



AUSTRALIA COUNCIL

CULTURAL TRADE

BACKGROUND REPORT

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Executive Summary

The Australia Council believes that the appropriate treatment of cultural issues in multilateral trade agreements is of major practical and symbolic significance. Council welcomes the Australian Government's confirmation that it will ensure that Australia's cultural objectives are taken into account in future international trade agreements. In a televised debate on the Australian film industry, the Hon. Peter McGauran, former Minister for the Arts and the Centenary of Federation, said:

'...we've stated it unequivocally, which is, and it's a Cabinet declaration, that cultural identity and national interest will be prevalent and in fact dominant in any trade negotiations. ...Mark Vaile is not putting culture on the table. ...It will be foremost in our minds. It will be a dominant factor in any discussions. And it is hard, if not impossible, to imagine when or where this government would trade it off.'¹

The Australia Council proposes that the following core principles and objectives are fundamental to future trade negotiations:

- There should be no compromise in international trade agreements of the national right to encourage the emergence and promotion of artists, creative institutions and organisations through subsidies. Any discussions regarding subsidies (as proposed by the US and Brazil) should recognise the importance and the extensive use of such arrangements in the Australian arts and cultural sector and their central place in promoting national policy objectives. The Australia Council questions the likely trade benefits from developing such an understanding on subsidies because the proportion of world audiovisual trade taken by subsidised productions is likely to be very small.
- An argument might be advanced to establish new international forums to promote the access of artists and diverse cultures to global audiences and cultural interchange. This would address the considerable potential for dominant producers to exploit downstream bottlenecks (for example, as a result of oligopolistic control of global distribution channels).
- It is important that international trade protocols do not act to restrict the freedom of sovereign governments to promote public goods and the provision of community services within their jurisdictions.
- It is important that international trade protocols do not preclude sovereign governments from addressing systemic market failures.
- In the arena of the arts and cultural sector, there should be a bias to negotiations in a multilateral framework rather than a bilateral framework. There are difficulties in drafting all-embracing bilateral agreements in a manner that do not compromise existing legislation, government policy objectives, future developments nor the national interest.

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1. Introduction

In August 2001, the Australia Council made a submission to the Department of Foreign Affairs and Trade (DFAT) for the World Trade Organisation's (WTO) Fourth Trade Policy Review of Australia. This Cultural Trade Background Report sets out the context for many of the issues raised in Council's August 2001 Submission and provides an entrée to the current debate.

The purposes of the WTO's Trade Policy Review Mechanism are to improve transparency, to create a greater understanding of the policies that countries are adopting, and to assess the impact of those policies. It is in this spirit that the Australia Council suggests that a full discussion of the treatment of cultural industries at the next round of the WTO would be beneficial and in the nation's best interests. A continuation of the status quo (where no commitments are made on audiovisual services in the General Agreement on Trade in Services) is not sufficient to address cultural uniqueness and, as a result, the framework for negotiations affecting cultural issues is uncertain and open to challenge.

The significance of cultural issues has increased as the globalisation of the world economy gathered pace through the 1990s, and as experience with trade agreements encompassing cultural issues has broadened and developed. In fact, the failure of such agreements to deal adequately with broader issues such as cultural diversity and expression has been one reason the world trading system after the Uruguay Round has struggled to achieve popular legitimacy in either industrialised or industrialising countries.

The Australia Council believes that the appropriate treatment of cultural issues in multilateral trade agreements is of major practical and symbolic significance. It is critical not only to the future health of cultural diversity and creative expression in Australia, but also to public perceptions of the responsiveness of trade and economic policy to the needs and interests of people throughout Australia.

While this Background Report considers some of the principal concerns of the Australia Council with regard to international trade agreements and the role of the WTO, it is neither exhaustive nor comprehensive. Given the early stage of the negotiating process it is not possible to address specific matters that may arise during the next round. However, Council does recommend a set of core principles and strategies open to Australia to ensure that it maintains the right and discretion to pursue its own distinct cultural objectives and programs.

This Background Report covers:

- the recent experience in world trade negotiations relating to arts and culture;
- the social and economic benefits of Australian arts and culture, and some current cultural policy tools;
- the future of regulatory issues regarding trade in culture; and
- the Australia Council's core principles and recommendations.

2. Background - Cultural Trade

This section provides an overview of recent experience in world trade negotiations relating to arts and culture, particularly within the framework of the World Trade Organisation.

Trade liberalisation and free trade are central tenets of the current international trading system and the Australian Government's approach to trade. The rationale is that a more open, outward-looking economy can provide a higher standard of living than a highly protected, inward-looking economy. More efficient use of resources, increased competition, new markets and new technologies increase overall welfare in the long term.²

The Australian Government's current position on trade negotiations is outlined in the Department of Foreign Affairs and Trade Submission to the 2000 Joint Standing Committee on Treaties. An extract from the DFAT Submission which relates to cultural issues is set out in Appendix 1.

The Australia Council recognises that Australia's economic prosperity depends on an open, transparent and predictable trading system. A nation rich in resources, skills and knowledge, a large part of Australia's income comes from exporting goods and services in which we have comparative advantage. International trade agreements aim to provide a basis for expansion of trade opportunities and the creation of wealth. This must occur in a way that is consistent with our social, environmental and cultural priorities.

2.1 Free Trade/Trade Liberalisation

Free trade is based on the philosophy that the market is the best device to ensure that consumers can access good products at the best price, and to increase global wealth. The goal of reducing tariff barriers and national protection mechanisms is to allow the market to operate with fewer constraints. However, this approach to free trade does not necessarily take account of the fact that not all trading partners are equal, and neither are all products or services.

There are three categories of obstacles to international trade (sometimes called 'market access barriers'):

1. Tariff barriers (e.g. fiscal measures such as the imposition of customs duties).
2. Non-tariff measures (e.g. legal and regulatory barriers such as screen quotas).
3. Investment barriers (e.g. restriction of limitation of foreign capital or equity participation, control of the nationality of company directors, or restriction on the repatriation of capital).

The expansion of international trade over the past 50 years since World War II has been accompanied by trade agreements establishing the conditions for eliminating tariff and non-tariff barriers to the circulation of goods, services and investments.

2.2 World Trade Organisation

The World Trade Organisation (WTO) is a permanent intergovernmental body that deals with the global rules of trade between nations through multilateral agreements. WTO agreements are the legal ground rules for trade and cover goods, services and intellectual property. The WTO and its agreements are mandatory and permanent. The WTO has over 140 member countries accounting for more than 90 per cent of world trade.

The WTO came into being in 1995 (after the 1986–94 Uruguay Round of trade negotiations) and is the successor to the General Agreement on Tariffs and Trade (GATT), which was established after World War II. The updated GATT has become the WTO's umbrella agreement for trade in goods.

The Uruguay Round of trade negotiations also created the General Agreement on Trade in Services (GATS), the first ever set of multilateral, legally enforceable rules covering international trade in services; and brought intellectual property rights (copyrights, trademarks, patents) into the GATT/WTO system for the first time. The WTO international trading system is based on five principles or main orientations that underlie all the agreements:

1. Trade without discrimination between trading partners ('most-favoured nation' treatment³) or between national and foreign goods, services or nationals ('national' treatment⁴);
2. Freer trade, with barriers progressively coming down through negotiation
3. Predictable policies ensured by the binding nature of the commitments made by the member states
4. Promotion of open and fair competition by discouraging 'unfair' practices such as export subsidies and dumping products at below cost to gain market share;
5. Special provisions for developing countries, giving them more time to adjust to changes, greater flexibility and special privileges.

The dispute settlement system of the WTO is in many ways the key to the workability of the multilateral trading system. With clearly structured, binding dispute settlement mechanisms⁵ to enforce trade rules, the WTO dispute settlement system is more powerful, automatic and credible than its GATT predecessor. WTO members have an obligation to bring their disputes to the WTO and use the multilateral system of settling disputes instead of taking action unilaterally.

2.3 Trade Agreements

Trade agreements may be created between two countries or groups of countries. The Australian Government, like most governments around the world, pursues a combined multilateral, regional and bilateral approach to trade policy.

Multilateral agreements are the basis of the WTO trading system and are negotiated and signed by a large majority of the world's trading nations, and ratified in their parliaments. Multilateral agreements use a 'positive listing' approach whereby

commitments are made regarding everything that will be traded (i.e. each item to be traded is listed so countries wanting to protect cultural industries would not list them).

In contrast, bilateral trade agreements (between two countries) use a ‘negative listing’ approach where all activities are assumed to be covered and only those items to be excluded from trade are listed. There is usually pressure to keep this list as short as possible. In bilateral agreements, cultural items would need to be listed in order to be protected.

Regional trade agreements allow countries to pursue trade liberalisation at a faster pace than is possible through the multilateral system and around half of all global trade takes place through regional agreements. Under a regional or bilateral trade agreement, the reductions in trade barriers only apply to the countries that form the arrangement.

2.4 Culture and WTO Trade Rules

Cultural markets are increasingly ‘going global’; trade in cultural goods multiplied five times between 1980 and 1998.⁶

In the international trading system, components of arts and cultural activity and products may fall under the scope of rules contained in one or possibly all of the following agreements:

- the General Agreement on Tariffs and Trade (GATT);
- the General Agreement on Trade in Services (GATS); and
- the Trade-Related Aspects of Intellectual Property Rights (TRIPS).

In recent years, there have been a number of disputes regarding the application of trade rules and the interpretation of the law applying to trade in arts and culture.

2.4.1 General Agreement on Tariffs and Trade

The General Agreement on Tariffs and Trade (GATT) which applies to trade in goods includes some special arrangements for aspects of culture:

GATT Article IV allows for contracting parties to impose screen quotas on the import of cinematographic works (film and video broadcasting industry).

GATT Article XX includes a general exemption that allows contracting parties to violate the spirit of the letter of the GATT for the protection of national treasures. This definition has been narrowly interpreted to mean works of artistic, architectural, historic or natural heritage value. It does not include artists, the arts in general or cultural policies that fall beyond this narrow scope.

Any other cultural outputs that are considered ‘goods’ appear to be subject to the GATT rules.

2.4.2 General Agreement on Trade in Services

Most aspects of arts and cultural trade are considered to fall under the ambit of the General Agreement on Trade in Services (GATS).

Like the agreement on goods, the GATS operates on three levels: the main text containing general principles and obligations; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets. However, unlike trade in goods, the GATS has a fourth element: lists showing where countries are temporarily not applying the 'most-favoured-nation' (MFN) principle of non-discrimination.⁷

If WTO members wish to protect their audiovisual industries, they can do so simply by not covering that sector in their GATS commitments. Australia, and many other member countries, took this approach during the Uruguay Round of trade negotiations, with the result that audiovisual services have been excluded from our GATS commitments.

The basic obligations under the GATS as they apply to service sectors (and aspects of the arts and culture), are summarised in Appendix 2.

2.4.3 Categorisation of Cultural Outputs in GATT/GATS

The treatment of arts and culture in international trade law is not a settled issue. Definitions and semantics in the field of creativity and culture cause confusion—such as distinctions between public and private goods, between what is essentially non-traded and that which is traded.

Another area of confusion is the categorisation between 'cultural goods' and 'cultural services'. For example, it can be argued that a cinematic work is classed as a good (the early provision within the 1947 GATT refers to screen quotas), while television programs and broadcasting are typically classed as services ('Motion Picture Projection Services' is included within 'Audiovisual Services' in the GATS).

This matter is not universally agreed and may be challenged. The categorisation is important because currently the international disciplines governing trade in goods are more extensive than those covering trade in services.

The differences between the rules for trade in goods and services are as follows:

The General Agreement on Tariffs and Trade (GATT):

- Typically prohibits quotas and other forms of quantitative restrictions (except for screen quotas as above);
- Automatically provides national treatment on imported goods; and
- Allows tariffs on imported goods; the levels of tariffs are negotiated and then set.

The General Agreement on Trade in Services (GATS):

- Provides national treatment and market access on a negotiated basis sector by sector;
- Allows members that have made national treatment or market access commitments to reserve the right to continue applying some level of restrictions;
- Includes a non-binding moratorium encouraging members not to apply tariffs to e-commerce delivered services; and
- Allows negotiations on domestic regulatory issues not covered by GATT disciplines.

The following statement from the Motion Picture Association of America (MPAA) illustrates the challenge in classifying cultural outputs:

‘Even before the e-commerce era, MPAA had one foot in the world of goods and one foot in the world of services. When we export a canister of film, we are exporting a physical product, or a good, that is subject to the rules of the General Agreement on Tariffs and Trade (the GATT). However, when a motion picture company produces a new film, or a broadcaster broadcasts that film, these are services transactions subject to the rules of the General Agreement on Trade in Services (the GATS).

Likewise, in the e-commerce world, some transactions involving the digital delivery of motion picture images are so similar to trade in goods that they clearly should benefit from the rules of GATT. Other forms of digital delivery may be more akin to a services transaction and may fall under the rules of the GATS.’⁸

Whether digital content is classified as a good or a service under the rules of the WTO has important consequences in terms of the level of openness of trade in digital content. The Australia Council questions whether digital content would benefit from the rules of GATT or if this classification would serve the interests of bodies like the MPAA.

The MPAA has also stated that it hopes to improve on the number of commitments in audiovisual services and computer software in the current round of WTO services negotiations.⁹ Council has recommended that at the very least, Australian negotiators do not make any commitments under these sectors, and preserve exemptions from Most-Favoured-Nation status.

Illustration of the classification debate with Canada/US split-run magazines dispute

Canada has incorporated cultural exemptions in many of its bilateral and regional agreements. Most significant is Article 2001 in the Canada United States Free Trade Agreement (CUSFTA) with the United States, and the (later) North American Free Trade Agreement (NAFTA)¹⁰, which provides an exemption for the cultural industries. The intent was to allow Canada to continue to develop policies and programs to foster and promote its cultural development through the vehicles of book and magazine publishing, sound recording, film and broadcasting, without falling subject to the broad trade disciplines contained within the CUSFTA and NAFTA.

However, a corollary of the Canadian exemption was the so-called ‘notwithstanding clause’ which allows the USA to impose penalties on Canada for the implementation of such policies which have a harmful commercial effect on American interests.

The most serious test of the compromise between Canada and the US on the cultural exemption occurred in a dispute over ‘split-run’ magazines¹¹ and the related tax incentives for Canadian advertisers who buy space in Canadian publications.

In 1993, the US-owned *Sports Illustrated* began transmitting its publication electronically into Canada. The Canadian Government responded in 1995 by creating an 80 per cent excise tax on the value of advertising revenue generated by ‘split-run’ magazines. The United States, on behalf of commercial magazine interests, began dispute settlement proceedings in 1996 under the WTO, challenging the excise tax, a tariff in place since 1965¹², Canada Post's commercial postal rates and the postal subsidy. The WTO panel decided that all four measures were inconsistent with the GATT, and Canada repealed the excise tax, removed the tariff code and changed its postal program.

The WTO panel decision on this dispute brought the cultural goods versus services debate to the fore. The production and distribution of periodicals was considered by the dispute panel to be both a good (the hard copy of the magazine) and a service (the editorial and advertising content that can be transmitted in non-tangible forms). Both the obligations of the GATT and the GATS were seen to apply. The absence of any provision within the GATT to permit decisions based on cultural grounds to be implemented by governments gave the WTO panel reviewing the situation virtually no choice but to rule in favour of the United States.

The report *Canada and the Future of the WTO* highlights the extent of this issue:

‘In the case of culture, if a measure affects the transborder movement of the hard copy of a book, newspaper, periodical, film, tape, or CD, goods are involved, even if the content of each is considered a service. The same content could be sent by wire or wireless transmission and it would be considered an intangible service, at least until it was stored on some physical object. A tariff placed on magazines and a tax placed on the editorial content of magazines have similar effects even though the former is directed at a good and the latter at a service. Many of Canada's cultural policy measures such as subsidies, tax incentives, quotas, restrictions on private ownership, and the operation of public enterprises like the CBC, affect both goods and services in circumstances where both are combined.

...The question to be resolved is how distinctions are to be made between goods and services when the two are combined and where different trade rules apply. This problem affects items as diverse as advertising, bananas, music, and steel. Financial, storage, and transportation services are combined with the sale of most tangible items.’¹³

2.4.4 Trade-Related Aspects of Intellectual Property Rights

Ideas and knowledge are an increasingly important part of global trade. Films, books, music recordings, computer software and online services are traded because of the information and creativity they contain, not usually because of the materials (film, tape, plastic) used to make them. The rights of creators to prevent others from using their designs, creations or inventions are known as ‘intellectual property rights’ and may take the form of copyright, patents or trademarks, for example.

The WTO’s 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an attempt to bring about consistency in the way these rights are protected around the world, and to bring them under common international rules.

The TRIPS agreement covers five broad topics:

- How principles of the trading system and other international intellectual property agreements should be applied (e.g. national treatment and MFN)
- How to give adequate protection to intellectual property (IP) rights
- How countries should enforce those rights in their own territories
- How to settle disputes on intellectual property between members of the WTO
- Transitional arrangements for the introduction of the new system

The TRIPS Agreement complemented and enhanced various international treaties and conventions that the World Intellectual Property Organisation (and its predecessor) have serviced, in some cases, for more than 100 years.¹⁴

World Intellectual Property Organisation (WIPO)

As a specialised agency of the United Nations whose mandate is to promote the protection of intellectual property worldwide, WIPO administers some 21 treaties in the field of intellectual property. WIPO has 177 nations as member states. WIPO expanded its role in 1996 by entering into the cooperation agreement concerning the implementation of the TRIPS Agreement with the World Trade Organisation.

Australia recently amended its copyright laws to implement changes to the WIPO international frameworks for intellectual property protection. These changes were made to ensure the legitimate commercial interests of right holders could be protected for new distribution technologies as effectively as with established technologies. The change was similar to that effected when broadcasting first developed as a new way of communicating to the public certain kinds of copyright works, particularly music, for which payment might reasonably be demanded.

With rapid developments in technology, and the realisation that intellectual property is a resource of great potential in wealth creation, intellectual property continues to be an issue of widespread concern, and is a matter that is at the core of any Australian cultural content development and export.

Issues concerning Intellectual Property Rights for Australian Arts and Culture

Australia has not been the subject of any TRIPS disputes to date, either as a respondent or a complainant. Australia has participated in TRIPS disputes as a ‘third party’ to protect trade interests at stake. ‘Third party’ participation in a dispute between two other WTO Members gives the third party the right to take part in consultations, to make written submission in the dispute and to be heard by the Panel.

In the area of cultural trade, Australia to date has only participated as a third party in *United States – Section 110 (5) of the US Copyright Act*, in support of the rights of Australian songwriters and composers. In this case, a change to US copyright law had removed the right of songwriters and composers to receive payment when broadcast music was used commercially in an estimated 70 per cent of US bars and restaurants and 45 per cent of retail stores.¹⁵ A WTO panel found this to be inconsistent with the WTO intellectual property right protection rules (Article 13 of TRIPS).

Intellectual property laws must provide for due recognition and reward to Australian artists and creative people, including those working within Indigenous traditions. Indigenous arts and culture are the ultimate reference point for moral rights, and authenticity protections. Indeed, Indigenous arts and culture is of wider importance, because unlike traditional copyright law, moral rights in an Indigenous context takes us into the territory of collective versus individual rights (i.e., the rights of a community versus rights of the individual artist and creator).¹⁶ It has been suggested that there needs to be a ‘sui generis’, or independent system of IP rights for Indigenous cultures, to account for their communal sense of property rights. In what is likely to be a long-term process, the WTO Council for TRIPS intends to review and discuss the protection of traditional knowledge and folklore with WIPO.

Another intellectual property rights issue that impacts on Australian artists is parallel importation. Parallel importation occurs when books, compact discs or other IP-protected products are purchased legitimately overseas and are imported without the consent of the Australian IP owner. The United States and the European Union have taken a strong stand bilaterally against parallel imports of copyright products, and may wish to see this right definitively recognised in TRIPS.¹⁷ However, Australia has permitted parallel imports of compact discs, software, books, periodical publications and sheet music, and the removal of copyright control over parallel importation of packaging and labelling. The Hon Peter McGauran, former Minister for the Arts and the Centenary of Federation, in 2001 stated that the Federal Government has ruled out parallel importation of film products into Australia to ensure the long-term viability of Australia’s cinemas.¹⁸

There have been suggestions that the Internet and recent technological developments will make the parallel importation debate irrelevant. The rise in Internet use, particularly for e-commerce and information and knowledge exchange, poses many opportunities as well as complex challenges for managing intellectual property. Digital technology has meant increased penetration of online services and decreased costs and complexity of copying artistic audiovisual work but also decreased cost of fast distribution to a potentially global market. Internet piracy is a significant impediment to the delivery of digital content as the copyright owners are deprived of their income. While piracy of copyright materials is not a new problem, the scope and

speed at which content (i.e. cultural products) can be illegally distributed and downloaded over the Internet to global markets is remarkable.

File-exchange systems, such as those used by Napster to facilitate the free exchange of digital MP3 format recordings of songs, have recently shown the extent to which new technologies of production and distribution can provide alternative means of gaining access to valuable copyright works, seriously challenging rights holders' commercial interests. Napster's service was successfully challenged in the US courts, under copyright laws also adapted to implement the new international copyright framework. While there are continuing threats to the effectiveness of even the adapted copyright framework from similar services exchanging music and audiovisual titles, the Napster experience demonstrates the importance of strong, enforceable intellectual property laws to trade in cultural goods and services.

