

Australia & GATS

Submission
to the
Department of Foreign Affairs and
Trade

by the
Australian Coalition for Cultural
Diversity (ACCD)

February 24, 2003

SUBMISSION BY THE AUSTRALIAN COALITION FOR CULTURAL DIVERSITY (ACCD)

February 24, 2003

This submission responds to an invitation from the Department of Foreign Affairs and Trade to offer comment on issues relevant to Australia's negotiations for the current round of GATS. The Australian Coalition for Cultural Diversity (ACCD) thanks the Department for Foreign Affairs and Trade for the opportunity to present a submission on this matter of crucial importance to the Australian cultural sector. It offers the Department its full cooperation in exploring issues as they may relate to its sphere of competence, the cultural sector, and looks forward to further consultation during the negotiating period.

This submission states the common interests of ACCD members in sustaining and fostering Australian culture. Specific data and arguments for the various subsectors such as film or music will be presented in submissions from individual ACCD members.

Executive Summary

1. The Australian Coalition for Cultural Diversity. The nature and purpose of the Australian Coalition for Cultural Diversity is explained. The ACCD statement of purposes says, *inter alia*, that *"It is for us essential that Australian governments at all levels be entirely free to adopt the policies necessary to support the diversity of cultural expression and the viability of all those that produce and disseminate this expression."*

2. Definitions of "culture" and "cultural diversity". For the purposes of this submission, "culture" is defined relatively narrowly. ACCD has adopted the language used in the Australia-Singapore Free Trade Agreement. "Cultural diversity", which is manifest through "diversity of cultural expression", has many aspects. For purposes of this submission, the ACCD refers especially to cultural diversity *between* nations, a diversity which results from each nation having the right to sustain and develop its own culture without constraint from international trade agreements.

3. Cultural diversity and comparative advantage

Trade liberalisation depends on the theory of comparative advantage. The objective of cultural diversity and the theory of comparative advantage are in direct opposition. ACCD claims that despite the economic inefficiencies, governments should act to foster cultural diversity and should contest the cultural homogeneity that would follow from pursuit of comparative advantage.

4. Australia, GATS and the Australian cultural sector

The Australian Government has stated that it "is committed to sustaining our cultural policy objectives within the context of multilateral trade negotiations." This is in alignment with that section of the ACCD's statement of purpose that states: *"We advocate that Australian Government refrain from proposing or accepting trade liberalisation commitments that would in any way limit its freedom to support and foster Australian culture, whether in the context of negotiations within the WTO or within any other international trade negotiations."*

The ACCD's position in one sense needs no further elaboration. However, in Section 5 we take the opportunity to list the rights that should be retained.

The ACCD is aware that this and other governments will receive requests in this round of GATS to abandon aspects of the Government's "necessary subvention" to culture. It notes here in particular the known requests to Australia and to the members of the European Union concerning the audiovisual sector, and is reassured that the Australian

Government has stated unambiguously in the WTO that “Australia remains committed to preserving our right to regulate audiovisual media” to achieve certain policy objectives.

5. Some pitfalls

This section of the ACCD submission identifies some areas that do not fall directly under the cultural banner but in which trade liberalisation could have serious impact on cultural activity. It also points to the danger of standstill commitments.

Standstill commitments have been proposed by the USA. Such an approach will limit the ability of Government to determine appropriate cultural policy in the future.

The presence of natural persons. Australia has quite strict migration regulations regarding the presence of foreign persons to work in the film, television and live performance areas. The ACCD does not want commitments made in relation to Mode of Supply 4 that restrict Australia’s ability to retain these measures. It appears that requests in Mode 4 are not sector specific. There is a danger in acceding to requests in this area in a general way, that aspects of the current entertainment visa rules could be undermined.

Intellectual property. The "intellectual-property-as-investment" framework that currently is being pushed by the Motion Picture Producers of America (MPAA) could be an area of concern. It could have 'potential implications for cultural policies and programs, for example through content quotas or access to advertising services markets, for local cultural sectors.'

E-commerce. The US Trade Representative has sought to involve e-commerce in its arguments for nations to make commitments on audiovisual. It appears that in the US/Chile FTA, e-commerce is defined as digital products transmitted electronically. This very broad definition does not appear to amount to technological neutrality, but the defining of new technology so as to achieve liberalisation by other means.

