
Trade Liberalisation and Australia's Television Cultural Policy: Power and Interest in National Television Policy

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Abstract

In the development of national television policy Australian governments have placed considerable importance on the television system reflecting national culture. Commercial television is regulated for minimum levels of Australian content and direct subsidy is available for the production of certain types of content. Yet, despite this the participation of Australia in recent international trade agreements has constrained the power of the state to act in this area of national television policy. This paper examines the Australia US Free Trade Agreement and the Closer Economic Relations Trade Agreement with New Zealand for their impact on national television cultural policy. The paper proceeds from the proposition that policy change involves the exercise of power by organised groups within the policy domain, who seek to influence the terms of the policy development. It identifies Australian commercial broadcasters, Australian television producers and workers, foreign production industry groups and foreign governments as actors in this policy domain. It argues that each had differential power to influence the outcomes of the process of policy change and decision making by the state, but that willingness to exercise that power depended on their interest in intervening. Australian producers/workers had the most interest, but their power was weaker relative to that of commercial broadcasters. In comparison, the broadcasters and the USA had stronger power but only the USA was willing to exercise it to change Australia's television cultural policy.

This paper examines the interaction between Australia's trade policy and its cultural policy, looking at the impacts of each on the other. Within cultural policy it looks more specifically at the audiovisual sector. To do this, it mobilises the concept of each being a separate policy domain defined as 'a component of the political system that is organized around substantive issues' (Burstein 1991, 328). Cultural policy and trade policy became more closely linked at the international level during the Uruguay round of negotiations on the General Agreement on Tariffs and Trade (GATT) (Grantham 2000; Given 2003a). There the USA and the European Union contended over the issue of a 'cultural exception' to international agreements. More recently, in 2005 UNESCO members agreed to a *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, specifically designed to deal with trade and culture (UNESCO 2005). The idea being that cultural goods

and services are more than mere commodities, so that nations should have the right to afford protection to their cultural expressions.

In the Australian context this idea began to take root in the late eighties as the audiovisual sector started to realise the implications of trade agreements for domestic policy. It is from this point that cultural policy began to take an increasing salience in Australia's trade policy. This paper examines the debate and action around cultural policy in the context of three trade agreements to which Australia is a party – the General Agreement on Trade in Services (GATS), the Closer Economic Relations (CER) trade agreement between Australia and New Zealand and the Australia – US Free Trade Agreement (AUSFTA). It looks at how each was structured as a policy domain.

The literature on policy domains stems mainly from political science and sociology. Burstein provides a useful overview, describing how sociologists and political scientists arrived at similar conclusions, 'that politics proceeds primarily in numerous relatively self-contained policy domains, each operating more or less autonomously with its own issues, actors, and processes' (Burstein 1991, 329). Within political science, policy is understood as the instrument of governance, so that in the formation of policy domains there are processes of agenda setting, policy formation and policy enactment (Fenna 1998; Bridgman and Davis 2000).

More recently Fligstein has linked the idea of policy domains to field theory, specifically the idea of markets as fields. Fligstein (2001, 40) argues that policy domains can be focused on particular industries, in the way that Australian cultural policy is on the creative industries, or upon issues that are general to all industries, such as trade policy. The dynamic nature of these domains is captured by his proposition that:

Policy domains contain governmental organisations and representatives of firms, workers, and other organised groups. They are structured in two ways: (1) around the state's capacity to intervene, regulate, and mediate, and (2) around the relative power of societal groups to dictate the terms of intervention (Fligstein 2001, 42).

The domain of Australian audiovisual cultural policy is made up of governmental organisations, Australian commercial and national broadcasters, Australian television producers and creative workers, foreign production industry groups and foreign governments as actors. The power of each group seeking to make the state intervene stems from the economic and political resources they can marshal. However, there also needs to be a willingness to act.

The argument of this paper is that each group had differential power to influence the outcomes of the process of policy change and decision making by the state, but that willingness to exercise that power depended on their interest in intervening. Australian producers/workers had the most interest, but their power was weaker relative to that of commercial broadcasters. In comparison the broadcasters and the USA had stronger power, but only the USA was willing to exercise it to change Australia's television cultural policy.

The account in this paper of how this occurred is partly based on the author's own experience in the Australian Broadcasting Authority (1992-97), as Executive Director of the Screen Producers Association of Australia (1997-2001) and as a media policy consultant (2001-05).