2.5. Bilateral Trade Agreements

The international trading system is built on several levels: bilateral, regional, and multilateral agreements. While the WTO states that trade relations need not be dealt with only at the multilateral level, they believe that it is equally wrong to see bilateral or regional approaches as an alternative to the multilateral system. The WTO believes that there should be a natural complementarity between the three layers under the primacy of the rule-based multilateral system. As such, bilateral trade agreements are generally consistent with the rules of the WTO.

2.5.1 Australia New Zealand Bilateral Trade Agreement

The Australia New Zealand Closer Economic Relations Trade Agreement (known as ANCERTA or the CER agreement) is the main instrument governing economic relations between the two countries. The CER came into force in 1983, and its central provision is the creation of a WTO-consistent Free Trade Area consisting of Australia and New Zealand.

Since its inception, the CER Agreement has undergone three general reviews and, in addition, several aspects have been amended or refined. The CER is one of the most comprehensive bilateral Free Trade Agreements in existence, and the first to include trade in services.¹⁹

The CER, and the related Trade in Services Protocol, binds the two signatories to treat each other's services no less favourably than their own. A dispute arose regarding this trade rule and the treatment of New Zealand television programs.

On 28 April 1998, the High Court of Australia handed down its decision on Project Blue Sky versus the Australian Broadcasting Authority (ABA). Project Blue Sky, a group of New Zealand interests in television argued that New Zealand programs should be treated as favourably as Australian programs for the purposes of Australian local content quotas on commercial television. The High Court determined that the Australian content standard contained in Section 9 of the Broadcasting Services Act

was unlawful because it was not consistent with Australia's obligations under the CER trade agreement with New Zealand.

The experience with the Trade in Services Protocol to CER, and the High Court's decision has highlighted the pitfalls of 'negative list' trade agreements that mandate liberalisation in all areas other than those specifically exempted. The consequences are potentially far-reaching as Australia pursues closer economic relations with other countries in the region.

2.5.2 Possible Australian Agreements with Other Countries

Australian Government policy is to consider Free Trade Agreement (FTA) proposals with other countries that offer Australia significant market access gains not available in a similar timeframe elsewhere (i.e. in multilateral negotiations in WTO rounds). Australia believes it is important that such bilateral FTAs contribute to the multilateral system, and as such, agreements should meet the criteria in the WTO agreements.²⁰

The Government is currently pursuing a number of regional trade initiatives²¹:

- Negotiations with Singapore on a bilateral FTA
- ASEAN²² & CER Ministers agreed in October 2000 to work toward a Closer Economic Partnership (CEP)
- Studies on how to strengthen economic relations with Japan and Korea
- Supporting a range of APEC²³ work on the issue of FTAs
- Studies examining a possible United States FTA
- Joint study with Thailand on a bilateral FTA

Details of progress with the Singapore and Thailand FTAs and the proposed US FTA follow.

Australia/Singapore Free Trade Agreement

Singapore and Australia began negotiations on a bilateral free trade agreement in November 2000. Described as a commitment to a genuinely liberalising agreement, it will build on a strong and expanding economic partnership between the two countries. According to DFAT, the agreement will be comprehensive in scope and coverage. It will remove barriers to trade in goods and services and provide a stronger and more secure framework for doing business, including through e-commerce. The first round of negotiations on the FTA took place in Singapore from 21–23 February 2001.

Australia/Thailand Free Trade Agreement

Australia and Thailand are currently negotiating a comprehensive Closer Economic Relations Free Trade Agreement with the aim of eliminating tariffs and other barriers to trade and investment. Minister Vaile announced on 21 November 2002 that both countries have agreed to step up the pace of negotiations and have set a target date of June 2004 for the completion of negotiations.

Proposed Australia/United States Free Trade Agreement

The Australian Government has taken regular opportunities to discuss prospects for a free trade agreement with senior members of the United States Administration. In early September 2001 when Prime Minister Howard visited the US, the new US Administration had yet to establish its trade priorities. A commitment was reached whereby the US and Australian Trade Ministers agreed to report back to their leaders by the end of that year as to how to carry the initiative forward.

President Bush now has Trade Promotion Authority and is proceeding to negotiate a series of FTAs. As announced on 14 November 2002, the Australia/United States FTA is proceeding (for further information see the Department of Foreign Affairs and Trade website <<http://www.dfat.gov.au/trade/negotiations/us.html>>).

2.6 Disputes

Under the WTO's Dispute Settlement Understanding, countries bring disputes to the WTO if they believe their rights under the agreements are being infringed. Judgments by specially appointed independent experts are based on interpretations of the agreements and individual countries' commitments. The system encourages countries to settle their differences through consultation.

The development of global business regulation is still in its infancy. This vacuum is creating pressures for the WTO to address issues for which it was not designed and in which it has no particular competencies. The WTO's primary focus is on trade liberalisation. It is not an enforcement agency for environment, labour, cultural or other non-trade policies.

The resolution of the Canada/US dispute on periodicals through the WTO dispute-settlement process shows the difficulty of raising cultural issues within the context of WTO agreements and processes as currently constituted, even for the purpose of striking an appropriate balance between cultural and economic considerations.

The WTO cannot and should not be called upon to address all dimensions of all those issues with a trade component. Clearly parallel forums are needed. For example, there is a struggle for effective global institutions in the areas of environment, ethics (biotechnology), disarmament, and international justice. As is the case in these areas, an appropriate range of skills and powers is necessary to deal with matters of cultural sensitivity in trade negotiations (that is, to evaluate the cultural content of goods and services or to understand the cultural rationale behind particular policies, regulations and laws).

2.7 Current Trading Position on Culture

Global trade in culture and content/intellectual property is fundamentally imbalanced. The United States dominates global trade in content industries and software. Along

with many other countries, Australia is a net importer of content and cultural goods and services.

During the final negotiations of the Uruguay Round (1994), when the GATS was created, many countries expressed concern that enforcement of the GATT principles—in particular MFN and national treatment rules—on goods and services as well as on copyright-protected products would undermine their cultural uniqueness in favour of their commercial aspects. Negotiators felt that mechanisms were needed to maintain and develop a viable quantity of domestic production to reflect local cultural forms of expression and avoid the standardisation of tastes and behaviour.

The European Union fought for a general exemption for the audiovisual and broadcasting sectors.²⁴ However, it was apparent that a general exemption based on cultural considerations would not be accepted by the USA. The USA was supported by Japan and India. As a result, there is no general exemption for the audiovisual sector beyond the broad interpretation of Article IV of the GATT.

The European Union and the Australian Government, along with about 30 other member states, took out exemptions to the MFN rule in order to reserve the right to retain and develop support mechanisms for national cultural purposes (for example: broadcasting quotas, subsidies, and co-production agreements for the domestic audiovisual sector). Since then this tacit understanding has been known as the ‘cultural exception’—it does not have any legal status, nor does it exist in any agreement or treaty.

The WTO’s Third Ministerial Conference in Seattle in November 1999 failed to agree on a work program for the next round of multilateral trade negotiations. Although a full new services round started, as required in the GATS in 2000, little progress appears to have been made on issues around trade in audiovisual services or culture. Only Canada, the United States, Switzerland and Brazil have put forward negotiating proposals or communiqués to the WTO on trade in audiovisual services or culture.

An Australian Intervention on the Negotiating Proposal on Audiovisual Services was tabled at the WTO Trade in Services Council meeting in July 2001 (refer to Appendix 3). This intervention sets out the policy framework that underpins the Australian government’s current stance on culture and the audiovisual sector, and provides some comments and questions on the negotiating proposals from the United States, Switzerland, and the Brazilian government’s position.

Key issues for Australia in future trade negotiations include:

- How should Australia promote its own creative voices and ‘local content’, given that the United States dominates global trade in content and culture?
- What are valid national interests in global trade affecting the arts and cultural institutions?
- How do we avoid generic trade rules having disadvantageous or unintended impacts on Australian Government support measures for Australian arts, cultural institutions and the production of ‘local content’?

3. Cultural Sector

‘Culture will surely become the driver of the economy in the 21st century. Cultural diversity constitutes a global asset that the international community must capitalise on, not only for economic but also for ethical reasons, as a matter of fairness and justice. There is nothing dearer to the human being than culture. Nothing requires more urgent attention than making culture the central axis of global as well as sustainable development.’²⁵

This section of the report describes the social and economic benefits of the cultural sector, and considers various cultural policy tools used in Australia. Of the countries that have put forward formal negotiating proposals or communiqués to the WTO on trade in audiovisual services or culture (Canada, the United States, Switzerland and Brazil), it is the Canadians who have written most extensively on the topic. An overview of the Canadian approach to cultural trade policy is provided below to allow comparison with the Australian Situation. Regulatory issues regarding trade in culture raised by the other countries are described in Section 4 of this Report.

3.1 Social and Economic Benefits of the Cultural Sector

Culture may be defined as including cultural heritage, printed matter and literature, music, the performing and visual arts, cinema and photography, radio and television, and socio-cultural activities.²⁶

The Australian arts and cultural sector is dynamic and diverse, with a mix of many outstanding organisations and individual artists working across a range of artforms (theatre, dance, music, film, visual arts, craft, design, Indigenous arts, literature, digital media, etc). For a culture to thrive, it needs a supportive distribution system and investment infrastructure, as well as a stimulating environment for its creators and artists.

Australia’s cultural landscape is rich and diverse. Contemporary Australian art is recognised for its originality and our artists are in demand across the world. The arts have helped put Australia on the overseas tourist and trade map, creating international goodwill and a positive image of a vibrant nation.

The Commonwealth Government has demonstrated its commitment to Australian art and culture through its continued support of the industry via a range of measures, including public subsidy.

The Australia Council is the Federal Government’s arts funding and advisory body. Its vision is to enrich the life of the nation by supporting and promoting the arts. A broad overview of the functions and activities of the Australia Council is provided in Appendix 4. In recent years the Australia Council has worked with government to develop qualitative and quantitative analyses of the importance of the arts in the lives of all Australians.

3.1.1 Public Support for the Arts

The Australian government invests in promoting culture, just as it invests in other activities that benefit its citizens, such as supporting public health, protecting the environment and maintaining a defence force. In this way, the government acknowledges that cultural products are not simply commodities that can be packaged and sold. Cultural goods and services are different from the goods and services of other industries, and should be treated differently in trade negotiations.

The highly respected British film producer Sir David Puttnam clearly identified why culture is different when he said:

‘Stories and images are among the principal means by which human society has always transmitted its values and beliefs, from generation to generation and community to community. Movies, along with all other activities driven by stories and the images and characters that flow from them, are now at the very heart of the way we run our economies and live our lives. If we fail to use them responsibly and creatively, if we treat them simply as so many consumer industries rather than as complex cultural phenomena, then we are likely to damage irreversibly the health and vitality of our own society.’²⁷

There are very strong and longstanding public policy reasons for government support of the arts; these include information failures, access issues, externalities and public benefits (Appendix 5 expands on this topic). Assistance measures at both federal and state/provincial levels of government are common even in countries that promote trade liberalisation in the audiovisual sector. For example, US state film commissions have been established to encourage local production.

Many commentators have reflected on the diversity of benefits that arts and cultural activities deliver to society, for example:

‘Like language, the arts are one of the principal means by which a society binds itself together and transmits its beliefs and standards from one generation to another. The arts perform this function when they embody, reinforce, and celebrate the values of their society, when they confirm and exemplify the lessons simultaneously taught by the family, by the formal structures of education, and by the mass media in all their variety. In this function, the arts play a critically important role. Not only do they provide a kind of social “glue”, but they also furnish a means by which society can identify and distinguish itself from others.’²⁸

It is widely acknowledged that the arts play a vital role in education and in cultural development. Participation in arts and cultural activities is strongly related to other forms of civic engagement and ‘social capital’. It is clearly in Australia’s interest to maintain the existing measures in support of the domestic arts and cultural industries.

3.1.2 Australian Identity

In Australian paintings, craft, books, magazines, music, films, television and radio programs, we express ideas and perspectives, we are able to see and understand ourselves, and we share stories and images that are uniquely Australian. We develop a sense of pride in who we are as a nation and a more cohesive, understanding society. Our arts and cultural products help shape our sense of identity.

There is evidence of a community viewpoint that there should be no reduction of Australian voices and ‘identity’ in the media generally. Recent research into public attitudes to the arts in Australia, commissioned by the Australia Council, has revealed unanimity of view across a wide range of age-groups, gender, and social demographic, in relation to this point. One of the principal findings of the report *Australians and the Arts* is that 89 per cent of Australians feel proud when they see the creative talent of Australians being recognised locally and internationally.²⁹

Australian Identity in Film and Television

‘No one seeing *Looking for Alibrandi* could possibly mistake it for an American movie. No one seeing *Chocolat* really thought it was French. Our films, our theatre, our books, our art and our music speak volumes about who and what we are as a nation, and surely that is worth nurturing and protecting.’³⁰

In trade policy, domestic content regulation for television is intended to correct for the natural bias of commercial stations to supply low-cost, mass-appeal programs and for the failure of freely operating markets to take account of external benefits such as the enhancement of a national culture that may be generated by domestic programming.³¹ The period since the Uruguay round of trade negotiations has seen the internationalisation of the operations of the world’s major media companies and increasingly complex financial arrangements in the film production industry. Some of the characteristics of the Australian film and television industry are outlined in Appendix 6.

Some other countries have markets many times larger than Australia’s. In the United States there are more opportunities for companies to recover production costs in their primary market and they are able to sell much less expensive products. For example, it can cost about \$250,000 to produce an hour of prime-time television drama in Australia, and only \$25,000 or one-tenth of that amount to purchase an hour of a high budget (\$1 million) American drama.³²

The existing predominance of imported material on Australian screens is worth noting—in 1997 two-thirds of the films shown on Australian cinema screens originated in the United States. Only 10 per cent of films shown on Australian cinema screens were of Australian origin and these films accounted for only 5 per cent of the total Australian box office.³³ Government support mechanisms do not keep foreign arts and cultural material out of Australia—they do ensure that there is an Australian presence or identity in our domestic market.

It is important for the Government to preserve and foster the local production industry not only because the cultural industry produces the content which is rich in Australian identity and culture, but also for economic and employment reasons. Culture and development can no longer be viewed as independent of each other.

3.1.3 Cultural Industries in the Australian Economy

The arts contribute substantially to our intellectual and cultural life, to our leisure time, and to our economy through employment, tourism, taxes and export dollars. The arts are fundamental to the daily life and prosperity of our nation.

Our cultural industries make a considerable contribution to Australia's economy and to our economic growth. The arts and cultural industries contribute around 2.5 per cent of Australia's domestic production of goods and services, valued at some \$20 billion annually.³⁴ The arts and cultural industries are similar in size to the road transport industry or the house building industry.

Just over 250,000 Australians are employed in the cultural sector, which represents 3.3 per cent of the total Australian workforce. Altogether 157,000 people work in a cultural occupation as their main job and a further 98,000 work in cultural industries in a non-cultural occupation.

In March 1997, an Australian Bureau of Statistics (ABS) survey collected information about the involvement of persons aged 15 and over in selected culture and leisure activities during the previous 12 months. The survey showed that 2.2 million people (15.1 per cent of the Australian population aged 15 and over) were involved in culture and leisure activities (excluding involvement solely for the respondent's own use). Of these persons, 40.2 per cent received some payment.³⁵ Most of these involvements were of a short-term and part-time nature, being 13 weeks or less duration and less than 10 hours a week. Much arts work is irregular and casualisation is a feature of the industrial environment.

The arts and cultural sector has a strong reliance on the work of many volunteers and these statistics are not included in formal measurements of the number of arts organisations in Australia. The total number of organisations engaged in arts and cultural activities is estimated to be several tens of thousands (at least 30,000).

The cultural sector of the economy is growing strongly and some parts are expanding very rapidly. In the film and video production industry, growth of 58 per cent in the number of businesses (to 1,975) was recorded in a three-year period to end June 2000.

Overall, the cultural sector is one of the fastest-growing sectors of the economy as demonstrated by employment growth: in a recent five-year period, the increase was 20 per cent, whereas the increase in total employment in the same period was 7.4 per cent.

Demand for our arts and entertainment even exceeds our demand for football and cricket. More than 80 per cent of Australians attend a cultural activity each compared to 45 per cent who go to a sporting event.

Each year more than 7 million Australians enjoy cultural performances and 3 million crowd through our galleries. We are avid readers of Australian books. Our enthusiasm for learning a creative skill is shown by the 45 per cent rise in enrolments in arts courses from 1990 to 1995; and millions of Australians practise an artform for sheer pleasure.

However, this demand means that Australia imports many more cultural products and services than it exports. In 1998-99, Australia's deficit in international trade in cultural goods and services was more than \$4,000 million. Australia exported cultural goods and services with a value of \$1,236 million and imported cultural goods and services worth \$5,300 million.

The trade balance deficit occurred in both cultural services and cultural goods. The trade balance deficit was larger both in absolute and relative terms for cultural goods: Australia imported almost five times the value of the cultural goods it exported in 1998-99 (\$4,430 million compared with \$960 million).

Australia's cinema screens and television screens are dominated by products from overseas: about two-thirds of the films shown on Australian cinema screens in 1997 originated from the USA; another 7 per cent came from the UK, 5 per cent from France and 3 per cent were from Asia. Only 10 per cent of films screened in Australia that year were from Australia.

Only about 5 per cent of the annual 70,000 performances by Australia's music and theatre production industry occur overseas.

For more comprehensive statistics on the arts and cultural industries in the Australian economy refer to Appendix 7.

3.2 Cultural Policy Tools

The opportunity for cultural practitioners to develop their craft in a supportive, stimulating environment provides them with the skills and confidence to eventually grow to become major Australian cultural exports. Peter Carey, Cate Blanchett and Baz Luhrmann, for example, would not have such successful careers if they had not received the support of the Australian cultural industry.

Australia's current arts and cultural policies aim to encourage the creation, production and distribution of Australian cultural outputs and can be grouped into the following 'tools':

- Funding programs and financial incentives;
- Local content requirements and other regulatory support mechanisms;
- Tax measures;
- Foreign investment and ownership regulation;
- Measures to protect intellectual property.

A further explanation of Australia's arts and cultural objectives and policies is provided in Appendix 8.

The Australia Council welcomes the Australian Government's recent confirmation that it will ensure that Australia's cultural objectives are taken into account in future international trade agreements.

3.2.1 Audiovisual Industry Policy Tools

In the Australian audiovisual industry, the Commonwealth government has established a number of measures of support, including:

- Direct subsidy through the Australian Film Commission (AFC), the Film Finance Corporation (FFC), Film Australia Limited (FAL) and the Australian Children's Television Foundation;
- Indirect support through taxation concessions for investment in feature films, television miniseries and documentaries
- Australian content rules under the Broadcasting Services Act for free-to-air commercial television and pay television;
- Regulation of temporary entry of non-Australian residents into the Australian entertainment industry;
- International co-production arrangements;
- Rules governing foreign ownership of media;
- Cross-media ownership rules;
- Funding for national broadcasters: Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS);
- Direct support for training through the Australian Film, Television and Radio School; and
- Support for preservation of Australia's audiovisual culture through the National Film and Sound Archive.³⁶

These support measures for the audiovisual sector are similar to those in operation in many other countries.

3.3 Case Study: Canadian Cultural Trade Policy

Over the past few years, Canadian cultural policies have come under close international study. Like Australia, the Canadian Government uses a combination of financial incentives, local content requirements, tax measures, rules on foreign investment, and intellectual property tools to promote Canadian culture.

The preservation and promotion of cultural identity is a core objective for Canada in all international trade negotiations.³⁷ Canada has traditionally pursued this goal either by negotiating cultural exemptions (as in NAFTA and the FTAs with Chile, Israel and Costa Rica), or by not taking on obligations that directly affect the cultural sector (as in the GATS).

Given the recent challenges to Canada's cultural policies, most notably the split-run magazines dispute mentioned earlier in this Report, and also the challenges arising from emerging technologies, convergence and globalisation, the Canadian Minister for International Trade requested the Canadian Cultural Industries Sectoral Advisory Group on International Trade (SAGIT) to provide advice on the challenges facing the industry and on what they mean for Canada's cultural trade policy.

SAGIT publicly released its report in February 1999. It recommended that Canada should go beyond its policy of simply seeking to exempt culture from trade agreements and pursue a new strategy that would involve negotiating a new international instrument on cultural diversity, acknowledging the legitimate role of domestic cultural policies in ensuring cultural diversity.³⁸

Domestically, the Canadian Government used the report to consult with stakeholders on the recommendation, which received the support of the Standing Committees of Foreign Affairs and International Trade and Canadian Heritage. In October 1999, the Canadian Government indicated that it would pursue an instrument that would set out clear ground rules to enable Canada and other countries to maintain policies that promote their culture while respecting the international trading system and ensuring market access for cultural exports.

