

AUSTRALIA – US FREE TRADE AGREEMENT

“In broadcasting and audiovisual services, the FTA contains important and unprecedented provisions to improve market access for US films and television programs over a variety of media including cable, satellite and the internet”

Office of the United States Trade Representative, 8 February, 2004
www.ustr.gov

“Why bother whether we have our own stories or not? My only answer to that is that we have a right to them. We are human beings with our own feelings, strengths and weaknesses and we need to know what we are like, and we need to know that we are important enough to have fictions written about us, or we will always feel that real life happens somewhere else and is spoken in accents other than our own.”

Colin, Emerald City, David Williamson, 1987

Unfortunately, despite the fact that the lobbying efforts of the AWG and other industry organisations successfully limited what the Australian government gave away in the FTA, the bald fact remains that the Australia – US Free Trade Agreement means that future generations will have access to fewer Australian stories. The majority of the stories that they will be able to access in the new media landscape will be written about other people and spoken in other accents. Primarily American.

Our Government has traded away safeguards on cultural identity for tomorrow’s Australians who will live and work with, be entertained and communicate by, new media and new technologies. Australia’s capacity to ensure an Australian identity in this new media landscape has been seriously compromised. And one thing that is clear is that the levels of Australian content in emerging media systems will be much lower than the current levels we have come to expect on broadcast television.

As media analyst Jock Given has recently noted, this Agreement has *institutionalised lower aspirations for Australian content on new and emerging media platforms.*

Why is the picture so grim?

Didn’t the Government protect current regulations and ensure flexibility for new media?

Like much of the Agreement, the revelations are in the fine print. The Government has maintained current quotas and has allowed for some future flexibility – something the AWG fought long and hard for. However, the entire

premise of free trade is for increased liberalisation and even in this Agreement (where the free trade bit appears to be somewhat lopsided), you don't have to read too far between the lines to see that pressure will inevitably come to reduce regulation to negligible levels and

the only way is down due to

Ratchet Provisions for Transmission Quotas

The FTA says Australia can keep the Australian 55% transmission quota on free to air commercial television and its 80% quota for commercials, however under the FTA, these quotas are subject to ratchet provisions, which means that they can only ever be reduced. And if they are ever reduced, say to 50%, they can never be increased to their previous levels.

The long term effect of these ratchets is progressive liberalisation. As other forms of media gain currency and use, the pressure will be on to drop the bar for current (and soon to be superceded) media. You do the maths.

Is it in the National Interest that only 4% of kids programs on pay TV will be Australian?

Even with 26% market share, Government considers Pay television to be still in its infancy. That's why we only have a 10% expenditure quota on drama channels. This translates to less than 4% Australian programming in total on drama channels. Under the FTA, the drama expenditure quota can only ever be increased to 20%, and that's after consultation with the US!

We can only ever introduce 10% expenditure quotas on kids, documentary, educational and arts channels. Given the experience on drama channels, we can probably never expect to see more than 4% Australian content on these channels.

So – why is this a problem?

We expect that the free-to-air television networks will argue that it is unfair for them to compete with the relatively unregulated pay television sector, and the yet to be regulated (or indeed defined) new media sectors. Free-to-air broadcasters will argue that they should not have to bear the costs of ensuring Australians have access to Australian stories while their competitors can fill their schedules with much cheaper imported programs.

The low levels of regulation for Pay TV will set the benchmark for 'appropriate' and 'reasonable' local content regulation levels in Australian media in the future.

What about multichannelling?

If with digital television, additional channels are allowed, no more than two channels out of ten per network can ever be regulated. If a network broadcasts more than ten channels, one additional channel can be regulated. Put simply, potentially 80% of channels in a multi-channel environment will have no requirement to broadcast Australian programs.

What about new-media?

While we might think that new media covers all media that is yet to be introduced to Australia or yet to be invented, the FTA defines it simply as audio and interactive video services. While Australia has maintained the right to regulate in respect of these services, we can only do so after it has been established that Australian content is at unacceptably low levels and only after consultation with the US. Further, we can only regulate so as to ensure that Australian content is 'not unreasonably denied' to Australian consumers, and only on companies that carry on business in Australia.

