

The Asia Trade Task Force
Department of Foreign Affairs and Trade
BARTON ACT 0221
By email
February 7 2005

Sir/Madam

RE: PROPOSED FTA WITH ASEAN AND NEW ZEALAND

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.

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.

Given our past submissions with regard to GATS and the US FTA, we will not elaborately rehearse once more 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 Australian Broadcasting Authority 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, 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 ASEAN but would strongly advocate that this should be a positive list agreement, as with agreements under GATS and in the new 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 FTA, should be completely excluded. Under the negative list AUSFTA, no analysis was made of the possible consequences of the inclusion of all 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 NZ productions would qualify as Australian content on television obviously was not anticipated. Such a predicament 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 the new, emerging Australian culture.

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.

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.

Finally, since the prospect is that New Zealand will also be a party to an FTA with ASEAN, and 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. There must be an appropriate reservation.

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

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

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