3.3.1 A New Cultural Instrument

According to the Canadians, a new cultural instrument would seek to develop an international consensus on the responsibility to encourage Indigenous cultural expression and on the need for regulatory measures to promote cultural diversity. The instrument would not compel any country to take measures to promote culture, but it would give any country the right to determine the measures it will use (within the limits of the agreement) to safeguard its cultural diversity. The features of the instrument are identified in the SAGIT report:

‘A new international instrument on cultural diversity would:

- recognise the importance of cultural diversity;
- acknowledge that cultural goods and services are significantly different from other products;
- acknowledge that domestic measures and policies intended to ensure access to a variety of indigenous cultural products are significantly different from other policies;
- set out rules on the kind of domestic regulatory and other measures that countries can and cannot use to enhance cultural and linguistic diversity; and
- establish how trade disciplines would apply or not apply to cultural measures that meet the agreed upon rules.³⁹

To be effective, the new instrument would have to:

- be as broad as possible and provide global coverage;
- embrace cultural goods as well as cultural services;
- include all financial and tax support measures, regulations and controls over foreign investments;

- make references to competition policy to address market dominance problems that can adversely affect the vitality of indigenous cultural industry; and
- include references to copyright policy, which are not inconsistent with Canada's other intellectual property obligations.⁴⁰

3.3.2 Current Status of the Cultural Instrument

In announcing its decision to pursue a new instrument, the Canadian Government set out a multifaceted approach in such forums as the International Network on Cultural Policy, UNESCO, the WTO and *la Francophonie*, and in bilateral discussions. The Canadian Government also decided to keep all options open on the most appropriate forum for the negotiation of a new international instrument and its content.

To date, Canada has sought to discuss the international context of cultural diversity primarily in non-trade forums, to build a consensus on the importance of cultural diversity and support the need for a new international approach from the perspective of cultural policy. These forums include the International Network on Cultural Policy, a network of over 40 national cultural ministers which was established in 1998 following the Stockholm UNESCO Intergovernmental Conference on Cultural Policies for Development; and the International Network for Cultural Diversity, a network of over 200 non-government organisations.

In trade policy forums, the Canadian Government has signalled its interest in the development of a new instrument, but has not sought detailed discussions on the trade mechanisms of an instrument. The timing of raising the development of a new international instrument on cultural diversity in substantial discussions in a trade forum will depend on the outcome of discussions in cultural policy forums.

Pending developments regarding the negotiation of a new instrument, the Canadian Government has indicated that it will continue to seek the maximum flexibility in international agreements to pursue its cultural policy objectives.

An update of the current debate regarding the Cultural Instrument has been provided by Dr Ben Goldsmith in Appendix 9.

4. Issues in Cultural Trade

Changes in technology and the push towards more liberal trade policies are placing pressure on the cultural policies and support measures that have served to create Australia's vibrant and unique culture.

Commercially and intellectually, interchange between countries and cultures is desirable, and historically valued. The international flow of goods, services and ideas is crucial to cultural development. But so too are measures to assist cultural diversity and expression—creative arts, cultural heritage, audiovisual services—which ensure that people and places which might not otherwise be able to produce work are able to

do so, particularly in certain high cost cultural forms. Such regulatory or support measures are very widespread throughout WTO member states.

This section covers some of the current issues or challenges in cultural trade, and draws on information tabled in the formal communications to the WTO from the US, Brazil, and Switzerland. Particular reference is made to the Swiss Communication to the WTO, as this position is generally consistent with the Australia Council's.

4.1 Changing Technology

New technologies have given people access to a multitude of entertainment, cultural and information services.⁴¹ The audiovisual sector is a growing market, which accounts for an increasing share of employment, output and trade around the world. The United States is dominant in this sector; it is the largest market for audiovisual products as a whole, and the largest overall producer.⁴² The content industries (films, television programs, video, music publishing, computer games and software) generate more export revenue for the US than any other industry.⁴³

The audiovisual sector in 2001 is significantly different from that of the Uruguay Round when negotiations focussed primarily on film production and distribution, and the terrestrial broadcasting of audiovisual goods and services.

Changing technology is challenging existing mechanisms for supporting and promoting arts practice and cultural institutions. New industries, new distribution channels and new products are being created through convergence⁴⁴, making it more difficult to draw a line between the cultural industry and, for example, the telecommunications and computer industries. The digital and online revolutions are abolishing old notions of distinct territories (e.g. video, book, and DVD distribution arrangements), and are calling into question the ability of sovereign governments to 'license' and regulate content (compare traditional industry level free-to-air TV arrangements versus video streaming and digital television/cross-border broadcasting etc).

The convergence of technologies has been accompanied by greater vertical and horizontal integration of companies, creating increasingly dominant global communications and media companies which have control of distribution channels and considerable power in the industry. Creative content and 'creative industries' are produced and delivered through a complex value chain, along which the factors bearing on national sustainability will change over time. For example, it is one thing to promote local content in production, but if access to distribution channels is effectively prevented, the aims of such promotion may not be realised. In a global world, control of and access to distribution channels become key issues.

4.2 Regulatory/Support Measures

The Communication from Switzerland to the WTO Council for Trade in Services describes regulatory measures in the audiovisual sector:

‘The audiovisual sector has traditionally been heavily regulated in most countries. This is due to the high social, cultural and economic importance of the sector. Such regulatory measures usually concern issues such as public service obligations, subsidisation of content production, diversification of the supply of audiovisual contents, protection from socially harmful content, regulation of advertising through audiovisual channels, access to major events etc.’⁴⁵

4.2.1 Cultural Diversity Safeguards

Globalisation can have positive effects on cultural life as it multiplies exchanges of goods and services and gives the consumer or citizen broader access to cultural goods. However, if globalisation engenders cultural standardisation with domination by powerful multinational companies over local, national or independent businesses, it can threaten cultural industries. There are divergent views on this point. Some believe that internationalisation encourages cultural diversity; while others believe that cultural diversity is increasingly at risk because economic power relationships introduce a fundamental inequality to exchanges.

The Australia Council supports the Swiss Communication to the WTO on the future treatment of cultural diversity:

‘Cultural diversity has emerged over the past few years as a short-cut formula for a public policy objective for the audiovisual sector that enjoys a very broad acceptance. When facing the ambition of achieving a significant level of commitments in the audiovisual sector under the GATS, Members will need to consider how to ensure that the notion of cultural diversity is sufficiently taken into account. This can be done implicitly by targeting the instruments put in place by Governments to preserve cultural diversity and ensuring that their implementation remains possible, subject to certain disciplines to be developed. This can alternatively, or in addition, be done explicitly through the introduction of a general enabling clause to that same effect. In the latter case, the notion of cultural diversity would probably need to be properly defined, or at least circumscribed, and appropriate safeguards would need to be built-in in order to avoid any abuse. We believe that this question deserves to be thoroughly discussed among Members.’⁴⁶

This view is similar to Canada’s proposal for a new international instrument for cultural diversity. The Australia Council agrees that a general enabling clause or annex could conceivably achieve the same aim as a cultural instrument, possibly with less opposition, as it would sit within existing WTO trading system legal mechanisms. Elucidation of such an enabling clause or annex is provided below.

WTO Legal Mechanisms – Enabling Clause

WTO Agreements have the scope to make ‘special and differential treatment provisions’, usually for developing countries. The Enabling Clause, officially called the ‘Decision on Differential and More Favourable Treatment, Reciprocity and Fuller

Participation of Developing Countries’, was adopted under GATT in 1979 and enables members from developed countries to give differential and more favorable treatment to developing countries.⁴⁷ The Enabling Clause is the WTO legal basis for the Generalised System of Preferences, where developed countries offer non-reciprocal preferential treatment (such as zero or low duties on imports) to products originating in developing countries. Preference-giving countries unilaterally determine which countries and which products are included in their schemes.

A similar scheme and enabling clause could be explored as a means to address cultural diversity, and provide differential treatment for trade in cultural goods and services.

WTO Legal Mechanisms - Annexes

Annexes to the General Agreement on Trade in Services (GATS) are an integral part of the Agreement and cover sectors including, Air Transport Services, Financial Services, Maritime Transport Services and Telecommunications.⁴⁸

The Australia Council suggests that an annex for Culture could be similar to that which exists for complex sectors like telecommunications and financial services. These annexes recognise the specificities of the particular services sector and their broad societal importance. The annexes outline the agreed objectives, scope, definitions and requirements, and deal with issues of transparency, access, domestic regulations, restrictions, areas of cooperation, and in telecommunications, the relation to International Organisations and Agreements which recognise the importance of international standards.

4.2.2 Competition Issues

There are specific features of audiovisual markets (mainly network effects and the mass reach of cultural goods and services), which make them particularly vulnerable to anti-competitive conduct. There may be good policy reasons for unique competition laws to apply to cultural industries. More stringent laws may be applied to ensure that these industries (particularly broadcasting and associated cross-media assets) are more diversely controlled than general competition law might require.

The Australia Council endorses Swiss interest in discussing competition issues relating to audiovisual services at the next round of trade negotiations:

‘The audiovisual sector is characterised by high entry barriers, both as regards the production and the distribution of content. This tendency has even intensified as a result of the IT-revolution and the digitisation of the audiovisual contents. A growing vertical integration across the industry reinforces the fears of anti-competitive behaviours such as abuse of dominant positions. This tendency impacts not only the functioning of the audiovisual market per se, but also tends to induce a homogenisation and a levelling of the supply of contents. For these reasons, it seems that the competition dimension of the regulation of the audiovisual sector deserves some discussion.’⁴⁹

When content or audiovisual products are sold abroad for much less than they are sold in the US market, this is akin to ‘dumping’. Global market leaders are able to engage in predatory pricing. This creates a situation of unfair competition with the effect of overwhelming local voices. The situation is no different from steel or coffee beans. Trade defence or competition provisions are necessary in trade in content (as proposed by Brazil⁵⁰).

4.2.3 Subsidies

Subsidies are usually a highly transparent form of assistance and are probably the most widely used measure to assist cultural activities in WTO member states. The current positive list mechanism provides an adequate mechanism for countries that want to make commitments in that area to do so.

A particularly sensitive form of subsidy, the establishment and funding of public service broadcasters has been widely deployed in member states to address a broad range of cultural and informational issues using the traditional dominant media - television and radio.

Our Australian national broadcasters, the ABC and SBS perform a public service in terms of television broadcasting:

‘The ABC and SBS provide significant support for Australian television production and important cultural benefits for the Australian community. ...The national broadcasters continue their tradition of producing quality programs which are more risky commercially than those which can be supported by commercial broadcasters. Federal support of the national broadcasters is thus a key aspect of achieving the government's objective of quality and diversity in Australian screen culture.’⁵¹

Council notes the US and Swiss interest in discussing and perhaps ‘developing an understanding’ on subsidies. The US Communication on Audiovisual and Related Services of December 2000 notes WTO precedents ‘for devising rules which recognise the use of carefully circumscribed subsidies for specifically defined purposes, all the while ensuring that the potential for trade distortive effects is effectively contained or significantly neutralised’.⁵²

The treatment of subsidies in the context of the GATS is still to be discussed in the WTO framework.

Subsidies in the GATS

The Communication on Audiovisual Services from Switzerland states:

‘General subsidy rules under GATS Article XV are yet to be developed. It is a matter of fact that most WTO Members do subsidise with different intensities the production and distribution of audiovisual products, at least as regards

motion pictures. Therefore, in addition to the discussion on general subsidy rules, it would seem to be worth discussing subsidisation practices and their standing under disciplines to be agreed as part of the solution to the audiovisual issue. A common understanding among Members about subsidies, the policy purpose justifying them, as well as their effect on trade, would represent a positive precondition both for the negotiation of specific commitments in the audiovisual sector as well as for the elaboration of general subsidy rules.⁵³

Subsidies in the GATT

Countries that are members of the GATT have negotiated additional agreements, such as the Agreement on Subsidies and Countervailing Measures (**SCM Agreement**) and the Agreement on Trade-related Investments Measures (TRIMs), which provide further elaboration on rules governing trade in goods. TRIMs prohibits countries from establishing certain performance requirements as a condition for foreign investment.

The Subsidies and Countervailing Measures covers the regulations dealing with subsidies on trade in goods and, if taken to the extreme, could impact upon the very framework of Government cultural support in Australia, including that for the two major public broadcasting networks.

The SCM Agreement defines a subsidy as ‘(i) a financial contribution (ii) by a government or any public body within the territory of a Member [of the WTO] (iii) which confers a benefit. All three of these elements must be satisfied in order for a subsidy to exist.’⁵⁴ The definition states, ‘In many cases, as in the case of a cash grant, the existence of a benefit and its valuation will be clear.’⁵⁵

Assuming that a measure is a subsidy, as defined by the above, ‘it nevertheless is not subject to the SCM Agreement unless it has been specifically provided to an enterprise or industry or group of enterprises or industries. The basic principle is that a subsidy that distorts the allocation of resources within an economy should be subject to discipline.’⁵⁶ The Agreement only covers such ‘specific’ subsidies, and outlines four types of ‘specificity’ within the meaning of the Agreement:

- *Enterprise specificity* where a government targets a particular company or companies for subsidisation;
- *Industry specificity* where a government targets a particular sector or sectors for subsidisation;
- *Regional specificity* where a government targets producers in specified parts of its territory for subsidisation; and
- *Prohibited subsidies* where a government targets export goods or goods using domestic inputs for subsidisation.

Commentary on Subsidies

The first two types of specific subsidies arguably would cover the ABC, SBS, AFC, FFC and Australia Council in the absence of a clear understanding of the application of the GATT to arts and cultural products.

The Agreement on Subsidies and Countervailing Measures establishes three categories of subsidies for goods: prohibited, actionable and non-actionable. Subsidies that are provided based on export performance or on a company using domestic (rather than imported) goods are prohibited, while subsidies provided to assist in research and development or to help disadvantaged regions are excluded from the scope of the agreement.

Prohibited subsidies include ‘subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods (“local content subsidies”)...and local content subsidies of the type prohibited by the SCM Agreement were already inconsistent with Article III of the GATT 1947.’⁵⁷

Actionable subsidies, are not prohibited but are subject to challenge or to countervailing measures, if they cause adverse effects to the interests of another WTO Member. One of the conditions is ‘injury to a domestic industry caused by subsidised imports in the territory of the complaining Member.’⁵⁸ It is not inconceivable that either a subsidised Australian film subsidised by the AFC or the FFC, or a performing arts company or new media publication subsidised by the Australia Council, could find itself subject to action.

However, the Australian Department of Foreign Affairs and Trade argues that the SCM Agreement applies only to goods, not services.

The WTO has commented, ‘The creation of a system of multilateral remedies that allows Members to challenge subsidies which give rise to adverse effects represents a major advance over the pre-WTO regime.’⁵⁹ It points out that the difficulty remains for Member states to demonstrate the adverse trade effects arising from subsidisation, which has led to the establishment of a sub-category of actionable subsidies which includes subsidies to cover operating losses and the direct forgiveness of debt. A Member state need only establish that such a subsidy exists and the subsidising Member must then demonstrate that its subsidy has not caused serious prejudice to the interests of the complaining Member.

The Australia Council agrees that it is important that the basis on which subsidies are provided is clear and is not opposed to discussions about the forms of subsidy. However, Council suggests that discussions occur in the context of crafting an enabling clause/annex about audiovisual services, rather than in the context of broader discussions under the GATS about subsidies for all industries, given the highly specific nature of audiovisual industry subsidy schemes and the extensive use of subsidies in the broader Australian arts and cultural sector. The Australia Council also questions the likely trade benefits from developing such an understanding (proposed by the US) for two reasons:

- the proportion of world audiovisual trade taken by subsidised productions is likely to be very small; and
- as delivery platforms proliferate, the opportunities for export of audiovisual product are increasing (e.g. pay TV experience in Australia since 1995).

4.2.4 Local Content Quotas

Under the GATS provision allowing reservations for the purpose of cultural preservation, Australia has maintained standards requiring Australian commercial TV stations to broadcast a minimum quota of Australian content. Local content quotas potentially offend the specific obligations of Market Access and National Treatment Provisions.

Similar local content quotas for television exist in a significant number of countries, such as the UK, France and other European Union countries, South Africa, Canada and Mexico. The regulation of domestic content of television programs is an important element of the cultural policies of most developed countries. Many have argued that the regulation is also an arm of industry assistance and employment creation policy, although in Australia the legislation pertaining to the local content standard is founded on cultural and social objectives.⁶⁰

Because of the pervasive use of television as a source of information and entertainment, television programs are considered to have a very important influence in shaping and reflecting a sense of national identity and cultural diversity. The Explanatory Memorandum to the Broadcasting Services Act 1992⁶¹ states that the legislation ‘recognises that broadcasting can play an important role in shaping Australia’s collective views, values and culture’.

The regulation of Australian content of television is determined and administered in the form of a standard by the Australian Broadcasting Authority (ABA). The enabling legislation⁶² requires the ABA to perform its regulatory function in a manner consistent with, *inter alia*, Australia’s obligation under any convention or agreement with another country. The Australian regulation requires commercial and free-to-air television stations to screen Australian programs for at least 55 per cent of a station’s air time between 6.00 am and midnight. It also prescribes minimum quantities of first-release Australian drama, documentary and children’s programs.⁶³

Domestic television programs depict Australian themes and shared experiences, which contribute to building a common national culture and identity. Conversely, the consumption of imported programs tends to erode desirable national cultural traits by reinforcing those of another culture.⁶⁴

There is concern that any loss of local content regulation would almost inevitably see a reduction of the creative and financial rewards for artists, with a resulting negative impact on the vigour and viability of Australian culture. For Australia's artists the impact of a changing marketplace is even more important than for those in similarly populated countries in Europe or Asia, where touring to other marketplaces is relatively inexpensive and easily facilitated, and consequently artists are less dependant on income from multiple sources in their home country.⁶⁵

In 2001 writing in *The Australian*, former Australia Council Chair Dr Margaret Seares made the point that:

‘There is a further dimension to local content, and that is the contribution content regulations and the resulting Australian productions on our airwaves have made to the lifeblood of our artistic life. There is a high degree of crossover of activity within the cultural industries that is often unrecognised by policy makers.

Actors work for stage and screen; musicians write for concert hall and screen/radio; writers publish for the book market and write for the screen; visual artists create works across the spectrum.⁶⁶

In a 21st century environment it is arguable that Government funding of public broadcasting becomes a significant vehicle for promoting local content and its distribution.⁶⁷ This is consistent with the public policy rationale for the Government funding of cultural institutions. Currently the technologies, industries and markets for cultural goods and services are being transformed. There is a widespread view that traditional measures used to assist domestic cultural expression in broadcast media, such as quotas, may become more difficult to deploy successfully in a new environment. In the emerging global environment, subsidies (including the funding of those public service broadcasters able to expand their activities into online media) could potentially be one of the most effective cultural policy levers.

5. Core Principles and Recommendations

The trend towards free trade and more open markets presents challenges in negotiating trade agreements that recognise cultural diversity and the unique nature of cultural products.

The Australia Council Submission to the DFAT WTO 4th Trade Policy Review outlined core principles and objectives and makes recommendations for the next round of negotiations. These are repeated below:

5.1 Core Principles and Objectives – The Bottom Line

The Australia Council proposes that the following core principles and objectives are fundamental to future trade negotiations:

- There should be no compromise in international trade agreements of the national right to encourage the emergence and promotion of artists, creative institutions and organisations through subsidies. Any discussions regarding subsidies (as proposed by the US and Brazil) should recognise the importance and the extensive use of such arrangements in the Australian arts and cultural sector and their central place in promoting national policy objectives. The Australia Council questions the likely trade benefits from developing such an understanding on subsidies because the proportion of world audiovisual trade taken by subsidised productions is likely to be very small.
- An argument might be advanced to establish new international forums to promote the access of artists and diverse cultures to global audiences and cultural interchange. This would address the considerable potential for dominant producers to exploit downstream bottlenecks (for example, as a result of oligopolistic control of global distribution channels).
- It is important that international trade protocols do not act to restrict the freedom of sovereign governments to promote public goods and the provision of community services within their jurisdictions.

- It is important that international trade protocols do not preclude sovereign governments from addressing systemic market failures.
- In the arena of the arts and cultural sector, the Australia Council's preferred stance is for trade negotiations to occur within a multilateral framework rather than a bilateral framework. There are difficulties in drafting all-embracing bilateral agreements in a manner that do not compromise existing legislation, government policy objectives, future developments nor the national interest. However, the Australia Council is committed to work towards the best outcomes for the cultural sector irrespective of the trade forum.

5.2 Summary of Recommendations for the Doha Summit

The members of the WTO held the fourth WTO Ministerial Conference in Doha, Qatar, on 9–13 November 2001. The Ministerial Conference is the highest decision-making body of the WTO. It is required to meet at least every two years, bringing together all the countries and customs unions that are members of the organisation. The Ministerial Conference can take decisions on all matters under any of the WTO Agreements. The last Ministerial Conference was held in Seattle in 1999.

