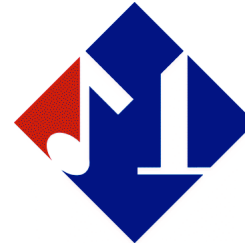


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*Australia's representative to the International Music Council*



**Music Council of Australia**

July 3, 2009  
The Secretary  
Korea FTA Task Force  
Department of Foreign Affairs and Trade  
R.G. Casey Building  
John McEwen Crescent  
Barton ACT 1221

Dear Sir,

**Re: Australian Korea Free Trade Agreement**

The Music Council of Australia is the national peak music organisation with a council of 50 representing the broad spectrum of music activities in Australia. The Council has taken a keen interest in the effects of globalisation and international trade on local culture, and has been actively involved in informing and advising government during trade negotiations under the World Trade Organisation (WTO) and in respect of the free trade agreement with the United States.

The Australia United States Free Trade Agreement (AUSFTA) has seriously curtailed the Australian Government's prerogative to support Australian culture, especially by way of regulation. Especially as new media and new delivery platforms emerge and become more dominant, the government's freedom to act will be further circumscribed by the very weak reservation in the AUSFTA concerning 'interactive media'.

With this example in mind, the Music Council is most concerned that the AUSFTA should not become a template for trade agreements under the WTO or with other countries or regions.

Given our past submissions regarding the General Agreement on Trade in Services (GATS) and the AUSFTA, we will not elaborately rehearse again the need to regard culture as not just another good or service to be traded. One of humanity's fundamental needs is to find an identity and a sense of belonging. It is through our culture, above all, that such an identity is articulated – as is recognised in various government documents such as the charters of the ABC and the Australia Council for the Arts and as provided for in the Broadcasting Services Act. Cultural expression should not be sacrificed to the trade ambitions of other countries.

The Music Council therefore strongly urges that culture should be totally excluded from the free trade agreement now being negotiated with Korea. It urges that a line should be drawn under Closer Economic Relation Agreement between Australia and New Zealand (CER) and the AUSFTA and no more undertakings concerning culture should be given in any subsequent free trade agreement.

The Music Council notes that this was the government's position, prior to negotiation of the AUSFTA, in its dealings with GATS, where no offers have been made in the cultural area, and in the bilateral trade agreement with Singapore where culture was comprehensively excluded. The government argued that position extremely well – and then abandoned it, not because of the merits of a countervailing argument, but under pressure from a much larger and dominant trading partner.

The Music Council supports in principle a trade agreement with Korea but would strongly recommend it be a positive list agreement, as is the case with GATS and the agreement with Thailand. A positive list agreement will permit much more exact specification of what is offered or by extrapolation, not offered.

If it is decided to enter into a negative list agreement, culture, as defined in the Australia Singapore Free Trade Agreement, should be completely excluded. Under the negative list AUSFTA, no analysis was made of the possible impact on Australia's culture (excepting the audio-visual sector, for which there are some limited reservations). In any case, it is impossible to foresee all of the consequences of these open-ended agreements. To cite once again the experience with the negative list CER, the possibility that New Zealand productions would qualify as Australian content on television was not anticipated. Such an unfortunate unintended consequence would be much less likely under a positive list agreement.

Furthermore, we cannot now know the future shape and means of culture. We fear that increasingly the Australian government will be precluded by AUSFTA from acting in support of Australian culture on new and emerging delivery platforms.

In supporting the exclusion of culture in a free trade agreement with Korea is not intended to imply that cultural productions from Korea should be prohibited from Australia. On the contrary, the Music Council believes they should be encouraged.

But agreements about cultural exchanges or commerce should not be part of international trade agreements because:

- the motivations for the latter are economic rather than cultural and the two are often in conflict
- free trade agreements are effectively irreversible, even when the consequences are deleterious for one of the parties
- such agreements offer opportunities for retaliation in unrelated areas should one of the parties offend.

Further, the Music Council is aware that in its free trade agreement with United States, Korea was obliged to make concessions it would have preferred not to make.

The Korean film industry followed a very rocky road during the last century. Its development suffered, successively, the impact of Japanese colonization, national division, civil war, military rule, strict censorship and distorting film regulations. It was not until the 1990s when, with a supportive government, a stable economy and the enforcement, finally, of screen quotas that had been in place for decades, together with the introduction of a supportive film policy framework, that the industry flourished. It quickly became one of the success stories of world cinema. From a negligible output and negligible audiences for Korean films, within ten years Korean films were capturing more than 50 per cent of the Korean box office and achieving success abroad.

The key to this astounding growth and success was the enforcement of screen quotas that mandated all cinemas show Korean films for 176 days annually.

Negotiations for a Korea-United States Bilateral Investment Treaty were suspended in 1999 when the Korean Government refused to repeal the screen quota. When negotiations for a free trade agreement resumed, the screen quota remained contentious. Finalisation of negotiations in 2007 was only achieved because the previous year the Korean Government had halved the screen quota from 176 days to 73.

Consistent with the views of the Music Council that Australia should not make concessions in respect of cultural industries in free trade agreements, the Music Council considers Australia should not ask for concessions in respect of cultural industries of other countries, including Korea, notwithstanding any concessions that might have been made in other contexts.

Concessions made by Australia in respect of the AUSFTA should not be treated as precedential nor multilateralised.

Rather both countries should be able to retain the unfettered right to support their own cultural industries in any manner either considers appropriate for their needs and to introduce any such measures at any time.

This position is consistent with the provisions of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, accession to which was announced by the Australian Labor Party in the lead up to the last federal election and now recommended by the Joint Standing Committee on Treaties.

In the event the agreement between Australia and Korea is to be a negative list agreement, the Music Council believes the agreement must include a broadly drafted exception or reservation covering cultural industries including the audio-visual industry that:

- allows for the introduction of supportive legislation or other form of industry support at any time and in respect of any delivery mechanism now known, in development or that might be invented in the future,
- is technology neutral,
- is self-judging and not subject to dispute,
- is not subject to standstill, snap-back, ratchet or roll-back provisions
- is able to override all provisions in the entirety of the agreement to ensure avoidance of unintended consequences, and
- protects the current restrictions on temporary entry to Australia in the entertainment and cultural industries and allows for amendment to those regulations at any time.

The provisions contained in the Singapore Australia Free Trade Agreement provide a model.

In summary, the Music Council urges the Australian government neither to propose nor accept any inclusion of culture, as is the case with the Singapore Australia Free Trade Agreement, in any future free trade agreements, including in an agreement between Australia and Korea.

As always, the Music Council will be pleased to respond to requests for further information or argument.

Thank you for the opportunity to make this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Letts', with a stylized flourish at the end.

Dr Richard Letts AM  
Executive Director