Australia's Audiovisual Cultural Policy

The development of a cultural policy domain is relatively recent in Australian political history. Although Australia developed a film industry in the early part of the twentieth century, this gradually succumbed by the mid century to the globalising trend of Hollywood and lack of investment capital. The state was reluctant to intervene effectively until the late sixties, despite such calls from the disintegrating local production base of creative workers. This reluctance is not surprising when one considers that there has usually been a relatively close coalition between capital and the state. Exhibition and distribution interests, largely controlled by English and US investment, generally opposed such intervention. It was not until the coming of television from 1956 onwards that a resurgent cultural nationalism, and more concerted political action by proponents of a national film industry, that state intervention started and became more sophisticated (Shirley and Adams 1983; Bertrand 1981; McDonnell 1992).

Australian content regulation for commercial television dates from 1960. In the late sixties the Commonwealth government established agencies that provided direct subsidy for feature film and television production. The initial argument for the latter intervention being that pump priming by the state was needed for an industry which might eventually be self-sufficient. However, despite the success of the Australian 'new wave' of feature films in the seventies, and the widening of assistance measures to include initially generous tax concessions in the eighties, by the end of the eighties it was clear that, like most countries, if Australia wished to maintain its local industry, then the state would have to maintain its presence (Dermody and Jacka 1987 and 1988; Cunningham and Jacka 1996).

When television was introduced with a dual system of state owned national broadcasting and privately owned commercial television, the latter went to the already substantial media companies with interests in newspapers and radio. The

commercial television sector resisted the imposition of quotas for Australian content, and from the mid seventies for children's television, pressing instead for self-regulation in these areas. The seventies going into the eighties were a period of contestation on these issues, between the broadcasters on one side and creative workers and children's advocates on the other (Edgar 2006). Flew (2006) uses the term 'policy settlement' to describe the compromise that eventuated, by which the state brokered the understanding that in return for access to the spectrum and to the oligopoly profits that accrued, the broadcasters accepted they had to meet these cultural and social obligations.

It is also important to note for the intersection of cultural and trade policy that, although the regulation of Australian content was seen as an essential element of cultural policy, the commercial broadcasters themselves were not imbued with a strong public service ethos. That is, they were not willing participants in the delivery of cultural policy outcomes and were more acted upon by regulation (Bonney and Wilson 1983; Brown 1986; Flew 2001). For the commercial broadcasters, television was first and foremost a business operation. While they can be nationalist in the most populist sense, such as in the promotion of national sporting events, they do not see themselves as explicitly charged with the promotion of national culture.

If the policy settlement represented a victory of sorts for media activists, the power of the broadcasters was being demonstrated in other areas of media policy. In 1983 a Labour government led by Robert Hawke with Paul Keating as Treasurer came to power. This was a reformist government characterized by an embrace of neo-liberal economic policies and progressive social policies. The Australian economy was internationalized, as the dollar was floated and tariffs began to fall. This was followed over the next decade and more by micro-economic reform designed to reduce regulation, reform the labour market, make the economy more efficient and develop a comprehensive competition policy.

The reformist approach extended to broadcasting and to telecommunications, with dramatic changes to the structure of television from the mid 1980s. The launch of a domestic satellite, which among other things greatly facilitated the networking of programming across the nation, and changes to media ownership laws, meant that existing Sydney and Melbourne centred capital city networks gained effective control of national networks. The fact that these changes explicitly benefited the interests of Rupert Murdoch and Kerry Packer was acknowledged by Hawke and Keating as recognition these media players being 'mates' of the government (Chadwick 1989).

In the late eighties and early nineties the government continued to reform media policy and its film assistance measures. Tax concessions were kept, but wound

back and a new film bank the Film Finance Corporation (FFC) was established, with substantial government backing and a brief to invest in both feature films and television, in partnership with the marketplace. From the mid eighties the Commonwealth also embarked on a program of co-production treaties designed to extend the resources of the production sector, through partnerships with other producing countries. The commercial broadcasters supported these measures because they benefited from the spreading of risk involved in their investment in local production, particularly since they went towards the subsidy of the more expensive drama required by the Australian content standard.