The Australia Council made the following recommendations to the Department of Foreign Affairs and Trade regarding how to approach the Doha round:

1. Elevate the importance of cultural issues in the WTO:
 - Reference to culture should be included in the text of the GATS (and the GATT if the debate on classification is not clarified), via a 'general enabling clause' or an Annex/Cultural Instrument, as this will have both practical and symbolic impact. The clause or annex could be similar to that which exists for complex sectors like telecommunications and financial services. Breadth of coverage of the cultural sector is critical.
 - Adapt the dispute settlement process to allow a party to a dispute to request that, at the very least, one member of the panel be a person, possibly nominated by the International Network for Cultural Diversity (INCD), with particular skills and experience in cultural industries and issues.
2. Retain Australia's capacity to maintain, adapt and introduce measures to support local cultural expression by:
 - Preserving the 'positive list' structure of commitments on national treatment and market access;
 - No commitments to remove existing measures.
3. Investigate and discuss regulatory issues regarding trade in arts and culture under both the GATS and GATT at the next round of WTO negotiations with particular reference on simplifying classification and identifying common views and solutions.

4. Work with stakeholders to increase debate and consultation with the Australian arts and cultural sector, ensuring that international legal expertise is available to the sector to provide advice in developing any treaty exceptions and in understanding the potential implications of trade negotiations.

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Appendix 1: Structure of WTO Agreements and Scope of Obligations in Cultural Trade

The following extract from the Submission to the Joint Standing Committee on Treaties by the Department of Foreign Affairs and Trade⁶⁸ outlines the government's current view on the WTO and cultural issues:

‘Some critics have argued that WTO rules threaten the diversity of cultural product and encourage global cultural homogenisation. But current WTO Agreements contain nothing which obliges WTO members to provide unrestricted access for foreign cultural products.

Under the General Agreement on Trade in Services (GATS), Members are only under a binding obligation to offer market access and national treatment (broadly speaking, treatment which does not discriminate between domestic and foreign suppliers) if they have made specific commitments under that sector. The audiovisual sector (film, television and radio) is a sensitive sector for a number of countries, and there are relatively few scheduled commitments. Australia has not made any commitments under this sector, and has also taken out exemptions from most-favoured-nation status (MFN). Australia will take into account its cultural policy objectives for the audiovisual sector in determining its negotiating strategy for the new WTO services negotiations. Australia has also not made any commitments in cultural services (entertainment, libraries, archives, museums and other cultural services).

In terms of the protection of cultural expression, the provisions of the WTO Trade-related Aspects of Intellectual Property Rights (TRIPS) Agreement have contributed to the protection of IP rights for WTO Members, thereby encouraging creativity and artistic expression.

Protection of expressions of indigenous culture is a matter of increasing practical and policy concern, and there is growing interest in how the intellectual property system—in its current form, or in an extended or adapted form—can work better to ensure that indigenous communities derive greater recognition and tangible benefits from their distinctive traditional cultures. On the international plane, there is active consideration of how to achieve this within the framework of integrated intellectual property standards established by the World Intellectual Property Organisation (WIPO) and the WTO TRIPS Agreement. Opportunities are apparent in more strategic and flexible use of trademarks or certification marks (such as the Australian authenticity label), geographical indications, protection of confidential information, copyright and related rights, and the patent system. For instance, indigenous communities can make access to and use of their traditional knowledge conditional on an equitable share, enforced by contract, in the benefits accruing from its subsequent commercial use, such as when it makes a contribution to a patentable invention.

Australia has been an active participant in a WIPO program aimed at benchmarking best international practice in this area. TRIPS only sets

minimum standards for IP protection, and leaves open the possibility for new forms of protection more directly tailored to the needs of indigenous communities, an opportunity several countries are currently exploring. The practical lessons currently under consideration in WIPO and elsewhere may lead to suggestions for enhancing TRIPS standards in time - for instance, some developing countries have already called for recognition within TRIPS of distinct new rights covering traditional knowledge.'

Appendix 2: Obligations under the GATS

The following table from Goldsmith⁶⁹, neatly summarises some of the basic obligations under the GATS as they apply to the arts and culture, particularly the audiovisual sector:

General obligations under the GATS apply to all service sectors. They include:

Most-Favoured-Nation Treatment (Article II) Unless specific exemptions are taken, member states must ‘immediately and unconditionally’ treat the services and service suppliers of any other members ‘no less favourably’ than they treat like services and service suppliers of any other country. That is to say, signatories of the GATS must not discriminate against services or service providers, but must treat them as favourably as the ‘most-favoured’ trading partner.⁷⁰

Transparency (Article III) Members are obliged to inform other members of all relevant trade measures including international agreements, changes to existing laws, regulations or administrative guidelines which affect trade in services covered by the member’s specific commitments under the GATS.

Economic Integration (Article V) Members are able to enter into bilateral or multilateral agreements liberalising trade in services as long as these agreements work to eliminate ‘existing discriminatory measures’ and prohibit “new or more discriminatory measures”.⁷¹

Subsidies (Article XV) Member states are expected to exchange information concerning all subsidies related to trade in services that they provide to domestic service suppliers, and ‘enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects’.⁷² Subsidies will be another focal point of the current round. There is no current obligation on Members to eliminate subsidies. However, the wording of this article makes it clear that negotiations are expected to explore ways to eliminate measures which benefit domestic suppliers.

Specific obligations apply to particular sectors nominated by each member. They include:

Market Access (Article XVI) In sectors where members make market-access commitments, they will not be able to limit the number of service suppliers; limit the total value of service transactions; limit employment in a sector; restrict the supply of a service by placing conditions on joint ventures; or limit foreign capital investment or levels of foreign shareholding.

National Treatment (Article XVII) Members are required to treat foreign services and service suppliers no less favourably than they treat domestic services and service suppliers.

Appendix 3: Australian Intervention on Negotiating Proposal on Audiovisual Services⁷³

AUSTRALIAN INTERVENTION on NEGOTIATING PROPOSAL on AUDIOVISUAL SERVICES CTS SPECIAL SESSION, July 2001

Thank you Mr Chair.

We would like to thank the delegations of Japan, the United States, Switzerland and Brazil for their proposals.

Australia's unique intersection of culture, geography, history and economic circumstance has produced a rich cultural diversity that is one of our most defining attributes.

Within this context, Australia's audiovisual sector is critical to the achievement of our key social and cultural objectives. While we approach negotiations to liberalise the audiovisual sector with some degree of caution, we nevertheless acknowledge that this is likely to be a significant area of interest in the services negotiations.

Australia is engaging with the debate on this matter, and what follows, for the information of members, is the policy framework that underpins our current stance on the audiovisual sector, together with some preliminary comments and questions on the negotiating proposals from the United States, Switzerland, and Brazil.

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.

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.

Audiovisual services are the most immediate and pervasive media for creative expression and mass communication. They play an integral role in developing and reflecting a sense of national and cultural identity within Australia's multicultural society. They provide opportunities for almost universal access by Australians to their own experiences and narratives.

Australia's current policy framework is designed to ensure that audiovisual services fulfill public needs and expectations.

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.

- Australia also has a tradition of openness and recognises the value in Australians accessing the rich variety of cultural products and services produced internationally. As well as enriching our cultural life they enhance our understanding of and engagement with the world.

The Australian Government also provides support for the development and production of Australian film and television programs so that Australians can make and view a rich variety of high quality, film television and other audiovisual productions.

The successful achievement of Australia's cultural objectives in the audiovisual sector depends in large measure upon the existence of a vibrant local film and television production industry to develop Australian programs for broadcast and exhibition.

- Government support for the sector is therefore provided in areas of greatest market failure—those links in the value chain where activity would not occur, or would fall to levels likely to threaten industry sustainability in the absence of subsidy.
- This support complements and underpins the growth that is occurring in the more commercially sustainable sectors of the industry.

Market forces alone are rarely sufficient to allow cultural organisations and individuals to be fully self-sufficient. This is true for the cultural sector worldwide, but in Australia's demographic and geographic circumstances it is particularly the case. A limited domestic market in turn limits the capacity of cultural industries to generate advertising revenue to recoup costs and sell cultural services.

- This is particularly the case for high budget, culturally significant television programming and especially so for children's drama.

The important mix of subsidy, regulation and tax concessions that forms Australia's support for the audiovisual sector is, accordingly, not designed to present barriers to market access, but as a necessary subvention in the national interest to sustain Australian creative resources and to ensure that Australians have access to their own images and stories in the cinema and on television.

In addition to these cultural objectives, Australia also has a broad range of social objectives for our audiovisual media. These include the maintenance of community standards, the protection of children, encouraging the provision of diverse services, local services and programs, high quality and innovative programming, fair and accurate reporting, and the protection of the national interest.

- the extent to which the Government regulates any particular audiovisual medium to achieve its cultural and social objectives will differ according to the particular characteristics of the medium concerned.

In Australia's view it is too early to talk about a 'new' audiovisual sector. Australia supports the principle of technological neutrality. There should be no discrimination on the basis of the means of delivering a service. This requires a distinction to be made between 'carriage' and 'content' services. 'Carriage' refers to the transmission service, whereas 'content' is the service—for example, audiovisual or financial—which is transmitted. Following this approach, an audiovisual content service would not need to be reclassified because it was delivered in a different way—for example, by using an Internet delivery service.

In a converging technological environment it is essential for the Australian Government to have access to a wide range of policy measures and the flexibility to apply them as necessary to ensure that Australia's cultural and social objectives for the audiovisual sector are met.

Communications from the United States, Switzerland and Brazil

Australia welcomes the recognition of the cultural importance of the audiovisual sector that is explicit in the communications on audiovisual services from the United States, Switzerland and Brazil.

We note that the proposals seem to suggest isolating elements of the audiovisual sector and encompassing them within the framework of GATS disciplines. We contend that there is a complex inter-relationship between the measures applied by nations to achieve their cultural and social objectives for the audiovisual sector;

- dealing discretely with individual measures may well jeopardise the broader objectives and the policy framework as a whole.

The communication from the United States suggests in paragraph 8, that 'the scarcity of outlets available to local film producers...has in large part been alleviated by multiplex cinemas and multichannel TV'. It is our experience that the growth of multiplex cinemas and the availability of cable and satellite TV has actually enhanced market access for imported cinematic films, and had an adverse effect on the number of screens available to local film producers.

Such experience reinforces Australia's continuing commitment to cultural objectives within the audiovisual sector. Australia, accordingly, approaches consideration of the audiovisual sector with caution.

We also note with interest the proposal on audiovisual services tabled by Brazil this week. We note, in particular, the emphasis in paragraph 8 on the flexibility of the GATS instrument and the right of members to regulate to meet national policy objectives in line with the principle of progressive liberalisation. We also note Brazil's recognition in paragraph 6 of the sensitivities associated with the sector given its role in the transmission and diffusion of cultural values and ideas.

We note that both the Swiss and US proposals raise the issue of subsidies, and appreciate the need to clarify the matter, given the important role that subsidies play in the audiovisual sector.

- We appreciate the explanation on this issue given by the delegate from the United States earlier this afternoon. It provides food for thought by all Members.

In this context also, Australia appreciates the further explanation from Canada on the nature, breadth, scope and force of the putative International Instrument on Cultural Diversity and we will reflect on this further.

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.

Thank you.

Appendix 4: The Australia Council - Overview

The Australia Council is the Federal Government's arts funding and advisory body. Its vision is to enrich the life of the nation by supporting and promoting the arts.⁷⁴

The Australia Council is a Commonwealth statutory authority created under the *Australia Council Act 1975*. Section 5 of the Act defines the functions of the Council as:

- (a) to formulate and carry out policies designed:
 - (i) to promote excellence in the arts;
 - (ii) to provide, and encourage provision of, opportunities for persons to practise the arts;
 - (iii) to promote the appreciation, understanding and enjoyment of the arts;
 - (iv) to promote the general application of the arts in the community;
 - (v) to foster the expression of a national identity by means of the arts;
 - (vi) to uphold and promote the rights of persons to freedom in the practice of the arts;
 - (vii) to promote the knowledge and appreciation of Australian arts by persons in other countries;
 - (viii) to promote incentives for, and recognition of, achievement in the practice of the arts;
 - (ix) to encourage the support of the arts by the States, local governing bodies and other persons and organisations;
- (b) to furnish advice to the Government of the Commonwealth either of its own motion or upon request made to it by the Minister, on matters connected with the promotion of the arts or otherwise related to the performance of its functions; and
- (c) to do anything incidental or conducive to the performance of any of the foregoing functions.

Australia is a culturally rich nation and the work of our artists is central to contributing to our sense of national identity and the way we are perceived by the world. The Australia Council fulfils a crucial role in supporting Australian artists and arts organisations to pursue artistic excellence, to create and present their work, to take advantage of opportunities to improve and develop their skills, and to tour and promote their work to wider audiences. It directly supports young, emerging, developing and established artists through a range of grant programs offered across all artforms, and it encourages arts and non-arts organisations to support and present artists' work, thereby expanding employment opportunities for all artists. The Council also plays a vital role in developing new audiences for the arts both here and overseas and promotes the greater appreciation of the value and role of the arts in the community.

The Council's national focus reflects the culture and creativity of both regional and urban communities, and it has a statutory obligation to ensure access to, and participation in, the arts by all Australians. The arts of Aboriginal people and Torres Strait Islanders are valued and supported; and communities across Australia are enriched by opportunities to incorporate the arts in local cultural life. The Council also maintains and develops cooperative arrangements with State and Territory arts

funding authorities, local governments, and key international agencies in all its activities.

The Australia Council was formed as an interim Council in 1973 and was given statutory authority by the *Australia Council Act 1975*. It replaced an earlier, non-statutory body called the Australian Council for the Arts, which was established in 1968 as a division of the Prime Minister's Department. The Council subsumed other arts-related government functions, such as the Commonwealth Literary Fund, which had supported writers since 1908, and the Commonwealth Art Advisory Board, which was set up in 1912 to develop a national art collection and, from 1927, to advise on matters relating to the visual arts. The Australia Council was granted considerably expanded functions and greater independence from government in its policy-making and funding roles than its predecessors. As with similar bodies in Canada and New Zealand, the Australia Council's structure and functions were based on those of the Arts Council of Great Britain.

The work of the Australia Council has always been guided by two fundamental principles. The 'arm's length' principle, which is enshrined in the *Australia Council Act*, ensures that decisions about specific grants are made at a distance from political processes.

The second principle is 'peer assessment' whereby decisions on grants are made by artists, individuals closely associated with the arts and community representatives who are the peers of those being assessed. Grants are offered to artists and arts organisations whose proposals, in competition with those of other applicants, and within budgetary constraints, demonstrate the highest degree of artistic merit and innovation.

The Australia Council is committed to providing the best possible system of peer-assessed funding of creative work, and will continue to ensure that creativity and excellence in the arts flourish and that all Australians have access to the arts and to the stimulation and enjoyment the arts can bring.

New lucrative markets for Australian arts are established by the Australia Council through participation at international book fairs, visual arts and craft events, performing arts markets, festivals, websites and databases, and government sponsored overseas promotions. Key international producers, curators, journalists and publishers are brought to Australia to attend important arts events.

The Australia Council supports projects which build wider national arts audiences - some are avid users of the Internet, others take the arts to new sites such as sporting fields, shopping centres and factories. Through training resources, market research and strategies the Australia Council is able to enhance the skills of arts companies to develop new audiences. The Australia Council also promotes the greater appreciation of the value and role of the arts in the community by undertaking special initiatives, research projects, developing networks and exchanges of information. Policies and strategies are developed to ensure that the arts are inclusive of our diverse cultures and arts practices.

Appendix 5: Public Support for the Arts

In its inquiry on the performing arts, the Industries Assistance Commission acknowledged the existence of external cultural benefits in the consumption of cultural products and considered them to be sufficient justification for government intervention.⁷⁵

There are very strong reasons for public support of the arts; these include information failures, distributional issues, positive externalities (spillover effects) and public benefits.⁷⁶

The essence of the public benefit argument is that the arts create not just a benefit for the people who attend, for which they can be charged, but also a benefit that accrues to everyone, both to those who do *and* those who do not attend. This benefit, the public benefit, cannot be charged to everyone and is therefore paid for by the government. In other words, in relation to some activities, including the arts, there may be significant private and public benefits associated with their production and consumption.

The particular public benefits from the arts that the Industries Assistance Commission (IAC) identified as justifying government support stemmed from their role in education and in cultural development (in the 1976 Inquiry into Commonwealth Assistance to the Performing Arts). Other economists have elaborated on the public benefits from the arts. Among the other public benefits suggested by economists have been:

- Enhancement of national identity or pride and of international prestige;
- Direct and indirect economic benefits including
 - Attractive to business, consumers and tourists
 - Labour intensive, absorbing a full range of job skills
 - Direct and multiplier effects on the economy
 - Ecologically and environmentally sound
 - In demand by a class of individual the attraction of which to a community might be economically beneficial
- Potential to benefit future generations by providing them with an element of cultural continuity (option demand for both present and future generations)
- Development of socially critical and other innovative/experimental work.

Appendix 6: Some characteristics of the Australian Film and Television Industry

The film and television industry in Australia has unusual and complex economic characteristics:

Because of economies of scale, it can be very difficult for small Australian firms to compete with large, well-capitalised foreign cultural producers for a place within our own market. Producing for a small market is costly. Australian companies have few opportunities to achieve cost efficiencies and production costs can be a significant barrier.

‘In the case of the film and television industry almost every complication possible exists: the large number of (large dominant) firms is small; the number of units of output is small; products are highly differentiated (each film is unique); lack of information and uncertainty on both sides of the market is inescapable; supplier influenced taste formation is ubiquitous; public goods characteristics abound; externalities are common; and industry boundaries are particularly hard to define.’⁷⁷

‘The international market for film and television programs operates very differently to that for manufactured products. The cost structure of production is distinctive in that the fixed costs of producing programs and maintaining transmission facilities are relatively high but, once the fixed costs have been incurred, the extra marginal cost of selling a program in another market, or broadcasting it to extra viewers, is very low. Thus there is a strong incentive to show a program in as many places as possible. This means that for countries with small populations like Australia unless Government intervenes to provide support, a national industry, telling Australian stories, would not be able to develop and survive.’⁷⁸

Appendix 7: Some Australian Cultural Statistics

Employment

- ◆ Just over 250,000 Australians are employed in the broadly defined cultural sector, according to the 1996 Census: 157,000 work in a cultural occupation as their main job; a further 98,000 people work in cultural industries in a non-cultural occupation (eg an accountant in a theatre company).⁷⁹
- ◆ At the time of the 1996 Census, the total Australian workforce was 7.6 million. The 250,000 people in the cultural sector represented 3.3 per cent of the total workforce at that time.⁸⁰
- ◆ The sectors of the economy which employ large numbers of cultural workers include:
 - ◆ Television
 - ◆ Radio
 - ◆ Libraries
 - ◆ Music and theatre
 - ◆ Book publishing
 - ◆ Performing arts venues
 - ◆ Film and video production
 - ◆ Film exhibition
 - ◆ Newspaper printing
 - ◆ Artists, writers etc⁸¹
- ◆ The cultural industry is one of the fastest growing sectors of the economy as shown by employment growth: in those occupations for which comparable statistics are available from the 1991 Census, the increase was 20 per cent. The increase for the total employment in the same five years was 7.4 per cent.⁸²

Unpaid and paid work in the arts

- ◆ About 2.2 million adult Australians work in an unpaid capacity in a wide range of arts and cultural activities each year.⁸³
- ◆ About 1.3 million adult Australians have some paid work in a wide range of arts and cultural activities each year.
- ◆ Many people had work in more than one kind of arts or cultural activity.

Australians use of leisure time and the Internet

- ◆ Australians spend a third of their leisure time watching TV or videos.⁸⁴
- ◆ About 7 per cent of their leisure time is spent reading.
- ◆ About 1 per cent is spent at the movies and at concerts etc.

- ◆ In November 2000, more than half (56 per cent) of Australian households had access to a computer at home.⁸⁵
- ◆ And more than a third (37 per cent) had access to the Internet at home.

The cultural sector of the economy in Australia

- ◆ The arts and cultural industries (widely defined) contribute about 2.5 per cent of Australia's domestic production of goods and services.⁸⁶

- ◆ The value of the total supply of cultural goods and services in Australia in the early 1990s was about \$20 billion.⁸⁷

The main sources were:

- | | |
|---------------------------|-----------------|
| ◆ Publishing and printing | \$6,000 million |
| ◆ TV and radio stations | \$2,900 million |
| ◆ Library, museums etc | \$ 525 million |
| ◆ Film industry | \$1,080 million |
| ◆ Live theatre, music | \$ 320 million |
| ◆ Artists, writers etc | \$ 405 million |
| ◆ Advertising services | \$3,400 million |
| ◆ Architectural services | \$1,700 million |
- ◆ The value of the total supply of goods and services to the Australian economy by the arts and related industry groups was \$4.8 billion in 1993-94. This means that by this measure of economic size, the arts industry is bigger than the clothing industry, or the cosmetics industry, or the brewing industry, or the household appliances industry.⁸⁸

The cultural industries in Australia

Music and Theatre Production⁸⁹

- ◆ There are about 880 businesses in the music and theatre production industry in Australia.
- ◆ These businesses generate about \$600 million in income annually.
- ◆ Together these businesses have about 13 million paid attendances annually.
- ◆ Over 6,000 people are employed by these businesses.

- ◆ About 5 per cent of the performances (out of the total of 70,000 performances) were overseas in 1996-97.

