

SUBMISSION BY
MEDIA, ENTERTAINMENT & ARTS ALLIANCE
TO
DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
REGARDING
AUSTRALIA – GULF CO-OPERATION COUNCIL
FREE TRADE AGREEMENT

APRIL 2007



The Media, Entertainment & Arts Alliance

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians.

I remember when I first became Secretary of State for Culture, back in 1997, having immediately before that been the Shadow Secretary for Health, a friend characterised the move from one subject to the other succinctly. Remember, he said: Health is a *sine qua non*; Culture is a *raison d'être*.

Rt Hon Chris Smith, Director of the Clore Programme for Cultural Leadership, formerly
British Secretary of State for Culture¹

¹ *Valuing Culture*, Rt Hon Chris Smith, Director of the Clore Programme for Cultural Leadership, at the National Theatre Studio London on 17 June 2003, available at <http://www.demos.co.uk/files/File/VACUCSmith.pdf>

Submission

The Media, Entertainment & Arts Alliance welcomes the opportunity to make comment in relation to the proposed free trade agreement between Australia and the Gulf Cooperation Council (GCC).

The Alliance made a submission to the Department of Foreign Affairs and Trade (DFAT) regarding this proposed agreement in October last year. That submission is also available on line.²

The Alliance is aware that the Government has, for some years, been concerned about the progress being made in the Doha Round of negotiations for the General Agreement on Trade in Services (GATS) and for that reason has pursued an aggressive agenda of bilateral and plurilateral free trade agreements.

As DFAT is aware, the Alliance prefers multilateral agreements over bilateral or plurilateral agreements and, consistent with research undertaken by the Productivity Commission, considers that bilateral and plurilateral agreements are more likely to be trade diverting than trade creating.

That being said, the glacial rate of progress since 2001 and the almost complete breakdown in the Doha Round negotiations last year, has obviously given impetus to the Government's many pronged approach to trade liberalisation.

With the resumption of the Doha negotiations, endorsed by the full membership of the World Trade Organisation (WTO) on 31 January 2007, the Alliance was reassured to learn that "[r]eforming the multilateral trading system is Australia's highest trade priority."³

The Alliance considers that the positive listing structure of the GATS best protects Australia's interests and is reassured that Australia's position in respect of audiovisual and cultural industries remains unchanged.

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 service 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, summarised them as follows:

"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

² *Submission to the Department of Foreign Affairs and Trade regarding Australia – Gulf Cooperation Council Free Trade Agreement Analysis*, October 2006. The Alliance submission regarding the proposed free trade agreement with the United Arab Republics, April 2005, is appended. http://www.alliance.org.au/component/option.com_docman/Itemid.28/task.cat_view/gid.117/

³ *World Trade Organization (WTO) Doha Round Negotiations: Work resumes*, Department of Foreign Affairs and Trade, see online at <http://www.dfat.gov.au/trade/negotiations/index.html>

made no specific commitments, and has MFN exemptions, for audiovisual services in GATS.”⁴

It also 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,”⁵ a position supported by the Alliance.

It also reflects 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.”⁶

With the resumption of the Doha negotiations in February, it finally seemed that a renewed momentum had entered the Doha negotiations, undoubtedly driven in no small measure by the impending expiry of the United States’ Trade Promotion Authority (TPA) on 1 July this year, especially in light of growing American resistance to TPA being extended.

However, it now appears that a number of countries, including India and South Africa, are becoming resistant to concluding the round in the time available.⁷

The Alliance has been reassured that Australia’s negotiating position in respect of GATS remains unchanged. Importantly, the Alliance further understands that Australia will not be acceding to the plurilateral request made to a number of WTO members, including Australia, by Hong Kong, China, Japan, Mexico, Singapore, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the United States seeking further liberalisation of audiovisual industries.

Although the Alliance, as noted above, prefers the positive listing multilateral GATS, it is clear that the Government is determined to make progress in trade liberalisation where it can and that the agreement with the GCC will build on the initiative to secure a free trade agreement with the United Arab Emirates (UAE).

As noted in the October 2006 submission, the Alliance prefers positive listing agreements over negative listing agreements. However, in the event the free trade agreement with the GCC is a negative listing agreement, the Annex 4-I(A) and Annex 4-II(A) reservations covering Australia’s cultural industries contained in the Singapore – Australia Free Trade Agreement (SAFTA) serve as a useful precedent.

Regrettably, the Australia – United States Free Trade Agreement (AUSFTA) includes a number of significant concessions in respect of Australia’s audiovisual industries, concessions not made in any other free trade agreement.

The AUSFTA effectively imposes standstill provisions in respect of the manner in which the Government can regulate levels of Australian content in free to air commercial television and

⁴ *Australia-Japan Trade and Economic Framework*, page 67, available online at www.dfat.gov.au.

⁵ *Australia-Japan Trade and Economic Framework*, page 63, available online at www.dfat.gov.au

⁶ Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, July 2001, Geneva.

⁷ *India, allies question Lamy’s June deadline for Doha round*, The Indian Express, 14 March 2007, see online at <http://www.indianexpress.com/story/25611.html>

includes ratchet provisions that mean in the event the overall transmission quota were to be lowered it could not in the future be increased.

The AUSFTA also seriously constrains the manner in which the Government can regulate subscription television and considerably ties the hands of Government in respect of new media. By way of example, the Government has announced that it will auction two digital channels which are currently unused. In doing so, the Government has announced the kinds of uses to which the channels might be put – community broadcasting, datacasting, open narrowcasting and subscription narrowing, and, in respect of Channel B, services can be delivered to hand-held devices. At present there are no local content requirements in place for any of these forms of services. Because of the concessions made in the AUSFTA, to do so will require the Government to establish that, after the services have been operating, Australian content “is not readily available to Australian consumers” and that “[a]ny measures addressing such a situation will be implemented through a transparent process permitting participation by affected parties, be based on objective criteria, be the minimum necessary, be no more trade restrictive than necessary, not be unreasonably burdensome, and be applied only to a service provided by an enterprise that carries on business activities in Australia in relation to the supply of that service.”⁸

The AUSFTA also extended copyright term to seventy years amongst other concessions.

Whilst acknowledging that these concessions have been made in the AUSFTA, the Alliance is strongly opposed to them being mirrored in any other trade agreement, including in the proposed agreement with the GCC.

That being said, the Alliance also notes that the United States is currently negotiating a free trade agreement with the UAE and has free trade agreements with Bahrain and with Oman. The trade agreement with Bahrain extends copyright term to life plus seventy years as in the AUSFTA and it is likely the United States is expecting a similar outcome in their negotiations with Bahrain.

The rights of consultation that the United States has acquired in the determination of Australia’s cultural and social policy are regrettable. Just how that right will be exercised is unknown. However, it would become completely impossible if those rights were extended to other countries.

The determination of cultural policy should be a national right.

To that end, and consistent with long standing policy in respect of trade agreements and Australia’s cultural industries – including its audiovisual and broadcasting industries – the Alliance is also of the view that Australia should now become a party to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which entered into force on 18 March 2007.⁹

⁸ Annex II, Australia United States Free Trade Agreement.

⁹ The European Community together with 55 individual states are now parties to the Convention. A full list of states party to the Convention can be found online at <http://portal.unesco.org/la/convention.asp?KO=31038&language=E>