By the early nineties the moment of the creative industries policy had also begun to arrive, as cultural policy formulation began to embrace the idea that government was providing support for cultural production, not just for the socio-cultural benefits to national health, but because there were potentially real economic benefits from fostering creativity. This was in part a linkage to the growing perceived importance of information services within the general services economy (Cunningham 2002 and 2004). Thus, in 1994 the Keating government's major statement on cultural policy, *Creative Nation*, saw an explicit embrace of this rhetoric backed with the commitment of real dollars across the board and new initiatives to increase audiovisual production (DCA 1994).

Reform of the media sector continued with the introduction of the *Broadcasting Services Act* 1992 (the Act), which now forms the basis of broadcasting law and regulation. The Act replaced the 50 year old *Broadcasting and Television Act* 1942, set up a new regulator, the Australian Broadcasting Authority (ABA) and moved towards de-regulation or co-regulation in a number of areas. This partially achieved the move towards self-regulation that the broadcasters had been arguing for since the seventies. However, in those areas of broadcast regulation that supported cultural policy – Australian content and children's television – the ABA retained the power to determine standards. On coming into existence in 1992 the ABA moved to reaffirm the standards and moved to increase the levels of both over the next few years (Armstrong and Lindsay 1991; Hawke 1995).

Significantly for trade and cultural policy, the Act also required the ABA to undertake these functions in a manner consistent with Australia's obligations under conventions and treaties. In part, this was a general move to make domestic law consistent with international law, but it is also possible the drafters had the CER agreement in mind (see below).

Australia's Trade Policy

Until the early seventies Australia's trade policy was based upon protection of agriculture and manufacturing through the erection of tariff barriers, justified by

the priorities given to national development and full employment. These measures had the strong support of both primary and secondary producers, as well as unions interested in promoting full employment. The Whitlam Labor government (1972-75) started to move away from this, as did the conservative government of Malcolm Fraser (1975-83), but as indicated above it was under the Hawke–Keating government (1983-96) that moves towards trade liberalization accelerated and have continued under the Howard government (1996-present) (Bell 1997; Lloyd 2002).

Very little consideration was given to the intersection of trade policy and cultural policy prior to the eighties, except for the inquiry conducted by the Tariff Board in 1972-73. The Board was a statutory authority, the function of which was to examine claims of industries for tariff protection. The production sector had been pressing for some time for tariff protection for the local industry and the government eventually conceded that the Board should examine the issue. An extensive inquiry into the industry brought some bold recommendations for restructuring, including centralizing supervision of distribution in government hands (including control over importation of all television programs), partial divestiture of cinemas by the major chains to create competition and regulated investment by distributors in local production (Shirley and Adams 1983, 250-253; Bertrand 1981).

The report was presented to the Whitlam government, but almost none of the recommendations were acted upon, except the establishment of the Australian Film Commission as the Commonwealth's single film subsidy organization. Not the least of these reasons for inaction was the personal pressure applied to the government by the visit of Jack Valenti of the Motion Picture Association of America (MPAA) early in the government's term, despite public demonstrations by production by the industry (Bertrand 1981).

Despite this interlude, in the larger agenda on trade, cultural policy was a minor consideration as Australia moved to embrace the multilateral approach to trade liberalization, with the commencement of the Uruguay round of the GATT. The bigger game for Australia was in agriculture and before the Uruguay round began in 1986, Australia established a coalition (known as the Cairns Group) of developed and developing agricultural export nations to press for liberalization of US, EU and Japanese markets. This move established Australia as a committed multilateralist and was instrumental in placing agriculture on the agenda of the Uruguay round.

At the same time Australia had not forgone bilateralism. Australia and New Zealand have similar historical, economic and cultural backgrounds and in 1965 for the first time entered into a free trade agreement that reduced tariff barriers on goods. This agreement was updated in 1983, with further liberalization in

agricultural trade, and renamed as the CER. Trade in services, which covered audiovisual, did not become part of the agreement until the Protocol of 1988 (Osborne 1988). It is important to understand that both the CER and the Protocol are what is known as 'negative list' agreements, meaning that the parties agree to liberalize barriers subject to any areas that they exempt. Australia agreed to give market access and national treatment to New Zealand service providers with few reservations. Airline services were one of those reservations, designed to protect the national carrier Qantas, but audiovisual services were not.