Radio and Television Services⁹⁰

- ◆ There are about 260 private radio broadcasters in Australia.
- ◆ Together they employ 5,000 people.
- ◆ They generate about \$600 million in income.

- ◆ There are about 50 commercial television broadcasters in Australia.
- ◆ Together these television stations employ 9,000 people.
- ◆ They generate about \$3,700 million in income.

Book Publishing⁹¹

- ◆ There are about 250 book-publishing businesses in Australia.
- ◆ Together they have combined sales of \$1,200 million annually.
- ◆ About half of these sales (\$625 million) are attributed to Australian titles
- ◆ About 14 per cent of the value of these Australian book sales are paid in royalties.

Music Recording Industry⁹²

- ◆ There are about 550 businesses in the music industry in Australia: 150 record companies, 23 manufacturers of recorded music, 70 music publishers and about 300 sound recording studios.
- ◆ These businesses provided employment for almost 4,000 people.
- ◆ Together they a combined income of over \$1,000 million in 1995-96.

Commercial Art Galleries⁹³

- ◆ There are about 450 commercial art galleries in Australia.
- ◆ Together they accounted for total sales of \$131 million.
- ◆ Of these sales, about 11 per cent were sales of Aboriginal and Torres Strait Islander artworks.

- ◆ The Australian Bureau of Statistics estimated that these commercial art galleries accounted for about 25 per cent of all artwork sales in 1996-97, the remaining sales being direct from the artists or through other outlets such as auction houses and art museums.⁹⁴

Motion Picture Exhibition⁹⁵

- ◆ There are 1,050 cinema screens in Australia in 325 sites.
- ◆ In 1997, there were 73 million admissions to cinemas in Australia.
- ◆ Gross income from box office receipts and other income amounted to \$830 million in 1996-97.

- ◆ In 1997, two-thirds of the films shown on Australian cinema screens originated in USA; 10 per cent were Australian films; 7 per cent originated in the UK, 5 per cent were from France and 3 per cent from Asia.⁹⁶

Film and Video Production Industry⁹⁷

- ◆ There are about 2,000 businesses in the film and video production industry.
- ◆ The industry has been growing rapidly in recent years: the increase recorded in the three years 1997 to 2000 was 58 per cent, and in the previous three years to 1997 the number of production businesses increased by 70 per cent (possibly due to the arrival of pay TV in 1995).
- ◆ These businesses employ about 9,500 people, of whom about 60 per cent are employed full time.
- ◆ Together these businesses earn an aggregate annual income of \$1,100 million.
- ◆ Approximately 55 per cent of the total value of their production activity is the making of productions specifically for television.
- ◆ Making feature films accounts for 20 per cent of their activity and another 20 per cent is the production of commercials and advertisements.

◆ Australia's balance of trade in culture

Balance of Payments⁹⁸

- ◆ In 1998-99, Australia's deficit in international trade in cultural goods and services was more than \$4,000 million. Australia exported cultural goods and services with a value of \$1,236 million and imported cultural goods and services worth \$5,300 million.

- ◆ The trade balance deficit occurred in both cultural services and cultural goods.

- ◆ The trade balance deficit was larger both in **absolute** and **relative** terms for cultural goods: Australia imported almost five times the value of the cultural goods it exported in 1998-99 (\$4,430 million compared with \$960 million).

- ◆ In 1998-99, Australia imported almost three times the value of the cultural services it exported (\$870 million compared with \$270 million).

dfchYWXUbXhY'a YUgi fYg'hu_Yb'hc'dfca chY`i a Ub'f][\lg'jb'5i ghfU]U'UFY'
dfcj]XX'jb'hY'T7cfY'8cWa Yb'figi Va]h'X'Vm5i ghfU]U' H\lg'Ugc'dfcj]Xyg'
]bZ'fa Uh'cb'cb'5i ghfU]U'g'UbX'zdYcd'Y'UbX'dc]h'W'g'fi V'fYz'UbX'g'ci X'VY'
fYUX'jb'W'b' b'W'cb'k]h'h'lg'fYdc'f'f'i'

5fh'WY'%. H'NY'F][\h'hc' hu_Y'dUfh'b'7i 'h'fU'@Z/H'NY'F][\h'hc'9b'cm'h'Y'
6YbYZ'lg'cZHYW'bc'c[m'UbX']hg'5dd]W'h'cbg'.

5fhg'

H'Y'5i ghfU]Ub'; cj Yfba Yb'ghi ddc'f'g'h'Y'5i ghfU]Ub'U'f'g'W'a a i b]m'UbX'
Yb\UbW'g'h'Y'cd'f'f'i b]m'Z'f'5i ghfU]Ub'g'hc'hu_Y'dUfh]b'W'h'fU'`Z'z'Vm
dfcj]X]b['h'Y'Z'`ck]b['Ugg]gh'UbW'.

f'W'a dfY\Ybg]j Y'Z' bX]b['Ugg]gh'UbW'Z'f']bX]j]Xi Ug'UbX'cf[Ub]g'Uh'cbg'UM'j Y]b'
']h'f'U'h'fY'za i g]W'dY'Z'fa]b[z'UbX]j]gi U'U'f'g'z'Ug'k Y'`Ug']bX][Ybc' i g'UbX'Y'h'b]W'
U'f'g'z'h'f'ci [\ 'h'Y'5i ghfU]U'7'ci bW'UbX'h'Y'G'U'Y'5'f'g'8'Yd'U'f'a Yb]g'.

f'X]f'Y'W'idi fW'Ug'Y'c'Zk cf_g'cZ'U'f'h'Z'f'gi Vg'Yei Yb'h'Y'Ug'Y'Vm; cj Yfba Yb'h'UbX'
df]j U'h'g'Y'W'cf'cf[Ub]g'Uh'cbg']b'5i ghfU]U'z'UbX']b'5i ghfU]Ub'X'd'ca U'h]W'dc'g]g'
cj Yfg'Y'Ug'z'h'f'ci [\ '5'f'h'Ub'/_'

f'd'Una Yb]g'hc'5i ghfU]Ub'k'f]h'f'g'i bX'Y'f'h'Y'Di V]W'@YbX]b['F][\h'z' bX']b'
fY'W' [b]h'cb'h'Uh]b'W'a Y]g'`c'gh'Ug'U'f'Y'gi 'hc'Za i]d'Y'i g'Y'c'Z'V'cc_g'Z'ca 'di V]W'
']V'f]Y'g'.

f'X]f'Y'W'igi ddc'f'h'hc'h'Y'b'Uh'cb'U'cd'Y'f'U'W'a d'U'bm'UbX'h'Y'cf'W'Y'g'f'U'g'k \]W'
gi ddc'f'h]g'dfc'Xi W]cbg'.

f'W'cf'X]b'Uh'cb'c'Z'UM'j]h'Y'g'hc'gi ddc'f'h'5i ghfU]U'g'k]X'Y'f'Ub[]b[]b'h'f'b'Uh'cb'U'
W'h'fU'Y']W'Ub[Y'UbX']b_U[Y'g'UM'j]h'Y'g'.

f'h'Y'b'Uh'cb'U'd'Y'Z'fa]b['U'f'g'hc'i f]b['dfc[f'U'a z'D'Un]b['5i ghfU]U'z'k \]W'Z' bX'g'
h'Y'hc'i f]b['k]h']b'5i ghfU]U'c'Z'][\ 'ei U]m'd'Y'Z'fa]b['U'f'g'd'f'c[f'U'a g'z']b'
f'Y'g'd'c'b'g'Y'hc' 'Ui X]Y'b'W'X'Ya UbX'.

l' hci f]b['Vm\][\ 'ei U]mYl \V]hcbg'cZ\Yf]HJ[YžgWYbhZVZj]gi U'UfhgZWUZg'
UbX'5Vcf][]bU'UbX'Hc'ffYg'GhfU]hW'hi fU'a Uhf]UždUfh]W'Uf'mlc'fY[]cbU'
5i ghfU]Užh'fci [\ 'J]g]cbg'cZ5i ghfU]U'

l' gi ddcfhZ'cfY[]cbU'UbX'W'a a i b]mZyghj U'g'lc' dfYgYbhei U]mW'hi fU'
UMj]]hYg'k \]W'gi ddcfh'cf'Yb\UbW'h'Y'Zyghj U'h'Ya Y'cf'dfca c'h'h'Y'c'W'
W'a a i b]mfg'W'hi fU'ja U] Y/

l' gi ddcfhZ'cf'gdYWU]ghbU]cbU'Ufhg'hfU]b]b[]bgh]h hcbg']bW' X]b[žh'Y'B U]cbU'
-bgh]h h'c'Z8 fUa U]W5fžh'Y'5i ghfU]Ub'6U'YhGWcc žh'Y'5i ghfU]Ub:]a ž
HY'Yj]g]cb'UbX'FU]c'GWcc žh'Y'B U]cbU'5Vcf][]bU'UbX'g'UbXYf'G_]`g'
8Yj Y'cda Ybh5ggcWU]cbžh'Y'5i ghfU]Ub'BU]cbU'5WXYa mcZA i g]Wžh'Y'
5i ghfU]Ub'Mei h' C'fWYghfU'UbX'h'Y: `n]b[: fi]h: `m7]fWg/

l' ja d'fcj Ya YbhcZUWYgg'lc']bZ'fa U]cb'cb'U' [fUblg'UbX'gi ddcfhgYfj]Wgž
Vi]bYgg'UbX'Yl dcfhd'fc [fUa g'Z'f'h'Y']bXi g]fmUj U]UVY'Z'ca 'h'Y'h'fYY'Yj Yg'
cZ[c] Yfba Ybž'dfj U'h'f'i g]g'UbX'Z'i bXU]cbgž'W'a a i b]mUfhg'cf[Ub]gU]cbgž
h'fci [\ '5flg'-bZ' 'UZY'YW' h'Y'd\cbY']bZ'fa U]cb'UbX'fY'Z'ffU' gYfj]W'UbX'
-bh'fbYhg]h'f'd\hd. #k k k "Ufhg]bZ' "bYh'Ui 2L'

l' hU']bWbh]j Yg'Z'f'X'cbU]cbg'lc' W'hi fU'cf[Ub]gU]cbg'UbX']bgh]h hcbg/

l' i gY'cZX][]hU' h'Wbc'c[mUbX'bYY'a YX]U'lc' d'fcj]XY'k]XYf'UWYgg'lc'
5i ghfU]Ub'W'hi fU']bZ'fa U]cb' 'dUfh]W'Uf'dfc [fUa g'UfY'5i ghfU]Ufg'7i 'hi fU'
BYhk cf_ 'fk k k "UW' "bYh'Ui Iž5i ghfU]U'cb'78žUbX'h'Y'DYfZ'fa]b['5flg'
Ai 'ha YX]U'@]VfUfm'

l' fYgYUfW'UbX'XU]U'W'`Ym]cb'cb'U'VfcUX'fUb[Y'cZUFYUg']bW' X]b['
Ya d'cna Ybh]b'h'Y'W'hi fU'g'Y'W'cfž; c] Yfba YbhYl dYbX]h'fY'cb'W'hi fYž
Vi]bYgg'gdc'bg'cf'g\]džUbX']bXi g]fm]gdYW]Wgi fj Yngžh'fci [\ 'h'Y'7i 'hi fU'
A]b]ghYfg'7ci bW]fg'GHU]gh]W'K cf_]b[; fci d/

l' h'fci [\ 'h'Y'5flg'-bXYa b]m5i ghfU]U'gWYa Yžh'Y'5i ghfU]Ub'; c] Yfba Ybh
]bXYa b]Zy'g'\][\]j Ui Y' hci f]b['UfhYl \V]hcbg'cZbU]cbU'UbX']bh'fbU]cbU'
g][b]Z]WbWžh'YfY'Vmd'fca c]h]b['UWYgg'Vm5i ghfU]Ub'g'UbX']bh'fbU]cbU'
j]g]h'cf'g'lc' h'YgY'i b]ei Y'W'hi fU'Yl dYf]YbW'g''

: /a ..

H\Y; cj Yfba YbhUbbci bWX]hg'ghfUH[mZ'f'gi ddcfhcZ\hY'Z'a UbX'hY'Yj]g]cb'
]bXi gfm]b'Bcj Ya VYf% - +"H\]g'fYgdc bXYX'hc U'W'a dfY\Ybg]j Y'fYj]Yk'cZ
7ca a cbk YUH' Ugg]ghU'W'hc'hY']bXi gfm i bXYfHU_Yb'VmA'f'8Uj]X'; cbg_]
'k\]W'fYdcfH'X'hc'hY'; cj Yfba Ybh]b': YVfi Ufni% - +"H\Y; cj Yfba Ybh]g'
ghfUH[m'W'bh]bi Yg'hc'dfcj]XY'Ub']bhY[fUH'X'Z'Ua Yk cf_ 'cZgi ddcfhc'hY'
]bXi gfmz']bW' X]b[.''

f'UXj UbWX'hU]b]b['h'fci [\ 'hY'5i ghfU]Ub':]a zHY'Yj]g]cb'UbXFUX]c'GWcc'^'

f'dfcZgg]cbU'z'gW]dlz']bXi gfmU' X]YbW'UbX'a Uf_YhXYj Y'cda Ybh'h'fci [\ 'hY'
5i ghfU]Ub':]a '7ca a]gg]cb/'

f'dfcXi W]cb'Z'UbW]b['h'fci [\ 'hY'5i ghfU]Ub':]a :]bUbW'7cfdcfU]cb/'

f'UfW]j]b['h'fci [\ 'hY'BU]cbU':]a 'UbX'Gci bX'5fW]j Y/UbX'

f'fU' XYXi W]V]mZ'f'Ei U]Z]b['5i ghfU]Ub':]a g'h'fci [\ '8j]g]cb'%\$65'cZ\hY'
[b'Wa YHU'5ggYgga Ybh5W%' * ''](#)

H\Y; cj Yfba YbhUgc'dfcj]XYg'gdYW]Wgi ddcfh'Z'f'gY'W'fg'cZ\hY']bXi gfm
gi VY'W'hc'cb[c]b['a Uf_YhZ]i fY'Vi hk]h'gh'fcb['W'hi fU']a dYfU]h' Yg"H\]g']g'
dfcj]XYX'h'fci [\ 'Ubbi U'] fU]hg'hc'hc'c'gdYWU]ghU[YbW]Yg' :]a '5i ghfU]U
fZ'f'Xc'Wa YbhUfmdfc[fUa a]b[L'UbX'hY'5i ghfU]Ub'7\]X'fYb]g'H'Y'Yj]g]cb'
: ci bXU]cb'fZ'f'W]X'fYb]g'H'Y'Yj]g]cb'E''

H\Y; cj Yfba Ybh]g'ghfUH[mUgc']bW' XYX'hY']bh'fci Xi W]cb'cZU'bYk' fU'
W'cbWgg]cb'!!hY':]a '@]WbgYX'bj Yg]a Ybh'7ca dUb]Yg'fl @=7L'W'cbWgg]cb'
Ug'Ud]chidfc[fUa 'Z'f'hc'c'mUfg'Z'ca '% - , - - "H\Y: @=7g'gWYa Y'k]'`U'ck'
U%\$\$dYf'W'bh'fU' W'cbWgg]cb'Z'f']bj Yg]a Ybh]b'W'a dUb]Yg'`W]bgYX'Vm'hY'
; cj Yfba Ybh]c'gi ddcfh'Z'a UbX'hY'Yj]g]cb'dfcXi W]cb''

7ca a YfWU'6fcUXWgh]b[''

7ca a YfWU'V'fcUXWgh]fg'UFY'Z' bXYX'df]a Uf]mZ'ca 'UXj Yfh]g]b["'@Y[]g]U]cb'
fY[i 'UH'g'hY'ck bYfg\]d'cf'W'bh'fci'`cZg]U]cbg'UbX'Ugc'fYei]fYg'hY'V'fcUXWgh
cZ'W'fU]b'a]b]a i a g'cZ5i ghfU]Ub'dfc[fUa a]b[z']bW' X]b['W]X'fYb]g'

dfc[fUa a]b["H\lg`YbUVYg`VfcUXWUghb[`gYfj]Wg`lc`Ugg]gh]b`XYj`Ycd]b[`UbX`
fYZYV]b[`UgYbgY`cZ5i`ghfU]Ub`]XYbh]mž`WUfUM]f`UbX`W`h`fU`Xj`Yfg]m"´´

H`Y`c`V`Y`W`g`c`Z`h`Y`[6fcUXWUghb\[`GYfj \]Wg`5V\] - &`fBG5L\]bW`XY`´´](#)

l`lc`YbW`i`fU[`Y`h`Y`dfcj`]XYfg`c`Z`V`f`c`U`X`W`U`g`h`b[`g`Y`f`j`]`W`g`l`c`f`Y`g`d`Y`M`W`a`a`i`b`]`m`i`
g`h`U`b`X`U`f`X`g`]`b`h`Y`d`f`c`j`]`g`c`b`c`Z`d`f`c`[`f`U`a` `a`U`h`f`]`U`ž`´´

l`lc`YbW`i`fU[`Y`h`Y`dfcj`]g]c]b`c`Z`a`Y`U`b`g`c`Z`U`X`X`f`Y`g`g`]b[`W`a`d`U`]`b`g`U`V`c`i`h`
V`f`c`U`X`W`U`g`h`b[`g`Y`f`j`]`W`g`ž`U`b`X`´´

l`lc`Ybgi`fY`h`U`h`h`Y`dfcj`]XYfg`c`Z`V`f`c`U`X`W`U`g`h`b[`g`Y`f`j`]`W`g`d`U`W`U`a`]`[`d`f`c`f`]`m`i`c`b`´´
h`Y`d`f`c`h`W`]c`b`c`Z`W`]`X`f`Y`b`Z`c`a` `Y`l`d`c`g`i`f`Y`h`c`a`U`h`f`]`U`k` \]W`a`U`m`V`Y` \ U`f`a`Z` `l`c`´´
h`Y`a`´´´´

H`Y`6`G`5`d`f`c`j`]`X`Y`g`Z`f`U`b`Y`g`g`Y`b`h`]`U`m`g`Y`Z`f`Y`[`i`U`l`c`f`m`Z`U`a`Y`k`c`f`_`Z`f`W`b`h`Y`b`h`
f`Y`[`i`U`h`c`b`ž`V`U`g`Y`X`c`b`W`X`Y`g`c`Z`d`f`U`M`]`W`X`j`Y`c`d`Y`X`V`m`Y`U`W`g`Y`M`c`f`c`Z`h`Y`´´
V`f`c`U`X`W`U`g`h`b[`]b`X`i`g`h`m`i`H`Y`W`X`Y`g`U`F`Y`a`c`b`]`l`c`f`Y`X`V`m`U`b`]`b`X`Y`d`Y`b`X`Y`b`h`g`h`U`h`l`c`f`m`i`
V`c`X`n`ž`h`Y`5`i`g`h`f`U`]`U`b`6`f`c`U`X`W`U`g`h`b[`5`i`h`c`f`]`m`i`f`5`6`5`L`ž`k` \]W`l`g`Y`a`d`c`k`Y`f`Y`X`l`c`´´
]`b`j`Y`g`h`[`U`h`W`a`d`U`]`b`g`U`b`X`]`a`d`c`g`Y`g`U`b`W`]c`b`g`´´´´

H`Y`Y`X`Y`f`U`h`c`b`c`Z`5`i`g`h`f`U`]`U`b`7`c`a`a`Y`f`W`U`H`Y`Y`j`]`g`c`b`G`H`U`h`c`b`g`f`i`7`c`a`a`Y`f`W`U`´´
H`Y`Y`j`]`g`c`b``b`X`i`g`h`m`i`7`c`X`Y`c`Z`D`f`U`M`]`W`k`U`g`f`Y`Y`U`g`Y`X`]`b`5`i`[`i`g`h`%`-`´´"H`Y`7`c`X`Y`´´
W`c`j`Y`f`g`h`Y`W`U`g`g`]`W`h`c`b`U`b`X`d`U`W`a`Y`b`h`c`Z`d`f`c`[`f`U`a`g`U`b`X`U`X`j`Y`f`h`g`Y`a`Y`b`g`ž`U`b`X`´´
h`Y`d`f`Y`g`Y`b`h`U`h`c`b`c`Z`b`Y`k`g`U`b`X`W`f`f`Y`b`h`U`Z`U`]`f`g`d`f`c`[`f`U`a`g`"h`U`g`c`d`f`c`j`]`X`Y`g`U`´´
W`a`d`U`]`b`g`d`f`c`W`X`i`f`Y`Z`f`7`c`X`Y`V`f`Y`U`W`Y`g`"H`Y`7`c`X`Y` \ U`g`V`Y`Y`b`f`Y`W`b`h`m`i`´´
f`Y`j`]`g`Y`X`U`Z`Y`f`d`i`V`]`W`W`b`g`i`h`U`h`c`b`U`b`X`h`Y`5`6`5`k`]`"U`g`g`Y`g`g`h`Y`f`Y`j`]`g`Y`X`7`c`X`Y`´´
U`[`U`]`b`g`h`g`h`U`h`l`c`f`m`i`W`]`h`f`]`U`l`c`Y`b`g`i`f`Y`h`U`h`h`Y`7`c`X`Y`d`f`c`j`]`X`Y`g`U`d`d`f`c`d`f`]`U`h`´´
W`a`a`i`b`]`m`i`g`U`Z`Y`[`i`U`f`X`g`/`h`U`h`U`a`U`c`f`]`m`i`c`Z`d`f`c`j`]`X`Y`g`c`Z`V`f`c`U`X`W`U`g`h`b[`g`Y`f`j`]`W`g`´´
\`U`j`Y`Y`b`X`c`f`g`Y`X`h`Y`7`c`X`Y`ž`U`b`X`a`Y`a`V`Y`f`g`c`Z`h`Y`d`i`V`]`W`U`j`Y` \ U`X`U`X`Y`e`i`U`h`´´
c`d`d`e`f`h`i`b`]`m`i`l`c`W`a`a`Y`b`h`c`b`h`Y`7`c`X`Y`´´´´

