

SUBMISSION BY
MEDIA, ENTERTAINMENT & ARTS ALLIANCE
TO
DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
REGARDING
AUSTRALIA INDONESIA FREE TRADE AGREEMENT
FEASIBILITY STUDY

MAY 2008



The Media, Entertainment & Arts Alliance

The Media, Entertainment & Arts Alliance (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.

Introduction

The Media, Entertainment & Arts Alliance (the Alliance) welcomes the opportunity to make comment in relation to the feasibility study into a free trade agreement between Indonesia and Australia, announced by the former Minister for Trade, The Hon Warren Truss MP, on 27 July 2007.

The Alliance has a long-standing interest in trade agreements in respect of the manner in which they might affect Australia's cultural industries. The Alliance has made submissions to the Department of Foreign Affairs and Trade (DFAT) regarding a number of proposed and negotiated free trade agreements including:

- the Singapore-Australia Free Trade Agreement (SAFTA);
- the Australia-United States Free Trade Agreement (AUSFTA), the Cooperation Council for the Arab States of the Gulf (GCC),
- Malaysia,
- Japan,
- China,
- Chile and
- the proposed agreement between Australia, New Zealand and the ASEAN countries,

as well as the General Agreement on Trade in Services (GATS).

The Alliance and Free Trade Agreements

The Alliance considers that the nation's trade objectives are best achieved in the context of multilateral agreements such as the GATS and the General Agreement on Tariffs and Trade (GATT). Australia's trade objectives with Indonesia will be best served in the context of the World Trade Organisation (WTO). The Alliance is hopeful that, following the decision by WTO members on November 30 2007 to aim to finish the Doha round of trade talks sometime in 2008,¹ the result will finally be a positive outcome. To that end, the Alliance welcomes the current Government's commitment to the conclusion of a successful round and to the comments made by the Minister for Trade regarding the importance of the multilateral trade framework.

In any event, consistent with bipartisan Federal Government policy in respect of the GATS, Australia's position in all positive listing free trade agreements must continue to be one where no commitments are made that might in any way adversely impact on the Government's ability to give effect to its social and cultural objectives for Australia's cultural industries now and into the future.

¹ *WTO members aim to finish Doha talks next year*, Reuters, 30 November 2007, *Guardian Unlimited*, see online at <http://www.guardian.co.uk/feedarticle?id=7117430>

“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 agreements.”²

Australian Intervention, CTS Special Session, July 2001, Geneva

In the event that Australia does determine that a bilateral agreement with Indonesia should be negotiated, the Alliance prefers positive listing bilateral agreements. However, in the event a negative listing agreement with Indonesia is considered appropriate, the comprehensive cultural reservations in SAFTA should serve as a workable precedent. The Alliance is opposed to the concessions made in the AUSFTA and would oppose the inclusion of similar concessions in any future free trade agreements including in any agreement with Indonesia. The Alliance is similarly opposed to any Most Favoured Nation clause that would have the effect of granting the concessions made in the Closer Economic Relations (CER) Agreement with New Zealand or the AUSFTA to any other country.

The Alliance is aware that reference was made to Australia’s cultural industries in the *Joint study into the costs and benefits of trade and investment liberalisation between Australia and Japan* which was released on 20 April 2005 (2005 Joint Study). The 2005 Joint Study was conducted under the Australia-Japan Trade and Economic Framework, signed in July 2003 by Prime Minister Howard and his Japanese counterpart Mr Koizumi. The 2005 Joint Study identified those service activities where Australia has not made commitments in the GATS or has listed limitations to its GATS market access and national treatment obligations. It states as follows:

“Australia reserves the right to adopt or maintain any measure with respect to the creative arts, cultural heritage and other cultural industries, including broadcasting, film and other audiovisual services, entertainment services and libraries, archives, museums and other cultural services (Broadcasting Services Act 1992, Radiocommunications Act 1992). Specific measures currently in place include local content quotas for television, subsidies and favourable tax treatment for Australian films, and film co-production arrangements with selected countries. Australia has made no specific commitments, and has MFN exemptions, for audiovisual services in GATS.”³

It also noted that:

“Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons,

² Australian Intervention on Negotiating Proposal on Audiovisual Services, CTS Special Session, July 2001, Geneva.