One has to remember that at this time trade negotiation was still generally seen as a somewhat technical and arcane branch of government, the aspects of which were probably little understood, even by the members of those industries that stood to gain or lose by them. The debate on globalization was still gathering steam in the public sphere, and the officials engaged in such negotiations were largely immune from any public scrutiny of what they were doing, let alone being compelled to consult with stakeholders. Public consultation on trade agreements in Australia dates from the late nineties. Certainly there was no consultation with the audiovisual sector in Australia and the full implication of the agreement took some years to be felt. In the meantime the focus of the audiovisual sector was upon the development of the Uruguay round.

As should be well known one of the achievements of the Uruguay round was not only the establishment of the WTO, but also the expansion of the trade liberalization agenda to cover trade in services through the GATS and intellectual property through the Trade Related Aspects of Intellectual Property Rights agreement (TRIPS). As Drahos and Braithwaite (2003) amongst other have pointed out, this expansion was in no small measure driven by copyright industries and pharmaceutical companies, who would benefit from both liberalization and the extension of intellectual property protections.

Before reaching consensus on the GATS in 1993, the negotiations on audiovisual services were a site of considerable disagreement between the United States on the one hand, which was pushing for complete liberalisation and the members of the European Union (EU), led by France, on the other, who refused to forfeit their ability to intervene in support of their domestic industries (Grantham 2000).

The Europeans did not achieve the exemption for cultural industries they were seeking, while the USA got agreement that audio-visual would be covered by the GATS and included in future negotiations, with the object of progressive liberalisation. However, unlike the CER agreement the GATS is structured as a 'positive list' agreement, meaning that in order to liberalise countries need to make binding commitments on national treatment, most favoured nation, market access and movement of natural persons. Given the large number of parties to the

agreement this was probably the only means of reaching consensus (Grantham 2000; Given 2003a; Drahos and Braithwaite 2003).

In this debate Australia eventually came down on the side of the EU, with the consequence that it made no offers to liberalise audio-visual. This was not without a considerable amount of lobbying by the production industry in Australia, with support being provided by the AFC for representatives to be present in Geneva to assist Australia officials in the negotiations. The production industry was able to achieve this outcome because there was no significant opposition from any other party, as the commercial broadcasters remained aloof from this process.

Most countries made no commitments on audiovisual or cultural industries. It remains Australia's official position in the current Doha round, as expressed to the Council of Trade in Services of the WTO in July 2001. At this meeting Australia stated that audio-visual remained critical to the achievement of its key social and political objectives; and then said:

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 (DFAT 2001).

In comparison, New Zealand liberalised almost entirely their audio-visual sector, the only exception being to retain the ability to support Maori broadcasting.

CER and Project Blue Sky

As McClelland and St John (2006) argue, despite cultural, economic and political similarities, there are sufficient differences between Australia and New Zealand in political ideologies, use of neoliberal economics and national identity for each country to have taken different paths in their responses to globalization. Both countries also came from different starting points in relation to their cultural policies and the configuration and regulatory structures of their audiovisual sectors. The aggressive application of neoliberal economics to the reformulation of the New Zealand economy from the eighties onwards did not leave the audiovisual sector untouched (Devetak and True 2006).

Space does not permit a detailed comparison between the two nations, but for the purposes of this paper the most relevant area is New Zealand television. Briefly, in 1987 New Zealand television had a single public broadcaster operating two channels supported by a mixture of advertising and viewer licence fees. Private television was licensed in 1987, but in 1989 the entire broadcasting system was

reformed. The public broadcaster was turned into a state owned business enterprise, Television New Zealand (TVNZ) with a brief to return a dividend to the government. The licence fee was diverted from TVNZ to a new organisation, NZ On Air, whose brief was to support New Zealand programming by direct funding of production. There was no local content regulation and by the time New Zealand made its GATS commitments that possibility was closed off. (Norris 2004; Horrocks 2004) Additional private channels and a subscription television service were introduced during the nineties making this small market one of the most competitive in the world.

The New Zealand government's cultural policy also extended to direct support for feature film production through the NZ Film Commission. In 1993 TradeNZ (the NZ Trade Commission) funded an initiative by the production sector, Project Blue Sky, designed to boost foreign exchange earnings to \$NZ200 million by 2000. However, the major strategy undertaken by Project Blue Sky was to use this resource to fund a challenge in the Australian legal system to the refusal of the ABA to recognize New Zealand programming in the Australian content standard. This was not an official initiative of the NZ government, even though the latter had in a polite way been pointing out that the Australian content standard was potentially in breach of the CER for some years¹. New Zealand is one of Australia's largest audiovisual export markets and the New Zealand industry believed then that by removing this trade impediment, trans-Tasman program flows might be equalised. The question does not seem to have been asked why it was that Australian broadcasters were not already seeking to replace US and UK imports with imports from New Zealand.

