

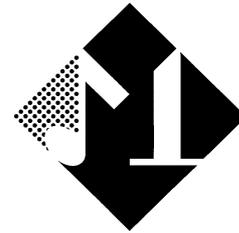
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*Australia's representative to the International Music Council*



**Music Council of Australia**

The Secretary  
Australia-Malaysia FTA Scoping Study  
Trade and Economic Analysis Branch  
Department of Foreign Affairs and Trade  
Barton ACT 0221  
By email  
October 15 2004

Dear Sir/Madam

The Music Council of Australia welcomes the opportunity to present its views to the scoping study on the proposed FTA with Malaysia.

The Council supports the conclusion of a mutually beneficial trade agreement with Malaysia. However, it believes that cultural content and dissemination should not have a part in an agreement that is intended to achieve trade objectives. Cultural objectives can be the losers in such agreements, as is the case with the Australia/US FTA.

#### **Total exclusion of culture**

MCA advocates the total exclusion of culture from a trade agreement with Malaysia, and from all international trade agreements, in order that governments maintain their right to support to their own cultures unfettered by the terms of such agreements.

Our culture is who we are, and how we express that.

*It is not appropriate that a country's prerogative to support its own culture should be constrained by the trade ambitions of another country.*

In effect, as we have noted in previous submissions concerning the US agreement and GATS, the Australian government has propounded and enacted such a policy of total cultural exception in the Australia/Singapore Free Trade Agreement and in its offers under GATS.

Although the Australian government more or less abandoned the policy of cultural exclusion in the final outcome of the agreement with the USA, and thereby imposed constraints on its own rights to support Australian culture, the Music Council nevertheless urges the reinstatement of the policy in all subsequent agreements including that with Malaysia. This will avoid opening the door to further erosion of the cultural exclusion.

#### **Definition of culture**

The word "culture" has many definitions. For the purpose of international trade negotiations, the Australian government's own definition of culture, as formulated for the Singapore agreement, is most

satisfactory. It is culture as per this definition that the Music Council seeks to exclude from international trade agreements.

### **The consequences of not implementing a total cultural exception**

The Australian government's initial position in its negotiations for a trade agreement with the USA was for total exclusion of culture. When the US did not accept this position, the Australian government modified its proposals: there would be a total exclusion except that it would agree to certain limitations in some aspects of audiovisual: e.g. a cap on local content requirements for broadcasters. In effect, the cultural area became the location of a positive list agreement, sitting within a negative list agreement overall.

In the final negotiations, the Australian government abandoned the cultural exclusion, while retaining what had previously been concessions. These concessions now became the only rights to regulate culture permitted to the Australian government under the agreement. All other actions to regulate culture were now forbidden because they fell under the comprehensive jurisdiction of a negative list agreement.

It soon became apparent that there were immediate unforeseen consequences. For instance, digitally transmitted cinema cannot be regulated. Whether or not it should be regulated is not the point; if there were good arguments to do so, they would be frustrated by the FTA. This issue was never discussed with the industry because the abandonment of the cultural exclusion was not ever foreshadowed. If there had been a cultural exclusion, it could still be regulated.

There will be many other unanticipated consequences because we cannot foresee or even conceive the future in all its detail. This is the great disadvantage of the negative list agreement. It proscribes all interventions except those that are consistent with a particular philosophy and specifically permitted by the terms of the agreement, regardless of how circumstances may change for one or the other party.

The point is that in a time of such change the government needs maximum flexibility to respond. In the cultural area, without the cultural exemption, it will be unable to do respond other than through the very narrow prerogatives allowed by the US or other trade agreements.

### **Free cultural exchange**

Consistent with the rights of all countries to ensure the vitality of their own cultures, MCA supports free cultural exchange between countries, so that there is a development of intercultural understanding and appreciation, and therefore supports such cultural exchange between Australia and Malaysia.

Such exchange need not be at odds with the right of each country to support its own culture. For instance, to take a simple example, Australia requires that a minimum percentage of broadcast television or radio time be given to Australian content. But the remainder of the broadcast time is, in theory, open to content from all non-Australian sources.

There are trade aspects of such exchanges, but they are not the principal motivation and the arguments for trade should not prevail over the arguments for cultural sovereignty.

### **Cultural diversity**

It is apparent that a free cultural exchange, when controlled by market forces, may in practice allow the overall exchange to be dominated by the parties with the strongest position in the market place.

The Music Council believes that the Australian population would benefit most from a diversity of cultural experience, including access to the cultural productions of Malaysia -- a diversity that is not necessarily delivered by the market as witnessed by the US domination of Australian commercial television. The Council therefore would support in principle regulations or initiatives that encourage diversity in cultural imports, such as the establishment of SBS Television, but these should not be embodied in, depend upon, nor be prohibited by international trade agreements.

Thank you once again for the opportunity to make this submission. We are of course more than willing to participate in further discussion of the agreement.

Yours Sincerely

Dr Richard Letts AM  
Executive Director