

**NZ has been previously affected by Free Trade dispute settlements**

“Government claims that New Zealand has never been sued under existing trade agreements may be correct,” says Myles Thomas from the Coalition for Better Broadcasting (CBB), “but it is worth noting that the threat of it *did* affect government policy in 1998 and early 2000s.”

In 1998 the National Government’s Minister of Culture was considering compulsory local content broadcasting quotas. Such quotas are commonplace around the world<sup>1</sup> as a means to supporting local music on radio and programmes on television. But a report commissioned by the Ministry<sup>2</sup> concluded that quotas would breach GATS commitments because it would limit the profitability of foreign record labels, film producers and television producers.

In 2000 the Labour Government had to back away from election promises it had made to introduce New Zealand content quotas, after being advised that it would breach GATS.<sup>3</sup> The following year the US government also pointed out quotas in NZ would contravene the GATS.<sup>4</sup> The Clark government eventually helped create a voluntary music quota for radio stations which was successful, and the less effective TVNZ Charter.<sup>5</sup>

“It’s possible that when Jim Bolger signed GATS seven years prior, he didn’t believe it could ever affect New Zealand television or music content,” said Mr Thomas, “although it’s interesting that Australia did not agree to the clauses that limit quotas<sup>6</sup> and to this day, has very successful quotas for Australian music (25%) and for Australian television (55%).”

“This is a small but significant example of how Free Trade Agreements have negatively impacted upon New Zealand – not by actual legal action but by the threat of it, forcing a government to alter a policy, how it implements it, or to simply cancel it altogether.

“TPPA increases potential challenges and the threat of challenges, because it gives corporations the right to use the Investor State Dispute Settlement system to oppose policies that impede their profits.”

The CBB calls on the government to ensure that under TPPA; our film, television, music and other cultural assets are safe from threat of litigation, undue pressure or intimidation from overseas interests.

ends

Note: Corrections have been made in this release to reflect that GATS creates *Dispute Settlement Bodies* chosen by governments party to a dispute, rather than private companies as per *Investor State Dispute Settlements* in TPPA.

Contact:  
Myles Thomas  
Coalition for Better Broadcasting  
myles@betterbroadcasting.co.nz  
021 666297

references:

<sup>1</sup>[http://musicinaustralia.org.au/index.php?title=Broadcasting\\_Content\\_Quotas\\_%E2%80%94\\_An\\_International\\_Overview](http://musicinaustralia.org.au/index.php?title=Broadcasting_Content_Quotas_%E2%80%94_An_International_Overview)

<sup>2</sup> ‘Question of a “Local Content Quota” ‘, a legal opinion prepared for the Ministry of Commerce by Tony Small, 28 August 1998

<sup>3</sup> “We have unilaterally disarmed ourselves on trade but very few others have been so foolish. We’re now left with perfectly legitimate calls for local content and people saying ‘You can’t do that because of Gats’. This seems a bit ridiculous so we’re just working out the best way to handle it” – PM Helen Clark in the NZ Herald, 10 April 2000.

<sup>4</sup> I. Bernier, Content Regulation in the Audio-Visual Sector, in: D. Geradin/D. Luff (pub.) The WTO and Global Convergence in Telecommunications and Audio-Visual Services, 2004, p. 227

<sup>5</sup> <http://unesdoc.unesco.org/images/0013/001322/132262e.pdf>, page 31

<sup>6</sup> Dr Ruth Harley speech to SPADA 2014 “the Australian industry fought a trenchant battle in the GATS negotiations that saw their quota protected.”