Project Blue Sky and the ABA were the parties to this action that began in the Federal Court in 1996. Ultimately the challenge was successful and in 1998 the High Court ordered the ABA to remake the standard so that it was consistent with the CER (HCA 1998). Two comments can be made about the conduct of this interaction. The first is that it is not unreasonable to consider that Australia and New Zealand might become a single audiovisual market in the way that the European Union has been attempting do with programs such as MEDIA, that seek to cross fertilise national industries. Although, it must also be said the EU has not yet succeeded in erasing the substantial linguistic and cultural barriers to the creation of that single market. Nevertheless, despite the legal battle being conducted between Australian government agencies and a NZ government funded initiative, there was no attempt to resolve the matter diplomatically and move towards a more constructive dialogue.

The reason for this is the second point. Not surprisingly, the Project Blue Sky strategy was seen as enormously provocative by the Australian production industry. Nevertheless, so confident were the associations representing the

audiovisual sector the action would fail, they did not participate in the action until it reached the High Court. In all of this, even though the outcome would potentially affect their business, the commercial television broadcasters continued not participating.

The production sector read the decision as a threat to the integrity of the regulation, at a time when the latter was not immune from neo-liberal criticism that it was an outmoded form of industry assistance, rather than a vital element of cultural policy (Jones 1991). The fear was that the decision potentially undermined the arguments about cultural support that had been crafted over many years, and would stand as a precedent that could be used by other countries in future trade negotiations. The sense of threat was only heightened by the legal success of the strategy.

Many of these views were expressed to the subsequent Senate Environment, Communications, Information Technology and Arts Committee (ECITA) inquiry into the implications of amending the relevant section of the Act. It was here that the commercial broadcasters made their first appearance in this debate. The Federation of Australian Commercial Television Stations (FACTS) told the Committee:

Programs made for the New Zealand market have to date had very little impact in Australia.... that will not change if such programs become eligible for the Australian quota. Broadcasters will continue to look for broad audience appeal in programs, even more than cost-effectiveness, and there seem to be no grounds for believing that programs made for the New Zealand market will become more attractive to Australian viewers (ECITA 1999, para 2.20).

In other words the commercial broadcasters believed that while Australian audiences might be enthusiastic about US and UK programming, when it came to New Zealand there was an element of cultural chauvinism at work. Even more interestingly the Executive Director of FACTS in his oral evidence told the Committee:

Australian commercial broadcasters spend over \$800 million a year on local programming... They deliberately choose to commission quite an amount of expensive drama. They could obviously meet their quota requirements with fairly cheap serials. They choose not to because it is essentially a market driven broadcasting sector... The great bulk of the work Australian broadcasters do in the way of [supporting] local production is not quota driven (Ibid, para 2.21).

Both these comments reflect the counter argument made by the commercial television sector against regulation. During successive reviews of the standard in the eighties and nineties, they argued that content regulation is not necessary, because there is a substantial domestic market for Australian content which broadcasters will respond to with appropriate programming.

Whether that argument is true is not important, for what is interesting is that while this was put to the regulator it was not pushed hard with the government. In other words the commercial broadcasters were not prepared to expend political capital on overturning the policy settlement on Australian content or entering the trade policy domain too forcefully. The reason for this can be found in the coincidence of the outcome of the Project Blue Sky case and the decision the government was making about the introduction of digital television in 1998. For, at the time that the Project Blue Sky case was running, the commercial broadcasters were in the process of expending considerable political capital convincing the government that the best migratory path to digital television was to follow the lead of the USA, by giving them the loan of additional spectrum to simulcast digital HDTV. They were opposed in this by telecommunications companies and by subscription television, which saw potentially valuable spectrum being locked away for an indeterminate period of time. However, the commercial broadcasters prevailed over this concerted opposition. Part of the package also involved a moratorium on the introduction of new commercial television services for at least as long as the simulcast period lasted. Digital television was a far greater prize than the possibility of overturning local content regulation and in fact to be seen to be wanting to upset the settlement would have been counter productive (see Given 2003b for a full account).