The American's are thrilled. E-cinema, 3G telephony and a whole raft of other new media seem set to be dominated by programming from Hollywood.

What about subsidies and grants?

The Australian Government maintains that subsidy and grants have been excluded from the AUSFTA. However, the problem is that in terms of film and television, the Government doesn't 'subsidise' Australian films and television, they actually 'invest' in the intellectual property of the work and expect to recoup that investment.

Unless this matter is cleared up over the next few weeks during the 'legal scrub', it could mean that the 'significant Australian content test', which is a pre-condition for investment by the AFC and FFC, and covers subject matter, place of production and post production, source of finance, copyright ownership and personnel, would no longer be allowed.

This means that contrary to the claims made by Government, the most common form of film and TV 'subsidy' may in fact be constrained and investment in home grown talent and stories, horribly compromised.

ABC and SBS???

While the Government claims that because subsidy was excluded from the agreement, government funding of the ABC and SBS is not affected. However, the definition of public service excludes services provided on a commercial basis or in competition with other service providers. So SBS advertising or ABC

product marketing could be seen as services in competition with others. This ambiguity may mean the US could challenge some aspects to public broadcasting.

The Big Picture

We're not alone in questioning how much the AUSFTA is in the national interest. We're not the only ones who have been 'duded'. Cane growers were ditched and Australian beef farmers got a worse deal than even Chilean beef farmers and they still have to wait 18 years before they get the benefits of the Agreement. There are major concerns about the Pharmaceutical Benefits Scheme where costs will almost certainly rise and also about Quarantine where non-scientists will be allowed to have input into Quarantine policy in order to facilitate trade.

Sure we've increased anti-piracy measures for copyright holders, but give we're a net importer (primarily from the US) of copyright, it's straight back to American shores that the cash will flow.

We've Kissed Goodbye National Sovereignty

This is the first time that Australia has systematically given away its sovereign right to support its cultural identity without constraint.

The Australian Government has moved away from the 'cultural carve-out' approach it has maintained in all other bilateral and multilateral free trade agreements and has cheerfully (or not) given away its ability to implement regulations that most effectively and efficiently support the nation's culture. What the negotiators didn't specifically exclude in this agreement, is no longer do-able.

Anything that is not specifically excluded in the deal is off-limits for the Australian Government in the future. We will never be able to regulate cinema. We will never be able to introduce anything other than expenditure quotas on Pay TV (see Pay TV section), regardless of how effective they prove to be over the coming years.

So what happens next?

The text of the Agreement is currently 'draft only', because it's going through a 'legal scrub', i.e. they're finding out where the serious legal anomalies are and trying to fix them up. Nothing substantive can be changed at this stage, i.e. they are no longer negotiating. Once both sides are happy with it, the Prime Minister and President Bush can then 'sign' the treaty. After this happy event, the text of the treaty can not be changed. However, it does not automatically enter into force.

How does it enter into force?

Prime Minister Howard and President Bush want the Agreement to enter into force on 1 January 2005.

In Australia, this means that all the 'enabling legislation' has to be passed by 1 January 2005, i.e. the legislation that needs to be changed must have all those changes made and through the Senate by this date. It's all or nothing. If the Senate chooses not to pass a piece of enabling legislation then the FTA cannot be enforced.

Joint Standing Committee on Treaties

The Federal Government has referred the agreement to the Joint Standing Committee on Treaties (JSCOT) for comment. This Committee is analysing the FTA and the required 'enabling legislation'. Submissions to this enquiry are due on 13 April 2004 (but you can get them in any time before end May). JSCOT will then hold a series of public hearings and will report back to Government by 23 June 2004.

Senate Select Committee on the AUSFTA

The Select committee is also examining the agreement and its impacts and providing a process for review to ensure that the AUSFTA is in Australia's national interest. Submissions are due by 30 April and it will then hold public hearings and report back to Government.

So what can YOU do to HELP?

The AWG will be arguing that the FTA is not in the national interest and that therefore the enabling legislation required to enact the Agreement must be blocked in the Senate. You need to do the same!

Write to your local MP

Write to ALL the Senators in your State – they're the key to blocking the legislation

Write to the Mark Latham (ALP), Andrew Bartlett (Democrats), Bob Brown (Greens), because as leaders of the opposition parties, they're the ones that hold the key.