Telecommunications. *The dividing line between telecom and cable is increasingly blurred and any agreement on telecommunications must also preserve the right, in support of cultural diversity, to regulate cultural content delivered via such networks.*

6. A strategy for the Australian Government to retain or assert its rights to support Australian culture.

It is the ACCD’s position that the Australian Government should neither make nor respond to offers in the cultural area in the current GATS negotiations, nor in any other international trade negotiations. It should retain all its prerogatives to make and implement policy in the cultural area. It should not accede to any proposals for a standstill agreement in the cultural area. It should not make agreements in other areas such as e-commerce which now or in the future might constrain its rights in the cultural area.

While this statement suffices unto itself, there is possible advantage in listing the specific prerogatives that ACCD wishes the Australian Government to retain within the cultural field in the context of any international trade treaty, since in some cases the prerogatives may not be foreground in any current debate around culture.

7. The specific rights to be retained or asserted.

An extensive list of rights is advanced, such as rights to subsidise, to impose local content quotas and to give preferential treatment in procurement of cultural goods or services.

8. Loss of ability to exercise rights.

Without the proposed cultural exemption, the Government risks the loss of its right to support Australian culture. Some examples of possible consequences are noted.

9. Conclusion.

The ACCD urges the Australian Government to insist upon comprehensive rights for Australian governments at all levels to assist to sustain and develop Australian culture. The Commonwealth Government, explicitly through statements in international fora, and implicitly through its policies and subventions in the cultural area, has acknowledged that Australian cultural life cannot be sustained without such support. A portion of Australian cultural life must be made secure for a broad diversity of Australian cultural expression. Beyond the border of that secured area, free cultural exchange with all other countries is to be encouraged – although it must be acknowledged that by virtue of its trading strength, the USA already dominates that exchange.

THE SUBMISSION

The right of everyone to freely participate in the cultural life of the community is recognised as a fundamental human right conforming to the principle embodied in Articles 22 and 27 of the Universal Declaration of Human Rights, Article 1 of the International Covenant on Civil and Political Rights and in Article 15 of the United Nations International Covenant on Economic, Social and Cultural Rights.

Note also:

"(E)ach culture has a dignity and value which must be respected and preserved" (Article 1, UNESCO Declaration of the Principles of International Cultural Co-operation (Paris, 1966))

Refer also to the Declaration on Cultural Diversity, Council of Europe, 2000; the Cotonou Declaration on cultural diversity, International Organization of the Francophonie, 2001; the UNESCO Universal Declaration on Cultural Diversity, 2001.

1. The Australian Coalition for Cultural Diversity

1.1 The Australian Coalition for Cultural Diversity is an association of professional organisations in the cultural sector. Member organisations are listed at the end of the submission.

1.2 The ACCD states its purpose as follows:

1.2.1 The Australian Coalition for Cultural Diversity affirms that it is a fundamental right of every individual to participate in and give expression to his or her own culture and that this right should be assured and promoted by governments of all countries.

1.2.2 It is for us essential

- that Australian governments at all levels be entirely free to adopt the policies necessary to support the diversity of cultural expression and the viability of all those that produce and disseminate this expression;*
- that the Australian Government support and accede to international treaties or other mechanisms which will help to ensure such freedom;*
- that international trade agreements fully respect these policies;*
- that the application of such policies be free from reprisals of any sort.*

1.2.3 *We advocate that Australian Government refrain from proposing or accepting trade liberalisation commitments that would in any way limit its freedom to support and foster Australian culture, whether in the context of negotiations within the WTO or within any other international trade negotiations.*

1.3 The ACCD is in accord with the stated position of the Australian Government (Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, Geneva, July 2001):

1.3.1 *“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 negotiations.”*

1.3.2 *“As reflected in the proposals, there are factors which distinguish cultural goods and services from other goods and services. Cultural activities make a unique contribution to the social, economic and political fabric of any country.”*

2. Definitions of “culture” and “cultural diversity”

2.1 The word “culture” has many definitions, and therefore it is important that the ACCD should stipulate its intended definition for the purposes of this submission.

2.2 Broadly, "culture" is the whole complex of distinctive spiritual, material, intellectual, and emotional features that characterise a society or social group.

2.3 However, in many instances, and this is one of them, a narrower definition is intended. Commonly, there is difficulty in specifying the intended limits of the term. The ACCD has been delighted, therefore, to discover in the Australia-Singapore FTA a definition that, with minor changes, exactly suits its purpose:

“Culture” includes the creative arts(1), cultural heritage(2) and other cultural industries, including audio-visual services, entertainment services and libraries, archives, museums and other cultural services;

broadcasting and audio-visual services, including measures relating to planning, licensing and spectrum management, and including:

services offered in Australia;

international services originating from Australia

(1) Creative arts include: the performing arts - including theatre, dance and music - visual arts, craft and design, literature, film, television, video, radio, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend artform divisions.