The Australia US Free Trade Agreement

If the Project Blue Sky case had shown that the audiovisual production sector was relatively powerless to stop the action once it had commenced, the result energized the sector in its vigilance for the impact of trade on culture, and raised the profile of cultural policy in trade policy. At the same time the spectacular failure of the Multi-lateral Agreement on Investment (MAI) negotiations in 1998 in the wake of public suspicion, as well as the violent Seattle meeting of the WTO in 1999, convinced the Australian government to adopt a more open and consultative approach to trade negotiation.

The Australia US Free Trade Agreement (AUSFTA) was negotiated with this legacy, and against the background of a number of developments in the international relation between culture and trade. The first to note is the growing international debate about the importance of cultural diversity and the need for appropriate recognition in international agreements and in the work of

international agencies. International discussion about culture expanded from ideas of cultural protection and the preservation of cultural heritage, issues that still remain important, to a more active engagement with the idea of culture as an indelible part of strategies for development and the growth of a civil society (AFC 2003).

The discussion of cultural diversity at the level of governments reached a new stage with the formation of the International Network on Cultural Policy (INCP) in 1998, and subsequent discussions in government forums such as the Council of Europe (Council of Europe 2000) and the association of francophone nations. (Goldsmith 2002; AFC 2003) This culminated in the adoption by UNESCO of a *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* in October 2005, which attempts to set out the rights and obligations of countries in relation to cultural diversity and expression. The objective is in part to set an international consensus on the treatment of culture in international relations, including trade relations. The convention came into force in March 2007, although Australia has so far refrained from supporting it.

Civil society mirrored these developments with the formation of a number of national coalitions of cultural professional associations from the late nineties. The Canadian Coalition for Cultural Diversity was the first such group and it sponsored the first International Meeting of cultural professional associations in Montreal in 2001, to pursue the issue of cultural diversity and trade (Coalition for Cultural Diversity 2001). This established a growing international network that was increasingly active in fora such as UNESCO. The Australian Coalition for Cultural Diversity was formed in 2002 specifically in reaction to the prospect of AUSFTA (ACCD 2003).

The second major development has been the turn towards bilateralism led by the USA. The failure of Seattle to initiate a new global round, and the slow pace of progress in the Doha round, reinforced the resolve of the Bush administration to pursue bilateral and regional agreements as a means of creating a new international agenda for free trade. As the United States Trade Representative (USTR) has commented:

The President has promoted the agenda for trade liberalization on multiple fronts: globally, regionally, and with individual nations. This strategy creates a *competition in liberalization* (emphasis added) with the United States as the central driving force. It enhances America's leadership by strengthening our economic ties, leverage, and influence around the world (USTR 2002a).

Since 2002, when the Congress renewed the President's Trade Promotion Authority, the USA has completed bilateral negotiations with Chile, Singapore,

Australia, Israel, Jordan, and Morocco and with the countries of Central America. A principal attraction of these agreements is that they include standards of trade liberalization that are higher than has been achieved in the GATS and build leverage for the US agenda in the WTO (Wunsch-Vincent 2003).

The third development to note is the changed approach of the USA, which has explicitly recognised that the ability of countries to pursue cultural policy outcomes is an issue that has to be dealt with. In the Doha round in July 2002 the USA acknowledged current cultural measures, but requested that WTO members to make stand still commitments, which would preserve these measures, but not allow countries to undertake further measures. However, the apparent concession by the USA is only in relation to cultural measures as they affect analogue production and distribution (USTR 2002b). In relation to digital products and distribution that include cultural expressions the objective of the USA has been to argue that current cultural measures should not be extended to this realm. The justification being that digital technology changed the dynamics of distribution (Wunsch-Vincent 2003). As the MPAA told Congress in 2001: 'There is room on the Internet for films and video from every country on the globe in every genre imaginable. There is no "shelf-space" problem on the net' (quoted in Bernier 2004, 2).

The practical application of this strategy first became apparent in the US-Chile Free Trade Agreement in 2002, where Chile maintained its existing audiovisual policy settings, but the chapter on e-commerce was used to prevent any restriction on the free trade in 'digital products' so defined to explicitly include all forms of audiovisual production (Chile US Free Trade Agreement, 2002, Article 15). The bilateral agreements are more liberal than the WTO approach because they are negative list agreements that force negotiating parties to seek agreement from the USA to exemptions.

