



Australian Services
Roundtable

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12 November 2007

Amanda Gorely
Assistant Secretary
WTO Trade Law Branch
Office of Trade Negotiations

Dear Ms Gorely,

Thankyou for the opportunity to make a submission on whether Australia should participate as a third party in the WTO dispute initiated by the United States concerning China's restrictions on trading rights and distribution of certain audiovisual "products", sound recordings and publications.¹

We welcome and take guidance from your advice that in deciding whether Australia should join this dispute as a third party, the Government will have regard especially to the views of affected Australian parties on the impact on their commercial interests regarding the specified "products", namely "**films for theatrical release, audiovisual home entertainment products, sound recordings and publications**". The ASR membership includes a number of organizations which could be commercially affected by this matter or which represent the interests of commercially affected parties.

Taking into account the views of those affected members which have come forward on this matter, ASR can not support Australia joining this dispute as a third party between the United States and China.

While Australian services providers share many of the concerns of US industry for example with respect to enforcement of aspects of China's IP regime, the Government is aware that Australian services providers would not necessarily share them all. Australia's commercial interests in film and in music are different from those of the United States. Australian producers of film and music have difficulty competing with United States producers of film and music in the Australian domestic market place (which puts a premium on local content) and this difficulty extends to third country markets.

With respect to the Chinese market, affected ASR members recognise that there may be a potential niche export market for certain wholly Australian-content audiovisual "products" which are currently constrained by Chinese policy and practice on distribution

¹ ASR cautions against any Australian usage of the terminology "products" with respect to audiovisual matters in the WTO.

of foreign films. (This potential niche market is likely to be dwarfed by US industry estimates of US market potential in China.) There is currently likely also to be an emerging market for Chinese/Australian co-productions of audiovisual products. As you know, Australia has relatively recently entered into a co-production agreement with China. Co-productions would be exempt from the Chinese restrictions applying to distribution of foreign films. The co-production agreement therefore provides Australian commercial interests with a degree of current access to the Chinese market.

We note that in this instance you do not rule out some impact, if Australia was to join as a third party in this dispute, on relevant areas of bilateral cooperation. You will recall that ASR submitted on 17 September 2007 that we could not support a step on the part of the Government which could risk unduly or unnecessarily disturbing the atmosphere of our bilateral IP negotiations, to the potential disadvantage of Australian commercial interests, on account of any IP issues other than those in which Australia has a similarly substantial and direct commercial interests.

We consider that the postponement of the SVP visit by Commissioner Tian Lipu scheduled for later this month, and the failure of the Chinese IP negotiators to attend the tenth round of FTA negotiations in Canberra the week before last, is abundant evidence that the Chinese have indeed already reacted negatively, and in ways that damage our commercial interests, to Australia's decision to join as a third party in the United States/China dispute on copyright. We consider that this reality needs to be taken into account in formulating the Government's position on this second IP matter.

For our part, ASR does not support any unnecessary discretionary action in the WTO which might put further at risk any prospect of constructive bilateral reengagement with China on those IP issues which have been carefully identified by Australian stakeholders as of the greatest interest to their commercial interests, and drawn to DFAT's attention via the intensive process of IP consultations for the FTA. Nor could ASR support any unnecessary discretionary action in the WTO which prejudices future film co-production between Australia and China.

Finally we note that the Government is in a caretaker period and request that the Minister for Trade consult his Opposition counterpart on this important matter.

Yours sincerely,



Jane Drake-Brockman
Executive Director
Australian Services Roundtable