(2) Cultural heritage includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable and built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.¹

¹ The ACCD specifically excludes agriculture as an aspect of culture, noting that this has been an issue of concern for some DFAT personnel.

2.4 It remains to stipulate the meaning of “cultural diversity”. The ACCD also speaks of a “diversity of cultural expression”. Culture can be expressed through various and diverse forms, e.g. poetry, film, painting, music etc. Diversity can be seen in cultural expression of different geographical areas, whether they are rural regions, states or countries. Diversity can be a consequence of differing religions, ethnicities or other sub-cultural groupings, whether inside or outside Australia. Diversity arises from the creative expression of individual artists or groups of artists, and so is encouraged by artistic freedom.

2.5 Cultural diversity may exist as between countries, and within countries. This submission is concerned especially with diversity *between* countries. Specifically, it is concerned that Australia (and other countries) should retain the prerogative to sustain and foster distinctive local cultural expressions and identities such that among countries, there is a global diversity of cultures rather than a homogenisation of cultures.

3. Cultural diversity vs. comparative advantage

3.1 International trade liberalisation objectives are based in part upon the theory of comparative advantage. The US obviously has a comparative advantage in the production of films through, for instance, the relative size, wealth and measure of cultural homogeneity in its population, and its ownership of international channels of distribution. It follows, under that doctrine, that the US should supply the world with film and that less efficient producers will terminate their film-making activities.

3.2 The objective of cultural diversity and the theory of comparative advantage are therefore in direct opposition. ACCD claims that despite the economic inefficiencies, governments should act to foster cultural diversity and should contest the cultural homogeneity that would follow from pursuit of comparative advantage.

3.3 DFAT staff would know of the failure of some economic development programs that have not taken into account the values and processes of local cultures. Even comparative advantage cannot be assessed only in terms of inanimate resources and logical systems.

4. Australia, GATS and the Australian cultural sector

4.1 We recall the statement by the Australian Government in 1.3.1 above: “Australia...is committed to sustaining our cultural policy objectives within the context of multilateral trade negotiations.”

4.2 This is in alignment with that section of the ACCD’s statement of purpose that states: “We advocate that Australian Government refrain from proposing or accepting trade liberalisation commitments that would in any way limit its freedom to support and foster Australian culture, whether in the context of negotiations within the WTO or within any other international trade negotiations.”

4.3 The ACCD’s position in one sense needs no further elaboration. Stated simply, it is that ***the government should make no commitments, whether by its own offer or by acceptance of the requests of other nations under GATS, that will in any way limit its rights to support culture.*** However, to make it clear what rights are contemplated, we list them in Section 7 of this submission.

4.4 The Australian Government has acknowledged that “*Market forces alone are rarely sufficient to allow cultural organisations and individuals to be fully self-supporting. This is true for the cultural sector worldwide, but in Australia’s demographic and geographic circumstances it is particularly the case... The important mix of subsidy, regulation and tax concessions ... (is) a necessary subvention in the national interest to sustain Australian creative resources...*” (Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, Geneva, July 2001)

Requests from other governments

4.5 The ACCD is aware that this and other governments will receive requests in this round of GATS to abandon aspects of this “necessary subvention”. In its Discussion Paper, the Department notes, for instance, that it has received requests concerning the audiovisual sector. The European Commission has given even more detail in its recent paper, *WTO Members’ Requests to the EC and Its Member States for Improved Market Access for Services*, and there is good reason to suppose that those requests are similar to those made of Australia. Half of the total of the requests to EC members concern the audiovisual sector. Requests from three members ask for full commitment to Market Access and National Treatment. Many ask for a binding of the current level of market opening, and commitments in specific subheadings. Some ask for elimination of local content quotas, discriminatory tax measures and subsidies in radio and television.