Australia, aside from Canada and Mexico, is the only OECD country to have concluded a free trade agreement with the USA. In February 2004, announcing the finalization of AUSFTA, Prime Minister John Howard said that 'this was a once in a generation opportunity to conclude such an agreement' and cited 'the political amity between the United States administration and the Australian Government' as a factor in its conclusion (Howard 2004). Selling the agreement both the US and Australian governments have promoted it as the product of the special relationship between the two countries, as though it was in some way unique.

In reality the USA, under the Clinton administration, had proposed a free trade agreement in the nineties, but it was rejected by Australia in preference for pursuing multilateral liberalisation. What had changed by 2002, when the negotiation was announced, was Australia's participation in the 'coalition of the

willing' and the personal friendship between Howard and Bush. These were strongly motivating forces for proceeding with the negotiation and attempting to complete it before the 2004 Presidential election, given that all US trade agreements require the specific approval of the Congress. Also, given Australia's economic status, there is no doubt the US saw the agreement with Australia as precedent setting at the multilateral level.

The audiovisual industry mobilized to influence the negotiating position of the Australian government and to campaign to make cultural policy an important issue in the negotiation. Australian content regulation for commercial television was the centre of contention, since in past reports on Australia the USTR had highlighted this as a significant trade limiting measure. The US negotiators conceded early on Australian content regulation in analogue should stay, in keeping with the position enunciated in the WTO. The central question became how new digital media might be regulated. The position of the audiovisual sector was that the only position should be to negotiate a broad cultural exemption, even though the risk was that the USA might insist on the freedom to take countervailing measures as they had done in the NAFTA (ACCD 2003; Boland 2003).

By November 2003 it was becoming clear that the Australian government was prepared to give ground on new media when the Minister for Trade, Mark Vaile, publicly seemed to be echoing the position of the USA when he said:

As we look to the future we'll maintain a policy of ensuring Australian content is available but we are not inclined to over-regulate and restrict the development of new media technologies and platforms (Vaile 2003).

When the deal was finally announced in February 2004 Australia had managed to make a reservation for local content regulation for free to air television, but subject to quotas being wound back when any future amendments took place. Reservations were also made for increasing from 10% to 20% Australian content requirements on subscription television, allowing up to two of any new channels provided by free to air broadcasters to be subject to local content requirements. In relation to interactive audio or video services, the Australian government has not only to satisfy itself before enacting regulatory measures, it will also need to consult the government of the USA (Australia-US Free Trade Agreement 2004; Given 2004). As the services industry advisory committee to the USTR describes it:

to accommodate uncertainties relating to technological change in this sector, Australia preserved its ability to take some new measures to assure continued availability of Australian content to Australian consumers, but will have to take US trade interests into consideration in designing any such new measures (ISAC 2004).

The audiovisual sector roundly condemned the outcome of the negotiation as a stepping back from the previous freedom the government had to determine cultural policy, without reference to the interests of another nation. Even so, it can be argued that Australia has been more successful than any other country in gaining concessions in this area from the USA.

The treaty outcome was controversial in a number of other areas, for Australia had failed to make substantial headway on agricultural liberalisation, had given some ground on the pharmaceutical benefits scheme, which is a central plank of affordable health care in Australia, and the new access to the US market for manufactured goods had some serious caveats. Economists also disagreed about the net economic benefit (Capling 2005; Weiss *et al.* 2004).

Combined with the unease about the growing malaise in Iraq, the opposition Labor Party felt there was sufficient political capital to be made out of community suspicion of the USA to seek concessions from the Government on the implementation of the agreement. In the area of Australian content this was to amend the Act to invalidate the wind back provisions in the agreement. In other words the ACMA is prevented by law from changing the standard from that which was in force in 2004 (Schedule 10, *US Free Trade Implementation Act 2004*).

Throughout the negotiation and the subsequent political manoeuvring the commercial broadcasters remained neutral. As far as one can determine they made no lobbying efforts on the issue, made no public statements either in support or opposition to the agreement and did not participate in the Parliamentary inquiries that examined the implications of the agreement. In other words despite their manifest power to act in the policy domain the broadcasters chose not to do so.