H`Y`Y`X`Y`f`U`h`c`b`c`Z`5`i`g`h`f`U`]`U`b`F`U`X`]c`6`f`c`U`X`W`U`g`h`Y`f`g`f`l`5`F`6`L`7`c`X`Y`k`U`g`´´
f`Y`[`]`g`h`Y`f`Y`X`V`m`i`h`Y`5`6`5`]`b`%`-`´´"h`W`c`j`Y`f`g`h`Y`V`f`c`U`X`W`U`g`h`b[`c`Z`d`f`c`[`f`U`a`g`]`b`´´
U`W`W`f`X`U`b`W`k`]`h`W`a`a`i`b`]`m`i`g`h`U`b`X`U`f`X`g`ž`h`Y`d`f`c`a`c`h`c`b`c`Z`U`W`W`f`U`W`i`U`b`X`´´
Z`U`]`f`b`Y`g`g`]`b`b`Y`k`g`U`b`X`W`f`f`Y`b`h`U`Z`U`]`f`g`d`f`c`[`f`U`a`g`ž`U`b`X`d`f`Y`g`W`]`Y`Y`g`a`]`b`]`a`i`a`´´
W`b`h`Y`b`h`Y`j`Y`g`c`Z`5`i`g`h`f`U`]`U`b`a`i`g`]`W`]`b`f`U`X`]c`´´´´

Di V]W6fcUXWghb[

H\Y'5i ghfU]Ub'6fcUXWghb['7cfdcfUhc b'f567LubX'h\Y'GdYVU'6fcUXWghb['GYfj]W'fG6GLUFY]bXYdYbXYbhghU h'cfmU' h'cf]hYg'YghUV]g\YX'i bXYf'h\Y]f'ck b'5Wg" H\Y'; cj Yfba YbhXYHfa]bYg'h\Y'Yj Y'cZ6i X] YhZ bX]b['Zcf'YUW'cf[Ub]gUhc b'Vi hXcYg'bch\Uj Y'UbmYX]h'cf]U'cf'dfc[fUa a]b['fYgdcbg]V]hmi''

H\Y'567 'UbX'G6G'UFY'Z bXYX'VmdUf]Ua YbhUfmUddfcdf]Uhc b'g'cb'U'hf]Ybb]U'VUg]g" G6G'Ugc'fYW]j Yg'fYj Ybi Y'Zca 'UXj Yfh]g]b['zh'U']b['UVci h' %&a]']cb' dYf'Ubbi a " H\Y'567]g'bchdYfa]hYX'lc' UWWdhUXj Yfh]g]b['cb']g'Xca Ygh]W VfcUXWghb['gYfj]Wg'UbX'h\YfY]g'ghfc b['di V]Wgi ddcfhlc' W'bh]bi Y'h]g' ghU h'cfm'dfc \]h]cb" 'bg]YUX'h\Y'567 'fU]gYg'fYj Ybi Y'h'fci [\ 'UbYh'k'cf_ 'cZ g\cdg'UbX'ch\Yf'Wa a YfV]U' Ybh'f'df]gYg"''

I H\Y'fc'Y'UbX'Z bW]cbg'cZ567 'UbX'G6G'UFY'gYh'ci h]b'h\Y]f'fYgdYV]j Y'7\Ufh'fgz'k \]W'Zfa 'dUfh'cZ'h\Y]f'YbUV]b['Y]]g'Uhc b'h\Y'5i ghfU]Ub'6fcUXWghb['7cfdcfUhc b'5W% , ' 'UbX'h\Y'GdYVU'6fcUXWghb['GYfj]W'5W% - %"!'

I H\Y'fY'UFY'% &']WbgYX'Wa a i b]hmfUX]c'gYfj]Wg'cdYfU]b['h'fci [\ci hi 5i ghfU]U' H\Y'gY'bc b!dfcZhgYfj]Wg'Ya d\Ug]gY'Wa a i b]hmidUfh]WdUhc bZ UWWgg'lc'a]bcf]hmiUbX'gdYVU']bh'fYgh[fci dgZ'UbX'dfca ch]cb'cZ'h\Y' 5i ghfU]Ub'a i g]W]bXi ghmi''

I H\Y'miUFY'Z bXYX'h'fci [\ 'h\Y'7ca a i b]hmi6fcUXWghb[: ci bXUhc b'@XZU' Wa dUbmYghUV]g\YX'Vmih\Y']bXi ghfmic' U'cW]hYX'Z bXg'lc'h\Y'Wa a i b]hmi gYV'cf"''

FYa chY'5fYU'6fcUXWghb[

H\Y'fYa chY'UFYU'VfcUXWghb['gYfj]W'ff 56GL'Wa df]gY'h\Y'567ZG6G'UbX'h'fY'fYa chY'Wa a YfV]U'h\Y'j]g]cb'gYfj]Wg'ff 7HG' 'cbY'YUW']b'K Ygh'f'f' 5i ghfU]Uz'7Ybh'U'5i ghfU]U'UbX'Bcfh'Yfb'5i ghfU]U' H\Y'midfcj]XY'h\Y'j]g]cb'gYfj]Wg'XY'j YfYX'VmigUH']h'lc'gca Y, \$\$\$5i ghfU]Ubg']b'UFYUg'VYncbX'bcfa U'h'fYfgh]U'gYfj]Wg'"5ggc'W]hYX'gUH']h' 'XY'j YfYX'fUX]c'gYfj]Wg'UFY'Ugc'dfcj]XYX']b'h\Y'gY'UFYUg" F Yf'Ubga]gg]cb'Z]W]h]Yg'\Uj Y'VYb'YghUV]g\YX']b'h\Y'Uf[Yf'Wa a i b]h]Yg"''

H\Y'567 'UbX'G6G'gYfj]Wg'UFY'Z bXYX'Zca 'h'Yf'bcfa U'7ca a cbk YUH' .
6i Xl YhU'c'Wljcb" H\YF 7HG'cdYfU'fcg'\Uj Y'fYW]j YX'7ca a cbk YUH' fU'bx]b'
gca Y'WgYg'LGHU'gi Vg]X]Yg'lc 'Ugg]gh]b'YghU'V]g'\]b['h'Y'gYfj]Wg" H\Y'
7ca a cbk YUH']g'Ugc'Z bX]b['gi Vg]X]Yg'lc '\ci gY'c'Xg'WffYbhnik]h' X]fYVW
gUH']Y'fYWd]hcbz'UbX'lc' bX]]bci g'UbX'gYZ'\Yd'W'a a i b]h]Yg']b'fYa chY'
UFYUg'lc 'Ugg]gh]b' h'Y'WffYbhW'bj Yfg]cb'Zca 'UbUc[i Y'lc' X]]h'fYWd]hcb'
Yei]da Ybh''

DUmhY'Yj]g]cb''

DUmhY'Yj]g]cb']b'5i ghU]U'W'a a YbWX']b'% -) žk]h' Ub'Ygh'a UHX) \$\$ZSS\$'
\ci gY'c'Xg'gi VgW]V]b['lc'cbY'cZ'h'Y'Z'i f'a U]b'X]gh]V]h'fcg"Gi ddcf]b['
5i ghU]Ub'W'h'fU'dc']W'nc'V'Y'W]j YgždUmhY'Yj]g]cb'']Wbg'Y'Yg'UFY'fYei]fYX'lc'
Ybgi fY'h'UhUh'YUgh%'\$'dYf'W'bhicZ'Ubbi U'dfc[fUa 'Yl dYbX]h'fY'cb'dUm
h'Y'Yj]g]cb'g'dfYXca]b'Ub]m'X'fUa U'W'Ubb'Y'g'lg'gdYbhicb' bYk '5i ghU]Ub'X'fUa U'
dfc[fUa g"5'fY]]Yk 'cZ5i ghU]Ub'W'bh'Y'bhicb'dUmhY'Yj]g]cb'k Ug'W'a d'YHX'Vm
%>i 'm% - +žUg'fYei]fYX'Vm'Y]]g'U'h'cbz'UbX'h'Y; 'cj Yfba Ybh]g'W'bg]X]f]b['h'Y'
ci h'W'a Yg'cZ'h'Y'fY]]Yk ""

CdYb'UbX'gi VgW]d]hcb'bUffck W'ghYfg'dfcj]XY'U'fUb[Y'cZ]Uf[YHX'b]WY'
gYfj]WgžcdYfU]b['i bXYf'U'W'Ugg']W'bg]b['gng]h'Ya ""

B'Yk'gdUdYfg'

H\Y'7ca a cbk YUH' '\Ug']a]h'Xž'Ygg'X]fYW'dck Yfg'cj Yf'bYk'gdUdYfg'"
<ck Yj Yfz'W'a d'U]blg'W'ub'VY'X]fYW'X'lc' h'Y'5i ghU]Ub'DfYgg'7ci bW]žk'\]W']g'
Udf]j UH'mZ bXYX'UbX'gYZ'fY[i 'U]b['VcXn''

< Yf]hU] Y'

H\Y'7ca a cbk YUH' ; 'cj Yfba Ybh'\Ug'Ubbci bWX'h'Uh'h'Y'B'U]hcbU'Ai gYi a '
cZ5i ghU]U'k]''VY'W'bg]h' W'X'Xi f]b['h'Y'bYl h'h'fY'n'Y'Ufg'UbX'k]''cdYb'lc' h'Y'
di V]W]b'>Ubi Ufm&\$\$%'H\Y'B'U]hcbU'Ai gYi a 'k]''VY'h'Y'7ca a cbk YUH'fg'
ZU[g'\]d']b' h'Y'W'bh'Y'UfmcZ: YXYfU]hcb'W'YVfU]hcbg" H\Y'B'U]hcbU'Ai gYi a'fg'
h'fY'W'fY'h'Ya Yg'cZ5'Vcf][]bU'UbX'H'c'ffYg'GhU]h'g'UbXYf'W'h'fYg'UbX'

\Yf]hU[Yz5i ghU]Ub\ \glc fmiUbX'gc VYmng]bW%' , , žUbX'dYcd Yfg']bhYfUM]cb' k]h' h'Y'5i ghU]Ub'Ybj]fcb' Yblžk]' VY]bhY[fUH'X'UbX'fYZYVWX'h'fci [\ 'h'Y' Ai gYi a g'g'dfc[fUa g''

H'Y'; cj Yfba Ybhgi ddcf]g'h'Y'B U]cbU'@VfUfmcZ5i ghU]Užh'Y'k cf'X'g' 'YUX]b['XcWa YbUfmiYgci fW'Z'f'YUfb]b['UVci hUbXi bXYfg]hUbX]b['5i ghU]U UbX'5i ghU]Ubg" H'Y'B U]cbU'@VfUfmdfcj]XYg'YUXYfg\]d'lc' h'Y'bU]cbU' gng]h'Ya 'cZ]VfUf]Yg'UbX']bZ'fa U]cb'gYfj]W'g''

H'Y'B U]cbU'; U'YfmcZ5i ghU]U'XYj YcdgždfYgYfj Yg'UbX'dfcj]XYg'UWYgg'lc' h'Y'bU]cbU' W'YV]cb'cZUf]k cf_gž]bW' X]b['Ug]]b]Z]WbhW'W'YV]cb'cZVch' 5Vcf]]bU'UbX'Hc'ffYg'GhU]hUf]i'5b'Yl h'bg]cb'cZ'h'Y'B U]cbU'; U'YfmcZ 5i ghU]UžVi]hk]h' h'Y'Ugg]ghUbW'cZ7ca a cbk YU'h'; cj Yfba YbhZ bX]b[ž k Ug'Ui bWYX]b'A UfW%' - , 'lc' UW'Wa a cXUY'a U'cf'h'Ya dcfUfmYl \]V]h'cbg''

H'Y'7ci bW'cZ5i ghU]Ub'; cj Yfba Yblg'a YH]b['cb'+ 'Bcj Ya VYf%' - +' [Uj Y]b' df]bW]d'YU[fY'Ya Ybhlc' h'Y'fU]cbU]gU]cb'cZYl]gh]b['7ca a cbk YU'h' #GHUY' UffUb[Ya Yblg'Z'f'h'Y'dfch'W]cb'cZd'UW'g'cZ\Yf]hU[Y'g]]b]Z]WbhW'h'fci [\ 'h'Y' XYj Y'cda Ybh'cZU'W'cdYfU]h'j Y'bU]cbU'\Yf]hU[Y'd'UW'g'ghU]h[m''

H'Y'< Yf]hU[Y'7c'W'V]cbg'7ci bW]žWU]fYX'Vmh'Y'7ca a cbk YU'h'žW'cfX]bU]h'g' bU]cbU'UddfcUWYg'lc' W'fY'Z'f'UbX'dfcj]XY[fYUH'f'UWYgg'lc' 5i ghU]Ufg' \Yf]hU[Y'W'W'V]cbg" H'Y'7ci bW]g'U'a cXY'Z'f'k \UhW]b'VY'UW]Yj YX' W'UVcfU]h'j YmVY]k Y'Yb[cj Yfba Yblg'UbX'U'\Yf]hU[Y'gY'W'cf"; cj Yfba Yblg' UbX'h'Y'a i gYi a 'gY'W'cf'U'W'blf]Vi h'Y'Z]bUbW]U'mlc' h'Y'7ci bW]g'dfc[fUa g'UbX' lc[Y'h'Yf'gYhd]f]cf]h]Yg'Z'f'UM]cb"~' '\$\$SS\$#YUf']g'W'blf]Vi h'Y'X'Vmh'Y' 7ca a cbk YU'h' 'UbX'~ () S\$SS\$#YUf']b'lc'U'Z'ca 'GHUY'#HYff]lc'fmi[cj Yfba Yblg' UbX'a i gYi a g''

5W]Yj Ya Yblg'cZ'h'Y'7ci bW]lc' XUY']bW' XY'5i ghU]Ub' Ai gYi a g'Cb'@]bY' f5A C @žUb' =bhYfbYhg]h'Y'Z'f'5i ghU]Ub' \Yf]hU[Y'W'W'V]cbgžk \]W'd'Ung'U' g]]b]Z]Wbh'fc'Y']b']bWYUg]b['UWYgg'lc' 5i ghU]Ufg' bU]cbUžfY[]cbU'UbX'c'W' a i gYi a g'UbX'h'Y]f'W'W'V]cbg" 8YH]g'cZU'a cgh%'SS\$a i gYi a g'5i ghU]U] k]XY'UfY'cb'h'Y'k YVg]h'Yžlc[Y'h'Yf'k]h' XYH]YXW'W'V]cb'fY'W'fXg'Z'f' ('\$

W`YMcBg" H\Y`bHyfbYhUXXfYgg`Zf`5A C@`g`
O\hd.#k k k "ba U"[cj "Ui #Ja c`#2"'

6Yk Yb`% - ' - *žhY`7ci bWfg`dfYXYWggcf`WbXi W`Xh`Y`B`U`h`cb`U`
7cbgYfj U`h`cb`D`fc[fUa `k` \JW`]bW` XYX`W`bgYfj U`h`cb`h`f`U`b`b`[`k`cf`_`g` \`cdg`
U`fc`i`b`X`5`i`gh`f`U`]U`ž`U`b`]b`h`y`fb`g` \]d`d`fc[fUa `Z`f`]b`X`[]b`c`i`g`U`b`X`b`c`b`!9`b`[`]`g` \`
gd`Y`U`_`b`[`V`U`W`[`f`c`i`b`X`W`bgYfj U`h`c`f`g`ž`d`]c`h`f`Y`[]c`b`U`W`bgYfj U`h`cb`d`f`c`Y`M`g`U`b`X`U`
di`V`]W`U`k`U`f`Y`b`Y`gg`d`f`c[fUa "`b`%` -`+`h`Y`7`c`i`b`W`X`Y`j`Y`c`d`Y`X`U`b`X`d`i`V`]g` \`Y`X`h`Y`
B`U`h`cb`U`7`cbgYfj U`h`cb`U`b`X`D`f`Y`g`Y`f`j`U`h`cb`D`c`]M`i`U`b`X`G`h`f`U`h`[`m`Z`f`5`i`gh`f`U`]U`g`
< Y`f`]U`[Y`7`c` `Y`M`c`b`g`" H\Y`d`c`]M`i`U`b`X`g`h`f`U`h`[`m`k`]` `V`Y`]a`d`Ya`Y`b`h`X`
W`U`V`c`f`U`h`j`Y`m`i`k` `X`Y`j`Y`c`d`U`b`U`h`cb`U`U`d`d`f`c`U`W`U`]a`Y`X`U`h`U`g`g`]g`h`b`[`f`Y`[]c`b`U`U`b`X`
`c`W`U`a`i`g`Y`i`a`g`]c` `V`M`h`f` `cc`_`U`Z`f`U`b`X`X`c`W`a`Y`b`h`h`Y`f`W` `Y`M`c`b`g` `gc`h`U`h`h`Y`
b`U`h`cb` \`U`g`U`V`Y`h`f`i`b`X`Y`f`g`h`U`b`X`b`[`c`Z`h`Y` `c`W`h`cb`U`b`X`g`]]b`]W`b`W` `c`Z`]g`
 \`Y`f`]U`[Y`" H\Y`7`c`i`b`W`k`]` `U`g`c`d`i`V`]g` \` H`Y`B`U`h`cb`U`D`U`W`U`]Y`c`Z`7`cbgYfj U`h`cb`
H`f`U`b`b`[`U`b`X`F`Y`g`c`i`f`W`A`U`h`f`]U`g`]b`%` - , `]c` `]i`]X`Y`]b`g`]h`]c`b`g`]b`h`Y`
a`U`b`U`]a`Y`b`h`U`b`X`W`f`Y`c`Z`h`Y`f`W` `Y`M`c`b`g`"'

-bHy`Ym`U`D`f`c`d`Y`f`m`i`

H\Y` ; cj Yfba Ybh]g`W`a`a`]h`X`]c`W`Y`U`h`b`[`U`W`d`m`i`[\`h`f`Y`[]a`Y`k` \]W`V`U`U`b`W`g`
h`Y`f`][\]g`c`Z`W`d`m`i`[\]h`c`k`b`Y`f`g`U`b`X`W`Y`U`h`c`f`g`]c`f`Y`W`]j`Y`U`d`d`f`c`d`f`]U`h`f`Y`k`U`f`X`g`Z`f`
h`Y`f`]b`j`Y`g`h`a`Y`b`h`c`Z`g`]` `U`b`X`f`Y`g`c`i`f`W`g`ž`k`]h`h`Y`f`][\]g`c`Z`i`g`Y`f`g`]c`U`W`W`g`g`
W`d`m`i`[\]h`a`U`h`f`]U` `c`b`f`Y`U`g`c`b`U`V`Y`h`f`a`g`"5`]b`i`a`V`Y`f`c`Z`]a`d`c`f`h`U`b`h`f`Y`Z`f`a`g` \]j`Y`
f`Y`W`b`h`m`V`Y`Y`b`U`b`b`c`i`b`W`X`c`f`U`f`Y`W`f`f`Y`b`h`m`]b`d`f`c`[`f`Y`g`g`"'

@Y`]g`U`h`cb`k` \]W`]g`d`f`Y`g`Y`b`h`m`V`Y`Z`f`Y`h`Y`G`Y`b`U`h`k`]` `]b`f`c`Xi`W`5`i`gh`f`U`]U`g`Z`f`g`h`i`
a`c`f`U`f`][\]g`f`Y`[]a`Y`" `h`k`]` `U`g`c`U`h`f`h`Y`d`f`c`j`]g`]c`b`g`f`Y`U`h`b`[`]c` `Ya`d`c`n`Y`X`
`c`i`f`b`U`]g`h`f`W`d`m`i`[\]ž`U` `c`k`]b`[`a`Y`X`]U`d`i`V`]g` \`Y`f`g`]c` `Y`l`d`c`f`Y`h`Y`i`g`Y`c`Z`b`Y`k` `.
h`W`b`c` `c`[]Y`g`"'

7` \]U`d`Y`f`W`a`d`U`M`X`g`W`g`k`]` `g`c`c`b`V`Y`U`j`U`]U`V`Y`h`c`5`i`gh`f`U`]U`b`W`b`g`i`a`Y`f`g`
Z` `c`k`]b`[`h`Y` ; cj Yfba Ybh]g`U`b`b`c`i`b`W`a`Y`b`h`c` `]Z`i`d`U`F`U`Y`]a`d`c`f`h`f`Y`g`h`]M`c`b`g`c`b`
g`c`i`b`X`f`Y`W`f`X`b`[`g`" @Y`]g`U`h`cb`[]j`]b`[`Y`Z`V`h`c`h`]g`f`Y`Z`f`a` \]U`g`V`Y`Y`b`]b`f`c`Xi`W`X`
]b`c`h`Y` < c`i`g`Y`c`Z`F`Y`d`f`Y`g`Y`b`h`U`h`j`Y`g`"'