4.6 Were they presented to Australia, each of these requests would mean the disbandment of current methods of regulation of or support to the Australian audiovisual sector. The ACCD is reassured to note that the Australian Government has stated unambiguously in the WTO that:

“Australia remains committed to preserving our right to regulate audiovisual media to achieve our cultural and social objectives and to maintain the broad matrix of support measures for the audiovisual sector that underpin our cultural policy; including retaining the flexibility to introduce new measures in response to the rapidly changing nature of the sector.” (Ibid)

A place for Australian culture – and for free international exchange

4.7 Through its rights to regulate and support the cultural sector, the Australian Government addresses only a portion of the total realm of cultural activity in Australia. This might roughly be conceived as an area pegged out to ensure that there is a space for the Australian voice, the Australian vision, the Australian story, the Australian artist. All the arts within this area are enabled in one way or another by the support of governments – even those activities involving international exchange. Without such government intervention, the activity would either not be viable or not be optimal.

4.8 Outside of that area is the much larger arena of Australian cultural activity. This is, broadly speaking, cultural activity that is self-sustaining, some of it commercial, some of it embedded in community customs and rituals with no commercial aspect. Here lie the activities of, for instance, the recording and broadcast industries, cinema exhibition, the touring of arena music shows, the export of recordings of Australian pop artists. It includes most of the activity of imported artists or cultural services.

4.9 Australia’s trading partners take every advantage of this larger area. Films from the USA earn 90% of the Australian cinema box office. Commercial television station drama programs are dominated by US sitcoms and films. Foreign sound recordings, mainly from the US, can fill 75%-95% of broadcast music time on commercial radio, even after local content regulations have been satisfied. Over 90% of sound recordings sold are issued on foreign labels. There is no regulation of this trade based on the source of the good or service – and consequently the strongest trader dominates the market even though this probably is undesirable culturally and only slightly supportive of cultural diversity.

4.10 Other countries may feel dissatisfaction with the level of access to the Australian market for their cultural services – but their problem must be more with US domination than Australian regulation. The US may be dissatisfied with the level of its access to Australian television or radio broadcast, but Australians could hardly be dissatisfied with their access to US content.

Export of Australian cultural services

4.11 So far as we are aware, the problems for Australia in exporting its cultural services have more to do with the costs of successfully registering a presence in the huge international marketplace than with official foreign impediments to trade. This is so whether the services are supported in some way by governments, or are totally dependent upon the market. The cost and marketing consequences of our geographical isolation also are a factor. If there is a solution to such problems, it probably involves application of more resources and they, ironically, might have to come from government. The only formal impediments of which we are aware are visa and related requirements for Australian performers touring overseas. Australia has similar requirements of performers wishing to work in Australia.

4.12 An argument could be made that there is a sort of market failure in the USA in providing access for the American public to audiovisual and other cultural product from other countries. It may be appropriate, for instance, to request that the USA impose a 10% foreign drama content requirement on local free to air and cable television, or a 20% foreign music content requirement on commercial music radio.

Additional tactical reasons

4.13 There are additional tactical reasons to avoid making offers or consenting to requests in the cultural area at this time. The cultural ministers network, the International Network for Cultural Policy, has proposed to UNESCO that UNESCO should finalise and be the auspice for an international convention for cultural diversity. This convention would place in the international arena a set of normative expectations for the rights of governments to sustain and further develop their own cultures without threat from the drive for trade liberalisation. The convention would thus stand as a multilateral defence against undue intervention from the WTO in the cultural area. Pending the declaration of this convention, such a defence is not available. Should Australia be under pressure to negotiate concessions in the cultural area, there is advantage in delaying negotiations until the convention is in place. We understand that it is intended to declare the convention before completion of the DOHA round.

4.14 Secondly, ACCD argues in our submission to DFAT on the US FTA for at least the same cultural exemption that Australia has with Singapore. If this were achieved it would establish a significant and useful precedent. Therefore, there is some reason also to delay GATS negotiations with regard to culture until completion of the Australia/US negotiations.

5. Some pitfalls

5.1 Protagonists of liberalisation in the cultural realm are aware that culture is becoming a 'hot' issue and that an overtly hard-nosed approach serves only to stiffen opposition. They begin therefore to offer peripheral concessions and to recognise nominally the needs for local cultural expression while promoting the core of their agenda in sometimes oblique ways.

5.2 For instance, there were those who saw the MAI negotiations as a way of liberalising the audiovisual sector via a 'back door'. E-commerce is an example of another area that could hold all kinds of ramifications for cultural services. This section of the ACCD submission identifies some areas that do not fall directly under the cultural banner where trade liberalisation could have serious impact on cultural activity. It also points to the danger of standstill commitments.

Standstill commitments

5.3 The US has suggested that WTO member countries should 'schedule commitments that reflect current levels of market access.' What this means, in effect, is that countries should agree to 'standstill commitments' in regulatory and other measures already in place.