³ *Australia-Japan Trade and Economic Framework*, page 67, available online at www.dfat.gov.au.

or other movement of natural persons, including immigration, entry or temporary stay.”⁴

This reflects Australia’s long-standing position in respect of the manner in which Australia’s cultural industries are considered in the context of trade agreements, other than, regrettably, in CER and the AUSFTA. The Alliance supports this position being reflected in any free trade agreement that might be negotiated between Australia and Japan and similarly supports the same position being reflected in the negotiations for any agreement with Indonesia.

Finally, consistent with long standing policy in respect of trade agreements and Australia’s cultural industries – including its audiovisual and broadcasting industries – the Alliance is pleased that the Rudd Labor Government is committed to becoming a party to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and that the Government is now moving to give effect to this welcome election commitment.

Background information on Indonesia

Film Industry

Indonesia has at various times during the 20th century had a booming feature film industry. For instance, during the 1970s and 1980s, Indonesia was regularly producing 70 features a year, although the output was considerably higher in some years. In 1977, 124 films were produced. While local output was consistently 70 films a year, around 180 films were imported annually. While the majority were from the United States, “audience figures suggest that 35-40 per cent of total viewers watched Indonesian films, only 20-25 per cent watched American films, while 15 per cent watched films from Hong Kong, and 12 per cent watched films from India. American films however made the most money for the distributors, for they were shown in the most expensive theatres.”⁵

However, things changed dramatically in the 1990s. While 115 films were produced in 1990, there were only 57 films made in 1991, 37 in 1992 and, by 1999, only three were produced.⁶

As with many film industries, slumps had occurred earlier in the industry’s history, notably with the collapse of the studios in the latter part of the 1950s.

Likely reasons for the dramatic decline in production in the 1990s include increased competition from American films, the advent of cineplexes and the introduction of commercial television in the late 1980s – before this time there

⁴ *Australia-Japan Trade and Economic Framework*, page 63, see online at www.dfat.gov.au

⁵ *Film in South-East Asia: View from the Region*, Edited by David Hanan, SEAPAVAA in association with the Vietnam Film Institute and the National Screen and Sound Archive of Australia, Hanoi, 2001, page 238.

⁶ *Ibid*, page 242.

was only one television station, TVRI (Televisi Republic Indonesia), owned by the government, with programs that were “not attractive.”⁷

Some commentators also attribute the collapse of the film industry in the last years of the Suharto regime to “[t]ough censorship and state control [which] meant only a few Indonesian-made films reached the screens. The rest were heavily cut Hollywood blockbusters imported and distributed by one enterprise with links to the president. Film critics had little room for manoeuvre and as [filmmaker] Lulu Ratna explains, with government restrictions there was just no appetite for film:

‘Nobody could say what really happens because then they will get accused of trying to disturb the establishment. We had so many regulations, including censorship, that it was just making it even harder to make films.’⁸

Despite a resurgence of energy following the end of the Suharto regime, in each of 1998, 1999 and 2000 only four films were produced, which some commentators attribute to a dramatic increase in production costs following the collapse of the rupiah in the wake of the so-called Asian meltdown.

“Faced with the drastically increasing cost of production, producers and other film employees sought to find ways to produce films with cheaper cost of production. They then decided to produce film by using video and transferring it to celluloid. This way of producing film can save up ... to 30 per cent. But, it must be acknowledged that the quality ... is not so good.”⁹

Production slowly picked up with 15 films shot in 2002 and 16 in 2004. However, the dynamics of the industry changed. Whereas once an Indonesian film could be considered a box office success with an audience of 500,000 to 700,000, by 2004 an audience of between two and three million was required for a film to be considered a box office success.¹⁰

However, the accuracy of the information available with respect to production output, audience reach, box office takings and share, and production budgets cannot be entirely reliable. Research methodology varies. The table over the page shows a slightly different picture.