H\Y; cj Yfba Ybhlg`W@a a]HYX`te`i dXU]b[`ci f`W`dnf]] \hfY[]a Y`te`a YYhhY`
WU`Yb[Yg`cZbYk`hYWbc`c[]Yg`UbX`HU`Y`UX] UbHU[Yg`cZbYk`cddcfh b]hYg"5`
X]gWgg]cb`dUdYf`Ybh]hYX`7cdmf]] \hfY`Zcfa`UbX`h`Y`8]]]HU`5[YbXU`k Ug`
fY`YUgYX`]b`>i`m%`-`+`žgYY`_b[]`bXi`g]fmiUbX`W@a a i b]mgi Va]gg]cbg`cb`Z`h`fY`
X]fY]cbg`Z`f`5i`g]fU]Ug`W`dnf]] \hfY[]a Y`"

H\Y`bYk`f]] \g`dfcdcgYX`]b`h`Y`dUdYf`k`ci`X`W`j`Yf`h`Y`i`g`Y`cZ`W`dnf]] \h`
a`UHf]U`]b`cb`]b`Y`]b`hYfU]m] Y`g`Yf]]W`g`cb`h`Y`b`hYfbYhUbX`k`ci`X`U`gc`U`ck`
5i`g]fU]U`te`Z`Z`]g`]b`hYfbU]cbU`c`v]] U]cbg`i`bXYf`h`Y`k`c`b`Yk`K`cf`X`
b`h`Y`Y]m`U`D`fcdYfmi`C`f[]b]gU]cb`h`fYU]Yg`Z`bU]gYX`U]i; YbYj`U`UghmYUf`"

H\Y; cj Yfba Ybhlg`W`b]bi]b[]te`]bj`Ygh]] UH`fY`Zcfa`g`te`5i`g]fU]Ug`W`ffYbhi`
]b`h`Y`Y]m`U`d`fcdYfmi`U`k`g`k`]h`Ub`U]a`te`a`U`_`Y`h`Ya`a`cfY`Uddfd]U]h`te`h`Y`
gdY]U`b`U]i`fY`cZ5`Vcf]]]bU`UbX`H`c`ffYg`G]fU]i`g`UbXYf`]b`h`Y`Y]m`U`UbX`W`h`fU`
d`fcdYfmi`

G]Y]bW`UbX`HYWbc`c[m`

H\Y`8`YdU]fa`YbhicZ`b`Xi`g]fmi`G]Y]bW`UbX`H`ci`f]ga`Z`bXg`U`bi`a`VYf`cZ`di`V]W`
fYgYUfW`Z]W]hYg`h`Y`7`ca`a`cbk`YU`h`G]Y]b]h]Z]W`UbX`b`Xi`g]f]U`F`YgYUfW`
C`f[]b]gU]cb`f]G`F`C`I`ž`h`Y`5i`g]fU]U]b`Bi`WYUf`G]Y]bW`UbX`HYWbc`c[m`
C`f[]b]gU]cb`f]B`G`H`C`I`ž`UbX`h`Y`5i`g]fU]U]b`b`g]h`h`h`c`Z`A`Uf]b`Y`G]Y]bW`f]B`A`G`E`
5`b`Ung]g`]b`X]W]hYg`h`U]h`YfY`lg`ck`]bj`Yg]a`Ybh]b`fYgYUfW`UbX`Xy]Y`c`da`Ybh`
Vm]5i`g]fU]U]b`Vi`g]b`Ygg`UbX`]b`Xi`g]fmi`UbX`U`g`ck`i`d]U`_`Y`cZ`g]Y]b]h]Z]W`
_`bck`YX]Y[]b`YfU]h`X`V`ndi`V]W]b]g]h`h`h`cbg"6`Uff]Yfg`te`W@a`a`YfW]U]gU]cb`cZ`
di`V]W`g]Y]m`f`fYgYUfW`]b`W`XY`UW`cZ`Uk`UfYb`Ygg`cZ]g`]a`d`cf]U]b`W`Z`U`fW`h`fY`
[]d`f]V]k`Y]b`fYgYUfW]Yfg`UbX`h`Y`Vi`g]b`Ygg`W@a`a`i`b]m]z`UbX`h`Y`ga`U`g]h`Y`cZ`
5i`g]fU]U]b`W@a`d`U]b]Yg`"

E`i`Yg]U]W`b`H\Y`B`U]cbU`G]Y]bW`UbX`HYWbc`c[m]7`Yb]fY`U`gc`d`Ung`U`_`Ymi`
f`c`Y`]b`]b`WYUg]b[]di`V]W]Uk`UfYb`Ygg`cZ`g]Y]bW`UbX`h`Wbc`c[m]E`i`Yg]U]W`b`
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d`fc[]f]Ua`g]ž`k`]h`U`d`U]h]W`Uf`Z`W`g`cb`fYUW]b[]fY[]cbU`UbX`fYa`chY`
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Gyj YfU`dfc[fUa g`Uj Y`VYYb`jb]hUHx`lc`hfmk`ghfYb[h`Yb`h`Y`b`g`VYk`YYb`
fYgYUfW`UbX`]g`Wa a`YfWU]gUhc`b`UbX`ch`Yf`Udd`]W]hcbg" G]bW`% , ,`
[cj`Yfba`YbhfygYUfW`U]`YbWYg`Uj`Y`UX`lc`gYY`_`dUfhcZh`Yf`Z`bX]b[`Zca`
Yl`hfbU`gci`fWg" H`lg`Ug`]bWYUgYX`h`Y`Yj`Y`cZV`b]U]UbX`YZZ`W]j`Y`
Wa`a`i`b]W]hcb`VYk`YYb`]bXi`ghmUbX`fYgYUfW`Yfgz`UbX`X]fYV]X`U]`YbW]h`
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dfc`YWg"9a`d`U]g]g`d`UWX`cb`h`Y`]bj`c`j`Ya`YbhcZfYgYUfW`i`gYfg`]b`h`Y`k`cf`_`
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YghU]V]g`YX`gY`Y]W]cb`W]h]f]U"5`h]h`Y`YbX`cZ%`-`)!`-`*`z]h`YfY`k`YfY`*`&`7`F`7`g`]b`
cdYfU]hc`b" `b`UXX]hcb`lc`h`cgY`k`]h`Wa`a`YfWU`c`VY`W]j`YgZ`U`bi`a`Vf`cZ`7`F`7`g`
Z`W`g`c`b`ci`h`Wa`Yg`Zcf`YU]h`UbX`h`Y`Ybj`]f`c`ba`Yb]h"'

5i`g`bXi`ghm]g`U`:`YXYfUz`GHU]Y`UbX`HYff]lc`fm;`cj`Yfba`Yb]g]b]b]h]U]j`Y`k`U]W`
U]a`g`lc`Y`d`Vi`g]bYggYg`VY`Wa`Y`a`cfY`]b]h]fbU]hc`b`U`m]Wa`dY]h]j`Y"'.
5i`g`bXi`ghm]XY`j`Yfg`dfc[fUa`g`lc`gi`ddcfh`Vi`g]bYgg`fYgYUfW`UbX`X]j`Y`cda`Yb]i`
ff/`8`Lz]bW`X]b[`Wa`dY]h]j`Y`F/`8`[fU]b]g`UbX`Ub`F/`8`hU`W`bW`gg]cb`
gWYa`Y" H`Y`bXi`ghmz`F`YgYUfW`UbX`8`Yj`Y`cda`Yb]i6`cUfX`ff/`8`L`cj`YfgY`Yg`
h`Y`F/`8`[fU]b]g`UbX`c`Ub]g`dfc[fUa`gZ`UbX`h`Y`F/`8`hU`W`bW`gg]cb`gWYa`Y"'.
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cZ]h`Y`5`W]ghU]Yg`h`Uh`h`Y`fY[]ghYf`cZfYgYUfW`U]`YbWYg`]g`lc`VY`a`UXY`U]`U]UVY`
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cZU]W]j`]hYg`]b`fYU]hc`b`lc`h`Y]f`fY[]ghU]hc`b`]g`lc`VY`]ghYX`]b`h`Y`U]bbi`U`6`cUfX`
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H\Y'DfchW]cb'cZ-bh`Y`W] U`DfcdYfmi

H\Y`5i`ghfU]Ub`bXi`ghfU]U`DfcdYfmiC`f[Ub]gUhc'b`f5`DC`L]g`fYgdcbg]VY`Zcf` UXa`]b]ghYf]b[`h\Y`DUH]blg`5W]j`%`-`\$`žh\Y`HFUXY`A`Uf`_g`5W]j`%`-`)`žUbX`h\Y` [8Yg\]\]`bg`5W\]j`%`\\$`*`"F`Y`WbhYfYgYUfW`Vm5`DC` \Ug`g`ck`b`h`Uha`Ubni` 5i`ghfU\]Ub`g`Xc`bchfYU\]gY`h\Y`ja`dcfUbhVYbYZ\]g`UbX`Wa`a`YfWU`\[`U\]bg`h`Ymi` W\]b`c`V\]U\]b`VmdfcdYf`mdfchW\]b\[`UbX`a`UbU`\]b\[`h\Y\]f`\]bh`Y`W\] U`dfcdYfmi`b` cfxYf`lc`ja`dfcj`Y`Uk`UFYbYggž`5`DC`g`Yhi`d`Ua`Uf`_Y\]b\[`UbX`dfca`ch\]cbg`gW\]cb` \]b`%`-`\)"`F`Y`Wbh\]b\]h\]Uj`Yg`\]bW`XY`h\Y`dfcXi`W\]cb`cZa`UhYf\]U`\]b`g\]a`d`Y`9b\[`\]g`ž` h\Y`dfcj`\]glcb`cZ\]bZfa`Uhc'b`UbX`gYfj`\]Wg`cb`5`DC`fg`b`hYfbYh`ca`Y`dU\]`YžU` dfc\[fUa`U\]a`YX`Uh`h\Y`ga`U`Vi`g\]bYgg`gYW`cfž`dUfh\]W\]dUhc'b`UhYl` \\]M\]hc`bg`UbX` gYa`\]bUfgž`h\Y`dfcXi`W\]cb`cZU`78`!`F`ca`Yl`d`U\]b\]b\[`ck`lc`i`gY`h\Y`dUH\]blg` gng\]hYa`ž`UbX`U`gYf\]Yg`cZU`X\]c`WggYhYg`k`\]h`\]bhYf\]Yk`g`cb`h\Y`i`gY`cZ`h\Y` \]bh`Y`W\] U`dfcdYfmi`gng\]hYa`""](#)

5b`]b]h]Uj`Y`dUfh]W`Uf`m]X]fY`W]X`lc`h\Y`f]]` \]g`cZ]bX]]`Ybci`g`dYcd`Yg` \Ug`VYb` h\Y`dfcXi`W]cb`cZ`k`c`j`]Xc`gY[`a`Yblg`k` \]W`k`YfY`]bW`XYX`]b`Ua`U[`Un]bY`

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k cf_""

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5i ghfU]Udfca chYg`WcdYfU]hcb`k]h`gWYbh]hg`UbX`UWXYa]Wg`Ufci bX'hY`
k cf`X`H\Y`5i ghfU]Ub` ; cj Yfba YbhUXa]b]ghYfg`V]U]hYfU`U[fYYa Yblg`UbX`ch`Yf`
UffUb[Ya Yblg`cb`gWYbh]Z]W]UbX`h`Wbc`c[]W`WcdYfU]hcb`k]h`Ufci bX`&`
Wci b]f]Yg" H\Y` ; cj Yfba Ybhdfcj]XYg`Z`bX]b[`Ugg]gh`UbW`lc`5i ghfU]Ub`
gWYbh]hg`UbX`UWXYa]Wg`WcdYfU]hcb[`]bhYfbU]hcbU`mž`h`fci [\ `Uk]XY`fUb[Y`cZ`
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Ugg]gh`5i ghfU]Ub`fYgYUfWYfg`k]h`h`Y`W`gh`c`Zcj YfgYUg`hfUj Y`UbX``j]b[`.
Yl`dYbgYg" ~`gca Y`W`gYgž`-GHD`Ugc`Ugg]gh`fYgYUfWYfg`Z`ca`XYj Ycd]b[`.
Wci b]f]Yg`lc`i bXYffU`Y`WcdYfU]h`Y`UM]]hYg`]b`5i ghfU]U`H\Y`8`YdUf]a Ybh]g`
cj YfgYUg`bY]k cf_`cZ`~Xi ghfnž`G]WYbW`UbX`HYWbc`c[m7`ci bgY`cfgž`\`Ydg`
gWYbh]hg`UbX`UWXYa]Wg`UVfcUX`lc`c`V]U]b`]bZ`fa U]hcb`UVci h]h`Y`5i ghfU]Ub`
gWYbW`UbX`h`Wbc`c[m]gngh`Ya ž`UbX`lc`YghUV]g`\`]b_g`k]h`5i ghfU]Ub`
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D`YUgY`Ugc`fYZf`lc`5f]h]WYg`' S`UbX`' %cZ5i ghfU]U]g`% - *`fYdcfhi bXYf`h`Y`
7`cbj Ybh]cb`cb`h`YF][\]lg`c`Zh`Y`7`\]Xž`UbX`lc`5f]h]WY`&`cZ5i ghfU]U]g`fYdcfhi
i bXYf`h`Y`~bhYfbU]hcbU`7`cj YbUbhZ`f`7`j]`UbX`Dc`]h]W`F][\]lg`""

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Appendix 9: Update on Cultural Instrument debate by Dr Ben Goldsmith

Presentation to the Trading the Arts Learning Circle by Ben Goldsmith
October 2002

In the time available, I would like to provide you with an update of developments relating to the proposal for an international instrument or convention on cultural diversity which have progressed significantly over the last year. I will begin by briefly recapping the history of the instrument, which I know some of you will be familiar with. I will then discuss two of the three draft instruments which have been prepared by the International Network for Cultural Diversity (INCD) and the Canadian Cultural Industries Sectoral Advisory Group on International Trade. Next, I will summarise discussion and developments at the recent meetings of cultural NGOs and cultural ministers in Cape Town, and briefly assess what may happen from here.

First, a brief history of the instrument deliberations which I know will be familiar to many of you, but which may be worth recounting to remind us how we have reached this point.

The previous round of world trade negotiations, the Uruguay Round, ended with no broad agreement on audiovisual services. A 'tacit agreement' which has been labeled the cultural exception enabled a number of members including Australia to avoid making commitments in this sector of the General Agreement on Trade in Services. The key point about the cultural exception is that it does not have any legal status, and does not formally exist in the GATS. And because the logic of the GATS is to revisit areas where no agreement has been reached, the issue will come up again. In the interim, the instrument proposal has emerged as an alternative strategy to achieve the ends of the cultural exception, but also to do more.

Since the end of the Uruguay Round in 1994, debate has shifted from being primarily about the treatment and classification of cultural goods and services (or products) to questions relating to the ways in which understandings of cultural identity and cultural diversity are changing because of globalisation and trade liberalisation. This shift is apparent in the spate of recent declarations and communiqués which focus on or emphasise cultural diversity from organisations such as the G-8 (in its Tokyo Summit final communique in July 2000), La Francophonie (Declaration on Cultural Diversity arising from the Third Ministerial Conference on Culture in Cotonou, Benin, June 2001 - and possibly a statement arising from last week's meeting in Beirut), UNESCO (the Universal Declaration on Cultural Diversity 2001, and before that Our Creative Diversity, the 1996 report arising from the World Decade for Culture and Development), the Council of Europe (Declaration on Cultural Diversity December 2000), the Organisation of American States (Declaration of Quebec City, April 2001), the INCD and the International Network on Cultural Policy (the ministers' network) which I'll come back to.

The shift away from a simple focus on the treatment of cultural products to issues relating to the promotion and preservation of cultural diversity was given impetus by the February 1999 proposal by the cultural industries sectoral advisory group

established by the Canadian Department of Foreign Affairs and International Trade to develop an international instrument on cultural diversity which:

"would seek to develop an international consensus on the responsibility to encourage indigenous cultural expression and on the need for regulatory and other measures to promote cultural and linguistic diversity. The instrument would not compel any country to take measures to promote culture, but it would give countries the right to determine the measures they will use (within the limits of the agreement) to safeguard their cultural diversity."
(SAGIT Canadian Culture in a Changing World: New Strategies for Culture and Trade available online at <<http://www.dfait-maeci.gc.ca/tna-nac/discussion/culture-e.asp>>).

The proposal for a General Agreement on Culture and Development had first been made at the request of the UNESCO World Commission on Culture and Development Secretariat in 1994, when a document was prepared by academics Sam Cole and Victoria Razak. The reconstitution of the secretariat later in 1994 resulted in the proposal being buried until it was resurrected by the SAGIT in 1999.

The instrument proposal came in part from a recognition that agreements in areas other than audiovisual services can impact on the cultural sector and on the capacity of governments - at local and regional as well as national levels - to make cultural policy. These areas and sectors include: education services; recreational, cultural and sporting services (which includes theatre and live performance), news agency services, libraries, museums and archives); and negotiations on e-commerce, on investment, on subsidies and on services provided in the exercise of governmental authority which are presently excepted, but which are imprecisely defined.

The instrument proposal was incorporated in Canada's Initial Negotiating Proposal for the current Millennium Round, and has been reaffirmed a number of times including in Canada's recent statement of requests to other WTO members released in July 2002.

The proposal has been taken up and endorsed by a range of organisations including the European Federation of Film Directors (FERA) and subsequently the Coalition for Cultural Diversity, a network of professional associations based in Canada. More significantly perhaps, the UNESCO Universal Declaration on Cultural Diversity made at the end of last year mentions the Instrument in the first point of its Action Plan for implementing the Declaration which has the objective of:

"Deepening the international debate on questions relating to cultural diversity, particularly in respect of its links with development and its impact on policy-making, at both national and international level; taking forward notably consideration of the opportunity of an international legal instrument on cultural diversity."

So momentum is growing. In the last year or so it has become clear that debate has moved beyond the need for such an instrument, to consideration of its content. As far as this work goes, it is currently concentrated in three places: the Canadian SAGIT, which has just produced a draft instrument, and particularly in the work of its members Ivan Bernier, Robert Pilon and Peter S. Grant; the INCP Secretariat and Working Group on Globalization and Cultural Diversity which produced a draft for

the ministers' meeting in Cape Town, but this draft is not publicly available; and the INCD which hired a Canadian environmental and trade lawyer, Steven Shrybman, to draft a Convention, which was made public in May after feedback from INCD members.

The ministerial draft is still being worked on. At last year's ministerial meeting in Lucerne, Switzerland, the ministers gave the Network's Working Group on Globalization and Cultural Diversity (which is chaired by Canada) a two-year mandate for work on the text of the instrument, so they will be working on that for the next few months. A separate, smaller, 'special policy research team' has been working on policy issues relating to the governance of the instrument. This team was chaired by Switzerland, and its work is due to have ended but as yet none of its deliberations or recommendations have been made public.

At present the INCP conceives the instrument as a stand-alone text, that is to say it is not currently attached to any institution, but no attachments have been ruled out. In fact, the Ministers agreed at their meeting in Cape Town last week to approach a number of key international institutions to ensure the instrument is on their agenda. These include the UN Commission on Trade and Development (UNCTAD), African-Caribbean-Pacific group, the World Bank, La Francophonie, the New Partnership for African Development (NEPAD) and the African Union (AU). The ministers also agreed, at the urging of France reportedly, to approach UNESCO to consider acting as the host and implementing authority of the instrument. One of the main previous objections to UNESCO as host has recently been removed with the US rejoining the organisation, but there is still some question as to whether UNESCO is indeed the most appropriate site.

The SAGIT model is self-described as a sequel to the 1999 report and a logical next step, since the preparation of models by different actors is a proven way to advance international discussion and movement towards action. The SAGIT model is accompanied by an explanatory text. Like the INCD model, and presumably the INCP model, it is structured as a formal international agreement intended to be governed by international law which extends rights and imposes obligations on signatories. It appears from the language used and the form of the documents - and the INCD model was deliberately crafted by using and subverting WTO language - that the modelers anticipate this being a legally binding international agreement rather than simply having the status of a memorandum of understanding.

Both documents begin with a preamble which establishes the rhetorical context in which the document appears - using the language of observation ("noting, considering, recognising") and affirmation ("confirming, desiring, emphasising") the preamble outlines the conditions under which this agreement comes in to being and points to the principles informing the text in ways which encourage assent. The SAGIT model positively notes the contribution a liberalised trade system can make to cultural diversity, while the INCD model is much more focused on checking further trade liberalisation, noting that "it may be unrealistic to regard the respective agendas of trade liberalisation and cultural diversity as being essentially compatible".