In Australia, the agreement does not need the approval of Federal Parliament; the Prime Minister and Cabinet just sign it off. However, for the trade agreement to come into force, a number of legislative and regulatory amendments are required. It is important to express your views to your local MP and seek opposition to the amendments. It may also be useful to remind them that it is an election year.

Write as a WRITER!!!

Politicians lead boring lives. Lead your letters with the fact that YOU ARE AN AUSTRALIAN WRITER! We write their favourite episode of their favourite Aussie series, their favourite Aussie film, the bits their kids really love in Playschool or Saddle Club.

Exploit the Glamour!

Because compared to Politicians, performance writers are glamorous! Performance writers change the Australian language and are responsible for how Australian's see themselves on screen (and the way Politicians are represented!). Remind them of that.

To find out your local Federal MP's or other MP's and Senators contact details, go to the Parliament House website:

<http://www.aph.gov.au/whoswho/index.htm>

Quick anecdote – We know that the West Indies Cricket Team is In Crisis. Well, in the Caribbean there are no local content quotas and everything is beamed in from the US. So if you're watching the running (say), the commentator is barracking for the US (and possibly sledging the Jamaican) and you are lucky to see or hear anything about the athlete representing your own country. And guess what – the Cricket is hardly televised because Cricket is not a US national sport. It doesn't even rate. And guess what – in the West Indies, a reason it is thought that the cricket team is in crisis is because fewer and fewer kids are taking up cricket and more and more kids are taking up basketball and baseball, because guess what – that's what they see on television.

Write to the Joint Standing Committee on Treaties

deadline: Tuesday 13 April, 2004 and throughout the inquiry

Submissions should be emailed to jsct@aph.gov.au or mailed to The Secretary, Joint Standing Committee on Treaties, R1 – 109, Parliament House, Canberra ACT 2600

<http://www.aph.gov.au/house/committee/jsct/usafta/index.htm>

Members:

Dr Andrew Southcott MO (Liberal Party, Boothby)
Mr K Wilkie MP (ALP, Swan)
Senator Santo Santoro (Liberal Party, QLD)
Senator A. Bartlett (Australian Democrats, QLD)
Senator Kirk (ALP, SA)
Senator B Mason (Liberal Party, QLD)
Senator Marshall (ALP, VIC)
Senator Stephens (ALP, NSW)
Senator T Tchen (Liberal Party, VIC)
Hon DG Adams MO (ALP, Lyons)
Mr Kerry Bartlett MP (Liberal Party, Macquarie)
Mr Stephen Ciobo MP (Liberal Party, Moncrief)
Mr M Evans MP (ALP Bonython)
Mr Peter King MP (Liberal Party Wentworth)
The Hon Bruce Scott MP (National P, Maranoa)

Write to the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America

Deadline: Friday 30 April 2004

email submissions to: FTA@aph.gov.au
mail to: Senate Select Committee on the FTA between Australia and the USA, Parliament House, Canberra ACT 2600 or fax: 02 6277 2219

http://www.aph.gov.au/Senate/committee/freetrade_ctte/index.htm

Members:

Senator Peter Cook (ALP, WA) (Chair)
Senator Brandis (Liberal Party, QLD) (Deputy Chair)
Senator Boswell (National Party, QLD)
Senator Conroy (ALP, VIC)
Senator Ferris (Liberal Party, SA)
Senator Harris (One Nation, QLD)
Senator O'Brien (ALP, Tasmania)
Senator Ridgeway (Australian Democrats, NSW)

Some messages & questions – but please make up your own from the information supplied

Is trading away national sovereignty in the national interest?

Any free trade agreement Australia enters into should ensure that Australia remains free to respond to changes as and when it sees fit?

We've effectively outsourced our cultural policy to Hollywood – does the Government truly believe that one of America's largest industries will support additional regulations on Pay TV, digital multichannels or any on new media?

Is it in the national interest to have just 4% of all kids and educational programs on Pay TV being Australian? Is it in the national interest to have 96% of all programs on kids and educational channels on Pay TV made overseas?

further information on

www.awg.com.au

www.asdafilm.org

www.aftinet.org.au

www.free2baustralian.org.au