⁷ *Film in South-East Asia: View from the Region*, Edited by David Hanan, SEAPAVAA in association with the Vietnam Film Institute and the National Screen and Sound Archive of Australia, Hanoi, 2001, page 243.

⁸ *Indonesia calling*, Anna Yeadell, 16 September 2003, a Radio Netherlands feature, available online at <http://www2.rnw.nl/rnw/en/features/development/030916film.html>.

⁹ *Film and Television Production in Indonesia*, Enison Sinaro, President, KFT-Indonesia Cineast Association, a paper presented at the UNI-MEI Conference, Bangkok, October 2004.

¹⁰ *Film and Television Production in Indonesia*, Enison Sinaro, President, KFT-Indonesia Cineast Association, a paper presented at the UNI-MEI Conference, Bangkok, October 2004.

Table 1 Indonesian Films and Audience

Year	Titles	Audience	% Total Audience
2000	5	1,845,520	7.46
2001	5	687,226	2.78
2002	12	4,330,540	17.50
2003	13	4,697,945	18.98
2004	21	6,065,338	24.51
2005	31	8,724,223	35.25
2006	32	10,142,940	40.98
To 30 June 2007	22	10,391,842	41.99
2007 estimate	50		60.00

Source: GPBSI (All Indonesian Theater Organisation)¹¹

Other sources assert the number of films in production in 2006 totalled 60, a fivefold increase on the twelve produced in 2003, 29 more than the number produced in 2004, and ten more than the number produced in 2005. Yet others claim the total number of feature films produced in 2006 was 41 – of which only around ten were filmed on 35mm.

The differences may relate to whether all films were counted or only those achieving cinema release and whether films produced on low resolution video were included or excluded.

However, the trend is clear from all the available data. Production is increasing, together with audiences and box office share.

Nonetheless, budgets, along with quality, generally remain low. The average feature film budget in 2004 was \$220,000 rising to \$255,000 in 2006.

Small budgets do not however mean small crews. The average on set feature film crew for a production filmed on 35mm is around 75 to 80 – high by comparison with a low budget Australian film. Compliance with occupational health and safety principles is patchy as is compliance with laws that set out the need for seeking filming permits. Workers compensation insurance coverage is also not common. Many films are shot “guerilla style”, circumventing the need to seek relevant permissions. Crew sizes on so called “instant” digital films are much smaller and generally shot in around seven days.

The regeneration of the industry this decade has been led by independent filmmakers responding to the end of much of the censorship that characterised the Suharto era.¹² Although quality is generally low, driven by low budgets compounded by only negligible interest in Indonesian films outside Indonesia, some directors, like the award winning Garin Nugroho, nonetheless manage to continue to produce quality films tackling difficult

¹¹ Cited in *Film and Television Show Production in Indonesia: Present Situation and Future Prospects*, Chand Parwez Servia, paper delivered at the 7th Asia-Pacific UNI-MEA Film Production Conference, Jakarta, August 2007

¹² The Global Industry – A Background Document, prepared by

subjects. By way of example, Garin Nugroho this year won the Silver Screen Award for Best Film at the Singapore International Film Festival for *Opera Jawa*, the latest in a long list of Asian Awards that includes the Special Jury Prize at the Tokyo International Film Festival in 1998 for *Daun di atas bantal*.

Although the Indonesian government does not provide financial assistance to the film industry, it has done so in earlier decades and lobbying continues for it to do so again. According to the office of the United States Trade Representative, “foreign investment is prohibited in the film industry.”¹³

The government also imposes restrictions on foreign investment in print and broadcast media, including video production and distribution and cinema construction and operation. Under the Film Law¹⁴ in 2000, it extended the prohibition on foreign investment to include “multimedia services” defined as Internet services and electronic commerce.