The preamble is followed by articles outlining the objectives, principles and purposes of the agreement. The INCD model includes a section of "Definitions", although it is

really a section of "Definitions and non-definitions" since one of the key aspects of the INCD model (and indirectly of the SAGIT model) is that signatories or parties to the treaty should be free to define 'culture' and 'cultural diversity' in their own terms. Both models make the point that cultural diversity means not only diversity among (primarily national) cultures, but also diversity within cultures and that governments have responsibilities to ensure space for a variety of cultural expression while simultaneously fostering international cultural exchange. But the explanatory text of the SAGIT model cautions against an overly broad, sometimes described as 'anthropological' understanding of cultural diversity as diverse ways of life, arguing that such a definition would weaken the agreement. There was considerable discussion of this point at the INCD conference also.

Articles 3 and 4 of the SAGIT model discuss international cooperation and exchange. Some of the things it points to are happening, such as the establishment of cultural observatories around the world to facilitate exchange of knowledge and best practice. This also sits well with the WTO/OECD emphasis on regulatory and policy transparency. These articles also acknowledge the importance of ongoing innovative sectoral research.

There is a difference in the two models' language regarding the actions of governments: while the SAGIT model states in Article VI.1 that members have the right to take measures, the INCD model in its section on General Commitments states that parties shall develop measures. That is to say, it almost implies that members are bound to do so if they have not done so already, subject to the proviso that measures are taken "in accordance with each party's particular conditions and capabilities".

The INCD model also makes specific reference to linguistic diversity, thus making the important connection between language and cultural expression. This appears to have been overlooked in the SAGIT model which is much more narrowly focused on assisting cultural industries.

Part III of the SAGIT model begins to outline the rules which will govern measures that governments will be able to take under the agreement. This is very much focused on contemporary and future cultural production, notwithstanding the reference in Article V.2(c) to archives and cultural heritage. The model defines 'cultural content' in part in terms of the creative expression of individuals - not communities or groups. There is no direct reference to particular governmental responsibilities in relation to Indigenous cultures, although there is acknowledgement in the preamble of the particular needs and concerns of developing countries. Like the INCD model, the SAGIT model outlines the general kinds of measures governments may take, and includes an Annex listing particular measures.

One of the key areas in the development of the instrument is the issue of enforcement and dispute resolution mechanisms. Here the INCD model limits itself to identifying some of the features such mechanisms might incorporate - transparency in operation, enabling participation by interested third parties including NGOs, and cultural competence of adjudicators, mediators and arbitrators. The SAGIT model proposes the establishment of an Executive Council to administer the agreement and ensure its implementation, and also the setting up of a Cultural Dispute Resolution Body with procedures for "well-qualified government and/or non-government individuals who

are familiar with cultural matters and cultural industries” to hear and advise on how the dispute may be resolved. It is anticipated that parties must agree in advance if the Panel's decision is to have binding force, which might seem somewhat to undermine the exercise: if one party chooses not to be bound by the decision, then the CDRB's advice will likely be irrelevant.

The INCD model then lists possible prototypes for the dispute resolution system drawn from a variety of existing international agreements. It should also be noted that the ministerial network's special policy research team was charged with the responsibility of examining the structure of the dispute resolution process, and apparently reported on this to the ministers in Cape Town. I anticipate that in coming weeks and months the content of the INCP texts will be made more public, and we can reasonably expect a detailed consideration of the dispute resolution issues.

Moving on to briefly report on the two conferences in Cape Town. Both the NGO (INCD) and ministers' (INCP) meetings departed quite significantly from previous years', primarily because of the substantial African presence, and the consequently greater consideration given to issues facing developing countries.

The INCD drew 186 delegates from 37 countries to its conference at the Centre for the Book in downtown Cape Town. A couple of days later, delegations including 13 national ministers of culture and non-ministerial representatives of 8 other countries met at the Radisson hotel in the newly refurbished Waterfront district of Cape Town. There were a couple of opportunities for the two sets of delegates to mingle.

My impression is that the two organisations may be moving apart in some ways. This year the INCD will have offices in Ottawa, Stockholm, Cape Town and Bombay as it seeks to broaden its work, and talk to artists and cultural workers about the issues.

I thought the INCD conference was quite productive, aside from quite spirited internal debate over the process of election to and representation on the Steering Committee. Dick Letts of the Music Council of Australia was re-elected in Cape Town as the Oceania representative, but it was notable that he and I were the only representatives from this part of the world. There were seven Asian delegates (two from India, one from the Philippines, one from Hong Kong, one from Bangladesh, and two from Korea) while at the Ministers' meeting only China and Malaysia from the Asian region were represented although not at ministerial level.

There were no representatives of South Pacific countries or organisations at either meeting. New Zealand is listed as a member of the INCP (although it is an informal organisation), but did not attend the meeting in Cape Town. An Indigenous Philippino woman, Leah Enkiwe-Abayao of the Tebtebba Foundation was elected to the INCD steering committee and is already charging ahead with consultation in her country. The other Asian steering committee member, Atul Kumar from India, is currently organising a conference on cultural diversity to be held in India next year, and is preparing for the preparatory meeting for the next World Social Forum which will be held in India in February 2003. The INCD has decided to fund a regional office in India as part of its new regional strategy.

The suggestion also came from the Asian group for efforts to be made to translate INCD documents and so on in to laymen's terms in many languages in order to speak properly to the Asia-Pacific's linguistic and cultural diversity.

A delegation of INCD steering committee members addressed the ministers on the first day of their meeting and the INCD's Cape Town Declaration was annexed to the final ministerial statement.

For this group, I think the issues at the moment are involvement in the process of the instrument's development; lobbying of government to take the issues seriously and work towards the involvement of Pacific peoples. Internationally there are a number of major international events happening next year which the INCD is hoping to have a voice in. These include the preparatory meeting for the World Social Forum, the World Summit on the Arts and Culture to be held in Singapore in November 2003, and the World Summit on the Information Society, which will be held in Geneva at the end of 2003.

The Minister's main work arising from their conference revolves around the content of the Instrument and the question of where it should be housed. The INCD and the SAGIT models, and indeed any others that are developed, will undoubtedly continue to influence the deliberations of the ministerial network, but ultimately this is where the ultimate proposal will come from.

On the housing of the instrument, UNESCO is favourite at the moment, particularly since the US has now rejoined although it remains to be seen what effect this will have. The alternatives at the moment are for the instrument to be a stand-alone text with its own bureaucracy and processes, or to be housed within the WTO. There is strong resistance to this last suggestion, but wherever it is housed, the instrument must come in to meaningful relationship with the WTO. This is an issue that will become increasingly important the closer this comes to the formal stages of adoption.

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Useful Websites

International

International Network for Cultural Diversity

<<http://www.incd.net/>>

World Trade Organisation (WTO)

<http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm>

World Intellectual Property Organisation (WIPO)

<<http://www.wipo.org/>>

United Nations Educational, Scientific and Cultural Organisation (UNESCO)

<<http://www.unesco.org/>>

Australia

Department of Foreign Affairs and Trade (DFAT)

<<http://www.dfat.gov.au/>>

Treaties Library Homepage

<<http://www.austlii.edu.au/au/other/dfat/>>

Australian Broadcasting Authority

<<http://www.aba.gov.au/>>

Other Countries

Canada

Department of Foreign Affairs and International Trade (DFAIT)

<<http://www.dfait-maeci.gc.ca/menu-e.asp>>

List of publications dealing with trade in Canadian arts and culture

<<http://members.home.net/c.maule/c.maule/>>

Canada Council for the Arts

<<http://www.canadacouncil.ca/>>

United States

Office of the United States Trade Representative (USTR)

<<http://www.ustr.gov/index.html>>

Endnotes

¹ McGauran, The Hon Peter MP, 2001b, 'Studio Debate on the Australian Film Industry' *Insight*, SBS, 8.30pm, 12 July 2001, Media Monitors Transcript, p 13.

² The government acknowledges that costs of adjustment are likely in various industries, with short-term losers in terms of employment (for example: a decline in plant and machine operation jobs in the textile, clothing and footwear sector).

³ Most Favoured Nation (MFN) Treatment: MFN means that every time a member state improves the benefits it gives to one trading partner, it has to give the same 'best' treatment to all of the other WTO members who are signatories to the trade agreement covering the terms of trade in that particular sector, so that they remain equal. Countries are to grant equal treatment – not more favourable or discriminatory – to goods and services from all WTO members who signed the trade agreement.

⁴ National Treatment: The national treatment principle means that imported and locally produced goods should be treated equally. The logic is to prevent discrimination in favour of local suppliers – in theory, to 'level the playing field' for foreign and domestic suppliers. For goods (GATT) and Intellectual Property (trademarks, copyrights and patents) it is a general principle. For services (GATS) it only applies where a country has made a specific commitment, and exemptions are allowed.

⁵ In the WTO dispute settlement process, first rulings are made by a panel and appeals based on points of law are possible. All final rulings or decisions are made by the WTO's full membership and no single country can block these. Further information available at World Trade Organisation website: <http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm>.

⁶ United Nations Educational, Scientific and Cultural Organisation 2000, '*Culture, Trade and Globalization: Questions and Answers*', UNESCO Publishing, available at: upo.unesco.org/booksonline.asp?id=3387, p 8. (See also United Nations Educational, Scientific and Cultural Organisation 2000b, '*International Flows of Selected Cultural Goods 1980-1998*', UNESCO Institute for Statistics and the Division of Cultural Policies, France, available at <http://unesco.org/en/pub/pub_p/culture.htm>.)

⁷ Information available at World Trade Organisation website: <http://www.wto.org/english/thewto_e/whatis_e/agrm5_e.htm>.

⁸ Motion Picture Association of America 2001, *Impediments to Digital Trade*, Testimony of Bonnie J.K. Richardson, Vice President, Trade and Federal Affairs, Motion Picture Association of America (MPAA), before the House Commerce Committee Subcommittee on Commerce, Trade and Consumer Protection, 22 May 2001, available at <http://www.mpaa.org/legislation/press/2001/2001_05_22.htm>, p 4.

⁹ *ibid.* p 5.

¹⁰ The Canada United States Free Trade Agreement (CUSFTA) was superseded by the North American Free Trade Agreement (NAFTA).

¹¹ As described by the Canadian Government at <<http://www.dfait-maeci.gc.ca/tna-nac/canculture-e.asp>>, a split-run magazine is a Canadian edition of a magazine published originally in another country that has basically the same content as the original but replaces more than 5 per cent of its original advertisements with ads targeted to Canadians. Producers of split-run publications cover the cost of production through sales and advertising in their own market. They compete for Canadian advertising dollars with Canadian-produced publications which need the advertising income to cover their production costs.

¹² To protect their cultural industries, the Canadian Government imposed a tariff in 1965 that prohibited the importation into Canada of American magazines which contained editorial content not specifically targeted at Canadian readers, and advertisements primarily aimed at the Canadian market that did not appear in identical form in all issues of the magazine distributed in the US.

¹³ Report of the Standing Committee on Foreign Affairs and International Trade (SCFAIT) 1999, *Canada and the Future of the World Trade Organisation: Advancing a Millennium Agenda in the Public Interest*, House of Commons, Canada, Bill Graham M.P., Chair, June 1999, available at <<http://www.parl.gc.ca/infocomdoc/36/1/fait/studies/reports/faitrp09/20.htm>>.

¹⁴ International cooperation in setting intellectual property standards is not new: the two fundamental treaties in this area, still in force and of benefit to intellectual property right holders today, are the Paris Convention in the area of industrial property and the Berne Convention in the field of copyright. Both treaties were originally concluded in the 1880s. These are now administered by WIPO, along with many other treaties on aspects of intellectual property. (WIPO's predecessor was a small international organisation formed in 1893 called the United International Bureaux for the Protection of Intellectual Property, best known by its French acronym BIRPI).

¹⁵ Information available at Department of Foreign Affairs and Trade website <http://www.dfat.gov.au/ip/disputes_110-5.html>.

¹⁶ For further information see Banks, Cate 2000, 'The More Things Change the More They Stay the Same: The New Moral Rights Legislation and Indigenous Creators', *Griffith Law Review*, Vol. 9, No. 2, 2000, p 334.

¹⁷ Department of Foreign Affairs and Trade 2000b, *Intellectual Property: A vital asset for Australia*, Background briefing on the review of the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), DFAT, Canberra, available at <http://www.dfat.gov.au/ip/ip_vital_asset.pdf>, p 14.

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²⁰ Information available at Department of Foreign Affairs and Trade website <http://www.dfat.gov.au/trade/negotiations/regional_trade_agreements.html#asfta>.

²¹ *ibid.*

²² Association of South East Asian Nations (ASEAN), members: Brunei, Thailand, Vietnam, Indonesia, Malaysia, Philippines, Cambodia, Myanmar, Singapore and Laos.

²³ Asia Pacific Economic Cooperation (APEC), members: Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States and Vietnam.

²⁴ This approach would have accommodated exemptions from the MFN clause for audiovisual industry assistance programs, permitted the continuance and extension of public aid and operational subsidies, allowed screen time to be reserved for indigenous production of films and TV programs, and permitted the regulation of existing and future broadcasting technologies and transmission techniques.

²⁵ United Nations Educational, Scientific and Cultural Organisation 2000, *op cit.*, pp 59-60.

²⁶ The Cultural Industries Sectoral Advisory Group on International Trade (SAGIT) 1999, *Canadian Culture in a Global World: New Strategies for Culture and Trade*, Trade Negotiations and Agreements – Other Trade Policy Issues, Department of Foreign Affairs and International Trade, Canada, February 1999, available at <<http://www.dfait-maeci.gc.ca/tna-nac/canculture-e.asp>>, p 6.

²⁷ Sir David Puttnam quoted in The Cultural Industries Sectoral Advisory Group on International Trade (SAGIT) 1999, *Canadian Culture in a Global World: New Strategies for Culture and Trade*, Trade Negotiations and Agreements – Other Trade Policy Issues, Department of Foreign Affairs and International Trade, Canada, February 1999, available at <<http://www.dfait-maeci.gc.ca/tna-nac/canculture-e.asp>>. See Puttnam David 1997, *The Undeclared War: The Struggle for Control of the World's Film Industry*, Harper Collins, London.

²⁸ Weil, S. 1995, *A Cabinet of Curiosities: Inquiries into Museums and Their Prospects*, Smithsonian Institution Press, Washington.

²⁹ Saatchi & Saatchi Australia 2000, *Australians and the Arts: What do the arts mean to Australians?*, Australia Council, Sydney, pp 11–12.

³⁰ Seares, Margaret 2001, 'Small Poppy Syndrome: Local Content Regulations Help Australian Artists to Show Us Who We Are', *The Australian*, 7 May 2001, p 13.

³¹ Papandrea, F.G. 1998, 'Resolving Conflict Between Cultural and Trade Policies: The Case of Australian Content on Television', *Prometheus*, Vol. 16, No.4, 1998, p 499.

- ³² Australian Film Commission and Film Australia Limited 1999, *Australia's Approach to Further Multilateral Trade Negotiations*, Submission to the Department of Foreign Affairs and Trade, May 1999, AFC and FAL, Sydney, pp 28-29.
- ³³ Australian Film Commission 1998, *Get the Picture: Essential Data on Australian Film, Television, Video and New Media* (5th ed), AFC, Sydney, p 147.
- ³⁴ In Australia, the collection of cultural statistics is guided by a classification scheme based on a United Nations Educational, Scientific and Cultural Organisation (UNESCO) framework. This classification includes literature and printed media, performing arts, visual arts and crafts, design, broadcasting, museums, libraries, environmental heritage, and other cultural services. Unless otherwise noted, statistics in this section are sourced from Appendix 4 of this Background Report.
- ³⁵ Australian Bureau of Statistics 1997b, *Work in Selected Culture/Leisure Activities*, Cat. No. 6281.0, ABS, Canberra.
- ³⁶ Australian Film Commission and Film Australia Limited 1999, op cit., p 17.
- ³⁷ Unless otherwise noted, information in this section has been provided by the Australian Consul General of Canada.
- ³⁸ The Cultural Industries Sectoral Advisory Group on International Trade (SAGIT) 1999, op cit., p 2.
- ³⁹ *ibid.* p 3.
- ⁴⁰ *ibid.* p 28.
- ⁴¹ New technology has enabled the development of new content generating processes, which tend to lower the marginal cost of production while increasing the overall volume of content produced and distributed.
- ⁴² World Trade Organisation 1998a, *Audiovisual Services Background Note by the Secretariat*, S/C/W/40, 15 June 1998, p 3.
- ⁴³ Motion Picture Association of America 2001, op cit., p 1.
- ⁴⁴ In the audiovisual sector, convergence may be defined as the combination of both new and existing media—e.g., broadcasting, cable, fibre optics, satellites—into one integrated system for delivery of video, voice, and data (see Goldsmith Ben, et al. 2001, p 20).
- ⁴⁵ World Trade Organisation 2001c, *Communication from Switzerland GATS 2000: Audiovisual services*, S/CSS/W/74, Council for Trade in Services, Special Session, 4 May 2001, p 1.
- ⁴⁶ *ibid.* pp 2–3.
- ⁴⁷ World Trade Organisation 2001d, *Main Legal Provisions*, available at <http://www.wto.org/english/tratop_e/devel_e/d2legl_e.htm>, p 2.
- ⁴⁸ World Trade Organisation 1994, *General Agreement on Trade in Services - Annex on Telecommunications*, available at <http://www.wto.org/english/tratop_e/serv_e/12-tel_e.htm>.
- ⁴⁹ World Trade Organisation 2001c, op cit., p 3.
- ⁵⁰ World Trade Organisation 2001a, *Communication from Brazil - Audiovisual Services*, S/CSS/W/99, Council for Trade in Services, Special Session, 9 July 2001.
- ⁵¹ Australian Film Commission and Film Australia Limited 1999, op cit., p 25.
- ⁵² World Trade Organisation 2000, *Communication from the United States - Audiovisual and Related Services*, S/CSS/W/21, Council for Trade in Services, Special Session, 18 December 2000.
- ⁵³ World Trade Organisation 2001c, op cit., p 3.
- ⁵⁴ World Trade Organisation 2001e, *Subsidies and Countervailing Measures: Overview*, available at <http://www.wto.org/english/tratop_e/scm_e/subs_e.htm>, p 2.
- ⁵⁵ *ibid.*
- ⁵⁶ *ibid.*
- ⁵⁷ *ibid.* p 3.
- ⁵⁸ *ibid.* p 4.
- ⁵⁹ *ibid.* p 4.
- ⁶⁰ Papandrea, F.G. 1997, *Cultural Regulation of Australian Television Programs*, Bureau of Transport and Communications Economics Occasional Paper No.114, AGPS, Canberra, page xxviii.

- ⁶¹ *Broadcasting Services Act 1992* (Cwlth), available at <http://www.austlii.edu.au/au/legis/cth/consol_act/bsa1992214/>.
- ⁶² *Broadcasting Services Act 1992*.
- ⁶³ Papandrea, F.G. 1998, op cit., p 499.
- ⁶⁴ *ibid.* p 500.
- ⁶⁵ Seares 2001, op cit., p 13.
- ⁶⁶ *ibid.*
- ⁶⁷ Current WTO and competition policy theory, taken to its logical conclusion, would condemn State support for public broadcasting.
- ⁶⁸ Department of Foreign Affairs and Trade 2000a, *Australia's Relationship with the World Trade Organization (WTO)*, Submission to the Joint Standing Committee on Treaties, September 2000, DFAT, Canberra, pp 76–77.
- ⁶⁹ Goldsmith, Ben, et al. 2001, *Cultural and Social Policy Objectives for Broadcasting in Converging Media Systems*, Australian Key Centre for Cultural and Media Policy, Griffith University, May 2001, p 23.
- ⁷⁰ General Agreement on Trade in Services, as reprinted in World Trade Organisation 1999, *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations*, Cambridge University Press, Cambridge, p 287.
- ⁷¹ *ibid.* p 289.
- ⁷² *ibid.* p 298.
- ⁷³ Australian Government 2001, *Australian Intervention on Negotiating Proposal on Audiovisual Services*, World Trade Organisation, Council for Trade in Services, Special Session, July 2001, Australian Government unpub., available at <http://www.dfat.gov.au/trade/negotiations/services/audio_visual_neg_proposal.html>.
- ⁷⁴ The information in this section is from the Australia Council's draft *Annual Report 2000–2001*.
- ⁷⁵ Industries Assistance Commission 1978, *Assistance to the Performing Arts*, Commonwealth Government Printers, Canberra.
- ⁷⁶ The information in this section is from Australia Council 2001b, *Submission to the Inquiry into the Definition of Charities*, Australia Council, Sydney, available at <<http://www.cdi.gov.au/submissions/254-AustraliaCouncil.doc>>, pp 8–9.
- ⁷⁷ Molloy, Simon and Burgan, Barry 1993, *The Economics of Film and Television in Australia*, Australian Film Commission, Sydney, p 68.
- ⁷⁸ Australian Film Commission and Film Australia Limited 1999, op cit., p 11.
- ⁷⁹ Australian Bureau of Statistics quoted in the Cultural Minister's Council brochure *Australia's Culture No 7*, Commonwealth of Australia, Canberra.
- ⁸⁰ *ibid.*
- ⁸¹ *ibid.*
- ⁸² *ibid.*
- ⁸³ Australian Bureau of Statistics 2000b, *Work in Selected Culture/Leisure Activities 1998-99*, Cat. No. 6281.0, ABS, Canberra.
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