5.4 The ACCD is concerned that the Australian Government may be considering possible standstill options as concessions in the cultural arena. We are extremely concerned that such

an approach will limit the ability of Government to determine appropriate cultural policy in the future.

The presence of natural persons

5.5 Australia has made only limited commitments in the GATS in relation to Mode of Supply 4, the presence of natural persons. Australia has quite strict migration regulations regarding the presence of foreign persons to work in the film, television and live performance areas which are matched by many other countries. The ACCD does not want commitments made in relation to Mode 4 that restrict Australia's ability to retain these measures.

5.6 There is a special problem for the cultural sector concerning this issue. It appears from the DFAT document that requests in Mode 4 are not sector specific. There is a danger in acceding to requests in this area in a general way, that aspects of the current entertainment visa rules could be undermined. An example could be agreement to remove labour market testing or prior employment requirements.

5.7 ACCD believes that there may be scope in the GATS for Australia to liberalise in Mode 4 but to reserve particular sectors. It has done this in relation to advertising services where it made market access and national treatment commitments, but reserved production of advertisements for TV and radio.

Intellectual property

5.8 ACCD acknowledges the merit of further multilateral developments in some aspects of IP regulation such as strengthening certain rights, and accession to existing WIPO treaties.

5.9 However, the "intellectual-property-as-investment" framework that currently is being pushed by the Motion Picture Producers of America (MPAA) could be an area of concern. Anne McCaskill pointed out in 2001 that the 'coverage of intellectual property rights as investments' was to be expected at some point in the negotiations regarding the Free Trade Agreement of the Americas (FTAA), and that this would have 'potential implications for cultural policies and programs, for example through content quotas or access to advertising services markets, for local cultural sectors.'

5.10 ACCD suggests that the Australian Government must be wary about intellectual property concessions and agreements that could ultimately limit its ability to make cultural policy. We are also concerned to ensure that Australia is able to continue and - perhaps in the future introduce - statutory schemes that protect the economic and moral rights of creators and authors.

5.11 ACCD makes the point that intellectual property will be one of the great drivers of the new century (one commentator has predicted that rights will be the currency of the 21st century), and that Australia will require adequate cultural policies to ensure that it is able to take a place at the rights table.

E-commerce

5.12 The US Trade Representative has sought to involve e-commerce in its arguments for nations to make commitments on audiovisual. Discussions about e-commerce have been continuing in a number of fora, including APEC, as well as in bilateral agreements, most particularly the recent agreement signed between the USA and Chile

5.13 In his summary of the US/Chile Free Trade Agreement, the USTR says that in relation to e-commerce:

“Chile and the U.S. committed to non-discriminatory treatment of digital products;

agreed not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.”

5.14 We have heard unconfirmed reports that for the purposes of that agreement e-commerce is defined as digital products transmitted electronically. If this is the case, and this would need to be confirmed when the text of the agreement becomes available, then the US has achieved a precedent for a wide definition of e-commerce. This does not appear to us to be technological neutrality, but the defining of new technology so as to achieve liberalisation by other means.

5.15 While the digital economy is the current buzzword, there does not seem to be a clear definition of e-commerce (ACCD is not aware of any definition under GATS). ACCD is concerned that Australia should proceed with caution concerning e-commerce, particularly until such a time as there is consensus in the WTO about the definition of e-commerce. Otherwise, there is a strong risk that many issues related to the cultural area may be lost in arguments about the digital world, and the need to be technologically neutral.

5.16 The Australian Government should not make any specific commitment in regards to e-commerce and should argue that current measures that Australia has in place to support its cultural policy for the cultural sector do not represent any barriers to the development of e-commerce.

Telecommunications

5.17 ACCD notes that the dividing line between telecom and cable is increasingly blurred and any agreement on telecommunications must also preserve the right, in support of cultural diversity, to regulate cultural content delivered via such networks.

6. A strategy for the Australian Government to retain or assert its rights to support Australian culture.

6.1 *As stated already, it is the ACCD's position that the Australian Government should neither make nor respond to offers in the cultural area in the current GATS negotiations, nor in any other international trade negotiations. It should retain all its prerogatives to make and implement policy in the cultural area. It should not accede to any proposals for a standstill agreement in the cultural area. It should not make agreements in other areas such as e-commerce which now or in the future might constrain its rights in the cultural area.*

6.2 While the statement in 5.1 suffices unto itself, there is possible advantage in listing the specific prerogatives that ACCD wishes the Australian Government to retain within the cultural field in the context of any international trade treaty, since in some cases the prerogatives may not be foreground in any current debate around culture.