“Since all of the major Indonesian-language Internet portals in operation are joint ventures with significant foreign equity, this provision caused substantial disruption to current investors. The Indonesian Government rescinded the ban two weeks later.”¹⁵

Indonesia also prohibits foreign film and videotape distributors from establishing branches or subsidiaries. Importation and distribution services are reserved for 100 per cent owned Indonesian companies. However, importation and distribution within Indonesia of European and American films is handled through a single organisation, the European and American Film Importers’ Association (AIFEA).¹⁶ That being said, distribution services within Indonesia have for decades been effectively a monopoly, albeit totally Indonesian owned. The laws were designed to protect Indonesian films from domination by overseas distributors and exhibitors but corruption resulted in a monopoly that controlled the dissemination within Indonesia of foreign films whilst, unfortunately, not necessarily acting in the best interests of all Indonesian producers.

Indonesian Television Industry

While the film industry was in crisis during the nineties, the television industry flourished with the introduction of commercial television broadcasters. The decade or more of commercial television has seen an appetite for soap operas, both from Indonesia and overseas, give way to an appetite for American reality television programs and finally to a demand for local drama programs. As with the film industry, however, many local drama programs are produced very cheaply and production values often leave a lot to be desired.

¹³ *Foreign Trade Barriers: Indonesia*, United States Trade Representative, page 195, available online at www.ustr.gov.

¹⁴ *2005 USTR National Trade Estimate Report on Foreign Trade Barriers – Indonesia*, see online at <http://jakarta.usembassy.gov/econ/annual/NTE-Reporti2005-2.html#ipr>

¹⁵ *Foreign Trade Barriers: Indonesia*, United States Trade Representative, page 195, available online at www.ustr.gov.

¹⁶ *Ibid*, page 194.

Nonetheless, local television drama production is extremely popular with audiences.

There are 6 television networks

- Televisi Republik Indonesia (TVRI) – public, operates two networks
- Surya Citra Televisi Indonesia (SCTV) – private
- Rajawali Citra TV Indonesia (RCTI) – private
- Indosiar – private
- Televisi Pendidikan Indonesia (TPI) – private
- Metro TV – private, news

Indonesian press

According to Reporters without Borders, Australia is ranked 28th in its 2007 Press Freedom Index while Indonesia trails well behind ranked 100th.¹⁷

There are a large number of newspapers including:

- The Jakarta Post – English-language daily
- Kompas – daily
- Pos Kota – daily
- Media Indonesia – daily
- Suara Karya – daily
- Republika – daily
- Sinar Harapan – daily
- Bisnis Indonesia – business daily
- Tempo – weekly, English-language pages

Intellectual Property Rights Protection

Indonesia appears on the US Trade Representative's lower level Watch List thereby meriting bilateral attention to address existing IPR problems. This has been because the Indonesian government have taken a number of steps in the IP protection area including:

1. The implementation of regulations designed to stop the illegal production of pirated optical discs,
2. The licensing of optical disc factories and raids against illegal optical disc factories,
3. Raids against retailers selling pirated goods,
4. Activation of a ministerial-level National Intellectual Property Task Force to coordinate IPR enforcement and the conduct of public awareness programs, and
5. A new Customs Law that clarifies the authority of Customs officers to seize goods that infringe on IPR

¹⁷ Reporters without Borders 2007 Press Freedom Index, see online at http://www.rsf.org/article.php3?id_article=24025

Indonesia also introduced new copyright laws in 2003. These laws included criminal penalties for end-user piracy, the ability of rightholders to seek civil injunctions against pirates, the provision of protections for neighboring rights in sound recordings and for the producers of phonograms and stipulates a 50-year term of protection for many copyrighted works.

Indonesia is a member of WIPO and has acceded to the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty, the Patent Cooperation Treaty, the Trademark Law Treaty, the Nice Agreement for the International Classification of Unclassified Goods and Services, and the Strasbourg Agreement Concerning International Patent Classification.

However, despite these moves there remains significant issues in particular relating to DVD, audio and software piracy. Software Piracy is significant in Indonesia with the Business Software Alliance stating that piracy rates were high at 85 per cent¹⁸

¹⁸ <http://w3.bsa.org/globalstudy//upload/2007-Losses-Global.pdf>