate new media is subject to tests that must secure US agreement that there is a demonstrable lack of access to Australian content.

Both the CER and the AUSFTA have set precedents that require on-going vigilance by Australia's trade negotiators entering into negative list agreements to ensure that the concessions made in these agreements are not multi-lateralised.

The Music Council considers that during this decade the value of bilateral free trade agreements has been considerably oversold and the benefits do not appear to be living up to the expectations posited at the time negotiations commenced.

The Senate Select Committee on the Free Trade Agreement between Australia and the United States Final Report commented on the economic modeling for that agreement:

Some results indicated substantial gains for Australia, others found the gains to be minimal. One study concluded that the Agreement would disadvantage Australia considerably by weakening its sovereignty.⁴

⁴ Senate Select Committee on the Free Trade Agreement between Australia and the United States of America Final Report, August 2004, page 21, see online at http://www.aph.gov.au/senate_freetrade/report/final/report.pdf

CIE was commissioned by Government to analyse the likely benefits of negotiating a comprehensive agreement. Its subsequent report estimated dynamic gains to Australia in the order of \$10.9 billion over 20 years. However, because of the disagreements over methodologies, particularly over the size of dynamic gains, CIE also employed a sensitivity analysis covering the most probable range of estimates. That analysis predicts a 95% chance that welfare in Australia will be improved by between \$1.1 billion and \$7.4 billion per year after 20 years, when all of the liberalisation commitments will have worked through the economy.⁵

The Senate Committee Final Report went on to cite evidence given to the Committee by economist Alan Oxley.

For some witnesses, econometric studies are somewhat beside the point. One business and trade analyst declared:

I can tell you that most of our members would not use an econometrics study to assess whether or not there were a new market. In fact, a lot of the debate we are having here is reminiscent of theological debates about how many angels can dance on the head of a pin. The actual amount of extra change being talked about either winning or losing in real terms is so small that one of the golden rules of econometrics is met, which is: don't use it for small gains or losses; it doesn't tell you anything. What should be done is a proper economic analysis, and that is the way in which business would look at it.⁶

The Senate Committee commissioned Dr Philippa Dee to review the CIE assessment and to analyse the likely benefit of the negotiated agreement. Dr Dee found there was, at best, likely to be a small benefit for Australia – in the order of \$53 million annually.⁷

It is widely known that service trade data is unreliable, difficult to measure, and now well accepted that it has likely been underestimated for some years. It is also clear that raw data cannot be taken at face value – given the range of factors that impact on the balance of trade such as currency fluctuations, droughts, the impact of trade diversionary affects of other agreements to which the trade partner is party, and so on. Even excluding services trade, from the goods trade data with the United States over the past ten years it is difficult to conclude that the AUSFTA has delivered results that could not have been achieved in its absence.

The following table shows that the balance of trade in goods with the US over the last ten years nearly doubled to the US's advantage, while Australian exports increased by only 25%. From the perspective of the cultural sector, the cost in autonomy or sovereignty is hardly compensated by the apparently very modest economic advantage.

⁵ Senate Select Committee on the Free Trade Agreement between Australia and the United States of America Final Report, August 2004, page 16, see online at http://www.apf.gov.au/senate_freetrade/report/final/report.pdf

⁶ Senate Select Committee on the Free Trade Agreement between Australia and the United States of America Final Report, August 2004, page 21, see online at http://www.apf.gov.au/senate_freetrade/report/final/report.pdf

⁷ Senate Select Committee on the Free Trade Agreement between Australia and the United States of America Final Report, August 2004, pp 16- 21, see online at http://www.apf.gov.au/senate_freetrade/report/final/report.pdf

United States trade in goods exports to and imports from Australia 2000-2009⁸

Calendar Year	Exports to Australia	Imports from Australia	Balance
2009	19,597.5	8,014.9	11,582.6
2008	22,218.6	10,588.8	11,629.8
2007	19,178.2	8,615.0	10,563.2
2006	17,545.7	8,204.0	9,341.7
2005	15,588.5	7,342.2	8,246.3
2004	13,957.9	7,545.5	6,412.4
2003	13,087.6	6,413.7	6,673.9
2002	13,084.9	6,478.8	6,606.1
2001	10,930.5	6,477.8	4,452.7
2000	12,482.4	6,438.0	6,044.4

Note: All figures are in millions of US dollars and are not seasonally adjusted.