6.3 This list is extensive. However, we do not wish to claim that it is comprehensive in case something has been overlooked which in the future may prove to be important. It should be regarded as an elucidation of the fundamental position stated in 5.1.

6.4 It should be noted that it is not the ACCD's intention in this section to advocate any of the following for government action but rather, to ensure that the Australian government has the *prerogative* to take these actions should it so decide, unhindered by international trade agreements.

6.5 After each of the rights listed below, examples are given of their actual or possible application. The examples are intended to be illustrative but not comprehensive.

7 Specific rights to be retained or asserted

7.1 The right to adopt, maintain or enforce measures that accord special, preferential, or more favourable treatment to indigenous or national cultural goods and services.

Such treatment also includes measures intended to foster the exchange of ideas, information and artistic expression regionally, nationally and internationally.

Concerning the right to foster the exchange of ideas, information and artistic expression internationally, it is the ACCD's purpose to ensure a place within Australian cultural life for Australian cultural expression, but otherwise to foster a free flow of cultural expression between Australia and other countries.

The ACCD supports the Australian Government's statement that "Australia also has a tradition of openness and recognises the value in Australians accessing the rich variety of cultural products and services produced internationally." (Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, Geneva, July 2001)

It should be noted, however, that such a free flow tends to result in domination of the exchange by the most powerful cultural traders, with a consequent constraint on the opportunity for Australian citizens to experience a diversity of foreign cultures.

ACCD notes also that the many years of support to the Australian cultural industries has allowed some success in export of cultural services and products and thereby the projection of Australian culture, identity and values to the world. There are wider benefits in trade and tourism flowing back from this.

The rights described in 7.1 may be asserted in these ways:

- a. qualification requirements and procedures, nationality requirements, technical standards and licensing requirements with respect to cultural goods and services;

Examples: professional accreditation; eligibility for subsidies or to tender; certificates of authenticity for indigenous cultural products; broadcast licenses; rules defining what is and what is not Australian content; local content standards for television and radio broadcasting; expenditure requirements for pay TV drama channels; export from Australia of heritage art.

We note reports that Australia is seeking in general to "discipline" domestic regulation through GATS, with all licensing, qualifications, and standards restricted to what is "no more trade restrictive" or "no more burdensome" than necessary, with what is deemed "necessary" to be decided by a WTO panel in cases of dispute. This could have an impact on broadcast licensing, not, of course, only for our trading partners but for Australia also. Australian content quotas could be deemed to be more burdensome than necessary. There may be reasons to seek this discipline in other areas of trade; ACCD is extremely concerned that it could impact negatively upon prerogatives in the cultural sector.

- b. limitations on the number of cultural service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

Examples: Allocation of broadcast spectrum; allocation of licences for cable or any other existing or future means of delivery of cultural product. Conditions on these licences, such as requirements for local content, local production.

The ACCD supports the Australian Government's policy statement that "It is essential that Australia's media reflects Australian identity, character and cultural diversity and provides an Australian perspective on local and international events. Measures such as Australian local content regulations and limits on the foreign ownership of broadcasting services have been put in place to ensure this perspective." (Ibid)

- c. limitations on the total value of cultural service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

Examples: requirement that subscription broadcasters that are providing a predominantly drama channel should devote 10% of their total expenditure on programs to Australian drama; local content requirements for television and radio.

- d. limitations on the total number of cultural service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

Examples: allocation of broadcasting licences

- e. limitations on the total number of natural persons that may be employed in a particular cultural service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

Examples: regulation of the importation of foreign performers, technicians, writers, directors, designers and the like.

- f. measures which restrict or require specific types of legal entity or joint venture through which cultural goods or services are supplied.

Examples: investment controls requiring joint ventures in the film industry; restriction of eligibility for investment or grants from cultural agencies to Australian nationals.

7.2 The right to prohibit or limit foreign investment in the cultural sector.

Examples: Media ownership

The government already exercises a right to regulate foreign investment in the national interest (e.g. the Woodside/Shell matter). It is in the national interest to sustain local culture.

7.3. Where investment is made in cultural undertakings, the right to maintain, adopt or enforce any of the following requirements:

- a. to achieve a given level or percentage of Australian content;

Examples: overall transmission quota for free to air television and sub-quota requirements for drama, documentaries and children's programs; TV advertising; quotas for music on radio and sub-quotas for new releases; ABC's regional music fund and CD production; pay TV expenditure requirement and the development of new Australian drama; educational curricula; commissioning of new theatre, music, opera etc. works.

