



March 8, 2004

Hon. James Peterson, P.C., M.P.
Minister of International Trade
125 Sussex Drive
Ottawa, ON
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Dear Mr. Peterson:

Let me begin by saying that I enjoyed your speech to *The Services Agenda: Getting Up to Speed* conference last Friday. It is very encouraging that the Doha round in general, and the GATS negotiations in particular, are getting back up to speed after the Cancun disappointment.

There is an issue which has arisen under the electronic commerce negotiations under GATS which concerns members of the Canadian Advance Technology *Alliance* greatly, the classification of software delivered electronically. As you know, CATAAlliance is the trade association which represents the Canadian high tech industry. We have almost 500 member companies, and a further 2000 companies belong to affiliated associations. Many of our members are in the software industry. While the very largest companies, like Nortel, Cognos and CGI Group are members, the vast majority are SME's. The markets in which our members compete are global, not local, so almost every one of them exports. Product innovation is the critical factor in global success, so only a few members do not perform R&D.

In an earlier round of consultations on the GATS, we were asked the following questions:

Canada is currently examining whether electronic deliverables that have a physical equivalent such as software, books or music, should be considered as a good, service, or Intellectual Property right under WTO rules. This question is of interest because the trade rules applicable to these different categories vary. How will this important classification issue impact on your business? If so, what are your views on how this question should be answered?

We responded that software must continue to be classified as a good. To classify it as a service could have a devastating effect on the software industry. As a good, software is subject to the GATT, and essentially free trade prevails on a global basis. The software industry has grown enormously as a result. A report by the *Branham Group* shows that in 2001 the top 100 Canadian software companies had revenues of \$4.9 billion. No less than \$4.4 billion, almost 90 percent of revenues, were exports. Without foreign sales, the industry would almost vanish. Electronic distribution of software has become commonplace. If this causes software to

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be reclassified as a service, subject to GATS rules, it will be subject to all the protective practices which continue to prevail in the world of services.

The e-commerce proposal links software to books and music, which are cultural products. Software clearly is not. *CATAAlliance* members appreciate the importance of our vigorous cultural industries, but we fear that Canada's large, dynamic software industry, including many of our members, will become entangled in the cultural agenda. There is a serious risk that it will suffer serious damage if that happens.

In your speech last Friday, with reference to health care, public education, social services and culture, you said : "They are not on the table; they never have been; they never will be." If they are not, obviously the classification issue should not be either. Canada should simply maintain the position that software is a good, subject to the GATT, no matter how it is delivered to the customer.

In your speech, you mentioned that Canada will sign a framework for a Trade and Investment Enhancement Agreement with the European Union at the Canada-EU Summit in Ottawa. The EU is one of the main proponents of reclassifying software as a service. I would appreciate hearing if the subject will be on the agenda for Canada's talks with the EU.

I will be happy to discuss this issue with you if you have any questions.

Yours sincerely,

David Paterson
National Director, Public Affairs