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*Australia's representative to the International Music Council*



**Music Council of Australia**

April 24, 2009

Committee Secretary  
Joint Standing Committee on Treaties  
House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

By email: [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

Dear Committee Secretary,

**Re: Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area**

The Music Council of Australia is a 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 WTO and with the USA and subsequent bilateral agreements.

The Free Trade Agreement with the USA has seriously curtailed the Australian Government's prerogative to support Australian culture by regulation. Especially as new media 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'.

Especially 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.

The Music Council asserts 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 belongingness. 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, the Broadcasting Services Act and the Australia Council for the Arts. Its expression should not be sacrificed to the trade ambitions of other countries.

The Music Council of Australia therefore strongly urges that culture should be totally excluded from any trade agreement with ASEAN. It urges that a line should be drawn under the AUSFTA and no more undertakings concerning culture should be given in any subsequent free trade agreement.

The Music Council notes that this also was the government's position in its negotiations concerning GATS, where no offers have been made in the cultural area, and in the bilateral trade agreement with Singapore where culture was comprehensively excluded.

A policy for exclusion of culture from an FTA with ASEAN is not intended to imply that cultural productions from ASEAN countries should be prohibited from Australia. On the contrary, the Music Council believes they should be encouraged, as provided, for instance, under the UNESCO Convention for the Protection and Promotion of a Diversity of Cultural Expressions.

But agreements about cultural exchanges or commerce should not be part of a general international trade agreement because

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

In simple summary of a general position, the Music Council of Australia urges the Australian government neither to propose nor accept any inclusion of culture, as it is defined in the Australia/Singapore FTA, in any subsequent free trade agreement, including an agreement with ASEAN or its members.

Concerning the proposed trade agreement with ASEAN, this has in-principle support from the Music Council. The Council welcomes the fact that this is a positive list agreement, as with agreements under GATS and with Thailand. A positive list agreement permits much more exact specification of what is offered or by extrapolation, not offered. The MCA recognises that the AANZ FTA does not make any commitments in respect of audio-visual and cultural industries or in respect of the movement of natural persons that are inconsistent with those commitments made by Australia in GATS.

New Zealand is a party to this FTA with ASEAN. Since in its CER agreement with New Zealand, Australia has made no reservation for culture, it is most important that the Australia/New Zealand market access rights and national treatment of culture should not flow on to ASEAN nations under a Most Favoured Nation agreement.

the MCA supports the provisions of Articles 7.1, 7.2, 7.3 and 7.4 of Chapter 8. The Music Council is pleased to note that the obligations on Parties to consult on the possibility of extending Most Favoured Nation treatment to other AANZFTA Parties that are set out in the 'Consultations on Most-Favoured Nation Treatment' article in AANZFTA do not apply to treatment contained in FTAs that entered into force or were signed prior to entry into force of AANZFTA (e.g. the Australia-New Zealand CER Services Protocol or any later iterations of the Protocol). Australia is therefore not under any obligation in AANZFTA ("automatic" or otherwise) to treat ASEAN countries in the same way that New Zealand is treated by Australia in relation to audio-visual services under the ANZCERTA. The MCA also welcomes the fact that application of MFN principles with respect to future agreements with non-parties is not automatic but subject to agreement under the same provisions.

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

Thank you for the opportunity to make this submission.

Yours sincerely

Dr Richard Letts AM  
Executive Director