- b. to purchase, use or accord a preference to goods produced or services provided in Australia, or to purchase goods or services from persons in Australia;

Examples: All subsidies to cultural services; public broadcast media's procurement of Australian-produced content; publicly funded libraries' resource development and collection sharing; FFC investments; film & theatre festivals showcasing Australian work; gallery & museum requirement to showcase/ conserve Australian work; all Australian content standards for broadcasters; online content; touring subsidies for performing arts, music, visual arts.

- c. to enter into independent, co-production, or co-distribution agreements with any country;

Examples: existing official co-production agreements for film and television.

- d. that members of a board of directors or senior management be Australian nationals.

Examples: self-evident

- 7.4. The right to adopt, maintain or enforce measures to ensure that investment activity in Australia is undertaken in a manner sensitive to concerns and policies concerning cultural diversity.

Examples: sensitivity to indigenous cultural beliefs and protocols, e.g. indigenous bans on filming in certain locations

- 7.5. The right to adopt procurement policies and practices which favour or accord preferences to Australian cultural goods and services in order to preserve or enhance cultural diversity.

Examples: procurement by government bodies, favouring Australia, services, organisations: calls for expressions of interest, tenders; investment in cultural projects or organisations; commissioning of all types of art works or services including the digital; purchase of educational resources

- 7.6. The right to establish, sustain and further cultural develop institutions, networks, programs and other mechanisms.

Examples: museums, virtual museums, galleries, festivals, theatres, libraries, translation services, arts education institutions, cultural industry training advisory bodies.

- 7.7. The right to establish, endow or empower government (all levels of government) enterprises, monopolies, and other publicly governed institutions to provide cultural services, such as arts education and funding, film development, production and investment, and public service broadcasting.

Examples: Australia Council; all tertiary arts education institutions; AFC, FFC; ABC, SBS; National Gallery, Artbank; heritage councils.

- 7.8. The right to support and foster cultural expression and its communication and delivery through forms and instruments yet to be developed as well as those already known.

Examples: forms based on/in new technologies; new methods of delivering cultural goods or services.

The ACCD notes and supports the Government's statement that "Australia supports the principle of technological neutrality." (Ibid)

7.9. The right to exercise the rights set forth in paras 6.1 to 6.8, without trade, trade-related or any other forms of retaliation by other countries in any arena.

8. The exercise of the claimed rights

8.1 Australian governments have a long and creditable record of support to Australian culture, reaffirmed by this Government, and supported by the ACCD.

8.2 This submission has argued that, in the context of international trade agreements, the Australian government should retain or assert specific *rights* to sustain and develop Australian culture.

8.3 Without these rights, the government would be unable to implement cultural policies already in place or contemplated, to which it has announced and demonstrated its commitment internationally and domestically.

8.4 Further, it would be unable to respond to some of the important changing circumstances in the cultural sector, nor to requests from the sector for constructive intervention.

8.5 Among the targets or mechanisms for support which may no longer be permitted are the following. The list is *indicative* rather than comprehensive.

- Cultural subsidies in any form
- Local content standards for TV and radio, TV advertising, educational curricula, commissioning in any sphere; pay TV production expenditure requirement
- Procurement policies favouring Australian cultural suppliers, services
- Broadcast licensing
- Reasonable regulation of the importation of foreign talent
- Maintenance of Australian ownership of the media
- Film co-production agreements with foreign countries
- Establishment and support of cultural institutions, including publicly governed institutions such as the ABC, SBS, galleries, museums, arts educational institutions
- Especially important: support to new cultural forms and new forms of cultural dissemination and distribution.

9. In conclusion

9.1 The ACCD urges the Australian Government to insist upon comprehensive rights for Australian governments at all levels to assist to sustain and develop Australian culture. The Commonwealth Government, explicitly through statements in international fora, and implicitly through its policies and subventions in the cultural area, has acknowledged that Australian cultural life cannot be sustained without such support. A portion of Australian cultural life must be made secure for a broad diversity of Australian cultural expression. A place for Australian culture having been assured, free cultural exchange with all other countries is to be encouraged – although it must be acknowledged that by virtue of its trading strength, the USA already dominates that exchange at the cost of cultural diversity.