One can speculate on the reasons for this. Australia has a large trade deficit in audiovisual with the USA and the bulk of this is in television. The commercial broadcasters, as a result, have substantial business connections with the major Hollywood studios developed over fifty years of Australian television. The terms of this trade have changed from time to time, with periodic bidding wars, but have remained fairly stable for about the last fifteen years. There was nothing in the agreement with the US that would have made this situation better.

One might have expected that, given the general business sector support for the agreement and the fact that there are some business partnerships with US interests, such as that between the Nine Network and Microsoft in Ninemsn, that support would have been more forthcoming. In the event, only Rupert Murdoch, whose Australian television interests are in subscription television, was willing to voice public support for the agreement (Higgins *et al.* 2004).

The commercial broadcasters are also not particularly export oriented. Most of the programs Australian broadcasters produce themselves are so culturally specific that there is little market for them outside Australia. In the area of drama and documentaries, which do have a market outside Australia, while the broadcasters may earn some revenue from their investment, it is the independent producers who drive the sales internationally and are dependent on the international market for finance.

But again, I would suggest, it comes back to the assessment of where political capital is best expended. Prime Minister Howard saw the agreement as so important that he invested a lot of his own political capital in making it happen. For commercial television to support the stance of the audiovisual sector would have been inconsistent with the previous positions it had taken on Australian content regulation. It would have required deft handling not to appear to be an opponent of the agreement in the whole. On the other hand, coming out in support of the US position also had no political benefits, since it would have been controversial.

Instead the commercial sector was more intent that the government remained committed to the digital terrestrial television strategy, despite the disappointing rate of take up of set top boxes. In 2004 the major subscription television platform, Foxtel, announced that it was going digital from the middle of the year, meaning there was now a competing digital television platform (Jiminez and Schulze 2004). What is more the government commenced reviewing its digital television policy in 2004, including the potential for new services and multi-channelling, making that a priority for industry attention. Therefore there was no political capital to be gained in becoming involved in the debate.

Conclusion

In the last two decades the cultural policy and trade policy domains in Australia have become inextricably linked to the point where decisions made on trade policy have substantial impacts upon cultural policy. One can see that although Australia has taken a forthright stance to retain the flexibility to determine its own cultural policy in the WTO, this has been far easier to do than has been the case with the bilateral agreements with New Zealand and the USA. In both cases Australia faced countries that were committed to wide ranging liberalisation of barriers to cultural trade, or at least New Zealand was in the eighties, and was unable to resist the demands for liberalisation.

Within the cultural policy domain it has been the audiovisual producers/workers who have been the chief advocates of a policy of exceptionalism in regard to

culture in trade negotiations. In that they are in line with what is the international consensus, as expressed both in UNESCO and in the WTO. In UNESCO the new instrument on cultural diversity which seeks to establish a normative benchmark for dealing with culture and trade has had rapid acceptance, but not by Australia. In the UNESCO debate Australia argued with the USA against the terms of the convention and abstained from the final vote. In the WTO the US arguments on the future of cultural regulation lack widespread support. The audiovisual sector, however, lacked the political capital to be able to convince the Australian government that in the AUSFTA the principled stance on cultural diversity should be a potential deal breaker. In part this was due to the fact that the commercial television broadcasters, for a number of historical reasons, do not see themselves as having such a stake in Australia's cultural policy to make it worthwhile to expend their own political capital in the area of trade policy.

In this paper I have shown how the trade policy and cultural policy domains in Australia have increasingly influenced each other over the last twenty years. This has occurred because of increasing activism on the part of audiovisual producers and creative workers, who were influenced by international arguments about the effect of trade policy on cultural policy. This group is relatively weak in terms of the power it can mobilise, when compared to the commercial broadcasters' potential to influence policy, as demonstrated by their successful lobbying for their preferred policy on digital television. However, despite having stakes in the effects of trade policy debates on cultural policy, the commercial broadcasters have shown almost no willingness to act in that policy domain. Their absence from the field gave the audiovisual sector greater ability to influence the stance the Australian government took on culture and trade, until met by the power of the US government. This shows that in analysing the formation of policy action, one must look not just at the disposition of power amongst groups within a particular domain, but also the willingness of the parties to act.

Note

¹ The author was responsible for managing this issue at the ABA and had numerous discussions with NZ government officials and Project Blue Sky upon which this account is based.

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