Source: U.S. Census Bureau, Foreign Trade Division, Data Dissemination Branch, Washington, D.C. 20233

Several commentators have noted that many bilateral free trade agreements are more appropriately characterized as preferential trade agreements (PTAs) and many are trade diversionary rather than trade creating. A gravity model study conducted in 2005 (Dee and Gali) found that among 18 recent agreements, "12 had diverted more trade from non-members than they had created among members" and that "some apparently quite liberal agreements had failed to create additional trade among members, relative to the average trade changes registered among countries in the sample".⁹

Another analysis by Dee and Findley in 2007 looked at whether PTAs are an effective way to promote deep economic integration. It found that whilst PTAs "that have addressed behind-the-border issues in their chapters on services and investment have generally gone further than the General Agreement on Trade in Services under the WTO", nonetheless they have still "tended to be preferential, even in the provisions that go beyond trade; and they have tended to target only those provisions that explicitly discriminate against foreigners".¹⁰

Some commentators, like John Ravenhill, suggest that:

⁸ *Trade in Goods (Imports, Exports and Trade Balance) with Australia*, US Census Bureau, see online at

<http://www.census.gov/foreign-trade/balance/c6021.html#> and *News*, U.S. Census Bureau 10 February 2010, see online at http://www.census.gov/foreign-trade/Press-Release/current_press_release/ft900.pdf

⁹ *The economic effects of PTAs*, Philippa Dee, in *Australian Journal of International Affairs* Vol. 62, No. 2, June 2008, page 155

¹⁰ *The economic effects of PTAs*, Philippa Dee, in *Australian Journal of International Affairs* Vol. 62, No. 2, page 157

Scepticism about the economic benefits from PTAs arising from the Australia-US Free Trade Agreement (AUSFTA) was reinforced by the apparently negligible aggregate economic benefits from the agreements with Singapore and Thailand. In the former case, most Australian exports (with some significant exceptions in services) already enjoyed unimpeded access to the Singaporean market; in the latter case, Australia's most valuable exports already entered the Thai market duty-free [and] the Thai government succeeded in establishing a long phase-in for duty reductions on Australian products regarded as sensitive".¹¹

There must remain serious doubts about realizing significant benefits from negotiating free trade agreements with either China or Japan – Australia's two most important trading partners. As was the case with the United States, Australia enters these negotiations as very much the minor partner.

The Music Council understands that Australia's negotiating position in respect of GATS remains unchanged. However, the Music Council also understands that a request was made to a number of WTO countries, including Australia, by Hong Kong, China, Japan, the United States, Mexico, Singapore, the Separate Customs Territories of Taiwan, Penghu, Kinmen and Matsu seeking further liberalization of our audiovisual industries. While Australia is able to resist such a request in the multilateral environment, questions must arise about its capacity to do so in bilateral negotiations with such important and dominant partners as China and Japan.

Whether the resources Australia has committed and continues to commit to bilateral agreements is warranted, especially in the light of the greater benefits that Australia has achieved in the multilateral environment and as a driver of the Cairns Group, is arguable. Australia's achievements in trade liberalization have demonstrably been most successful when it has acted unilaterally – as it did during the 1980s – or multilaterally as in GATS negotiations or when spearheading like-minded countries to resist protectionism in agriculture in GATS negotiations, best demonstrated by its role in the Cairns Group.

In summary, the Music Council considers that Australia's future prosperity and cultural well-being are best served in multilateral trade negotiations and that short-term gains that might be achieved more quickly in bilateral negotiations might ultimately result in longer-term pain. As Ravenhill has concluded:

As Peter Lloyd, in a colourful analogy, has described the dilemma, when the neighbourhood is populated by street gangs, one is better off being a member of one than not. Whether it be automobiles in the Middle East, or beef in Korea, Australia has considerable defensive interests to pursue: in the current global context PTAs may well be the most realistic vehicle for attempting to secure these interests. The extent of such defensive interests will vary from country to country, however; no blanket assumption can be made that PTAs are always worthwhile or the best strategy for pursuing such interests.¹²

The Music Council considers that whatever sectoral interests might be advantaged by negotiating bilateral and regional trade agreements, Australia's negotiating leverage

¹¹ *Preferential trade agreements and the future of Australian trade policy*, John Ravenhill, in *Australian Journal of International Affairs* Vol 62, No. 2, June 2008, page 123

¹² *Preferential trade agreements and the future of Australian trade policy*, John Ravenhill, in *Australian Journal of International Affairs* Vol 62, No. 2, June 2008, page 127

is always likely to be limited – the result of being a small country with an open economy – and the costs can, as evidenced by the AUSFTA, be considerable. Given the very considerable resources involved with negotiating bilateral and regional agreements, it is to be hoped that if Australia is to pursue this path, it will achieve much greater benefits, and with fewer important concessions, than those achieved from, for instance, the AUSFTA.

Thank you again for the opportunity to present this submission. The Music Council would be pleased to respond to your questions.

Yours sincerely

Dr Richard Letts AM

Executive Director