9.2 The Australian Coalition for Cultural Diversity once again thanks DFAT for the opportunity to make this submission. Should you have any questions, or wish to discuss the submission further, we would of course be pleased to respond. Contact should be made in the first instance with the principal author of the submission: Richard Letts, Executive Director, Music Council of Australia, PO Box 287, Double Bay NSW 2028. Phone 02 9251 3816, fax 02 9251 3817, email ozmusic@zeta.org.au

Sincerely

Richard Letts

On behalf of the ACCD membership:

Arts Law Centre

The Arts Law Centre of Australia is the national community legal centre for the arts. It was established in 1983 to provide specialised legal services and resources for artists and arts organisations.

Australasian Performing Right Association

Australasian Performing Right Association (APRA) is a non-profit organisation, established in 1926, which represents over 33,000 Australasian composers, songwriters and music publishers. It administers the Performing Rights in music of its members and affiliated societies around the world.

Ausdance

Ausdance is a nation-wide organisation which services all sectors of the Australian dance profession.

Australian Guild of Screen Composers

The Australian Guild of Screen Composers was established in 1984 to represent and promote the interests of composers in film, television, video and multimedia. The AGSC is represented on various film, television industry and music industry committees and boards; and activities of the AGSC include a newsletter, seminars, and annual awards.

Australian Interactive Multimedia Industry Association

The Australian Interactive Multimedia Industry Association represents over 400 Australian creators and developers of digital media by supporting best practice, keeping members up-to-date with industry news, export assistance, lobbying government and hosting industry events and Awards.

Australian Library and Information Association

The Australian Library and Information Association (ALIA) is the professional association for the library and information sector. The Association represents over 5 000 personal members, 1 000 institutional members and 10 million library and information services users.

Australasian Mechanical Copyright Owners Society (AMCOS)

Australasian Mechanical Copyright Owners Society (AMCOS) is a non-profit company representing over 200 music publishers in Australasia and administers certain reproduction rights on behalf of its members and affiliates.

Australian Publishers Association

The Australian Publishers Association (APA) is the industry association representing book publishers in Australia.

Australian Screen Directors Association

The Australian Screen Directors Association (ASDA) is the peak industry body representing the interests of film and television directors in Australia. It has 750 members nationally, including TV and feature drama directors, documentary filmmakers, animators and independent feature film producers.

Australian Society of Authors

The Australian Society of Authors is the peak industry association promoting and protecting the professional interests of Australia's literary creators. We have 3000 members across Australia.

Australian Writers' Guild

Established in 1962, the AWG is the peak professional body representing performance writers in Australia. On behalf of our members we work to improve professional standards, working conditions and remuneration; protect their creative rights; and promote the Australian cultural voice.

Copyright Agency Ltd

The Copyright Agency Limited is a not for profit organisation that represents 20,353 authors, publishers, visual artists, surveyors, and literary agencies. CAL administers certain reproduction and communication rights in works on behalf of its members and affiliated societies.

CREATE Australia

CREATE Australia is the national industry training advisory body for the cultural industry, covering the performing arts; music; entertainment and live theatre; film, television, radio, multimedia; museums and galleries; libraries; visual art, crafts and design; writing, publishing and journalism; botanic gardens and zoos; and community cultural development.

Media Entertainment & Arts Alliance

Established in 1992 following the amalgamation of the Australian Journalists Association, Actors Equity and the Australian Theatrical and Amusement Employees Association, the Media Entertainment and Arts 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.

Museums Australia

Museums Australia is the peak body representing the museum and gallery sector. It provides a range of professional services to members and promotes the role of museums and galleries in society at local, regional, state and national levels.

Music Council of Australia

The Music Council of Australia is a national peak music organisation and the Australian affiliate of the International Music Council. Its membership of 50 comprises national music organisations and elected individuals representing the breadth of the music sector. The MCA Network has a membership of 400. MCA conducts research, publishes online and in print, is an advocate nationally and internationally, campaigns for music participation, organises a national music critics' circle, music fellowships, and more.

Musicians Union of NSW

"The Musicians' Union of New South Wales is an industrial organisation registered under the Industrial Relations Act 1996 (NSW). The Union represents musicians performing and recording in all styles of music in all matters affecting their professional interests."

National Association for the Visual Arts

The National Association for the Visual Art (NAVA) is the peak body which advances the professional interests of the Australian visual arts and craft sector through advocacy, representation and service provision.

Screen Producers Association of Australia

The Screen Producers Association of Australia is the industry association representing the interests of independent film and television producers, television commercial producers, and services and facilities providers to the audiovisual industries.