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Mr. Mark Stephanou  
Director, Constituent Services,  
100 Great Meadow Road,  
Wethersfield, CT 06109

Re: Trade Adjustment Assistance #TA-W-53,209 Appeal result

Dear Mr. Stephanou,

Thank you very much for expediting our TAA appeal to the Department of Labor. On February 13, 2004 we received the results of that appeal from Timothy Sullivan, Director, Division of Trade Adjustment Assistance. (Please refer to the separate attachment). The appeal was denied. We are disappointed in this finding, but find encouragement and reasons for further judicial review (as is our right) in the conflicting reasons listed in the denial letter. We know that Senator Dodd is fighting the off-shoring frenzy that is decimating Connecticut's Information Technology sector and is introducing a bill to prevent the off-shoring of Federally funded IT projects. As our petitioning group moves forward to the next level of the appeal process, we wish to continue the relationship with Senator Dodd as our advocate. We are sure that with the information we are presenting below, Senator Dodd will find archaic and conflicting government rulings regarding computer software that are protecting American companies while they ship work overseas and continue lay-offs in this country.

We believe Senator Dodd will find the following points lifted from the February 13 letter very interesting and that they will positively contribute to the case he is building to stop the off-shoring of Federally funded work. We also hope that former IT employees of the private sector can benefit from this exposure of archaic and conflicting rulings.

**1.** Computer Software CAN be considered an 'article' as defined in the current Trade Act ( Section 222(c) (3) of the Act). This submission by the TAA is a break through declaration for the IT industry and in our specific case reverses the original petition decision. Our point is : how many more petitions were wrongly denied in the first stage?

**2.** The value of Imported Computer Software is reduced to the value of the medium it is written on. Let us say that again...imported Computer Software is worth NOTHING according to the U.S. Customs, based on a Treasury decision that goes back to July 8, 1985. Only the value of the Floppy Disk, the CD-ROM, the Disk Tape or any other magnetic storage medium that holds the computer software or data is appraised and valued by U.S. Customs. We believe this archaic 1985 Treasury law needs to be brought into the 21<sup>st</sup> century to better serve the rapidly expanding

e-commerce based global market and produce true competition among international software companies. We hope Senator Dodd will look more closely at this out-dated law.

Because imported computer software has no value, it cannot be considered traded goods and if there are no traded goods there cannot be international competition for a 'non-good' and hence there is no TAA assistance for those IT persons who apparently don't make anything. This conundrum is the basis of Department of Labor's decision to deny our TAA appeal.

Imagine if there were a 'tax' on imported software? That money could then be spent to fund projects and train Americans in technologies of the 21<sup>st</sup> century. American companies will say that they cannot measure how much software they now make overseas. Maybe not, but they sure know how many American workers to layoff after those American workers have transferred their skills to an 'offshore resource'. We are sure the Senator could phrase this better....

3. 'Finally, the North American Industry Classification System (NAICS), published by the U.S. Department of Commerce, designates all manner of custom software application and software systems, including analysis, development, programming and integration as "Services" (see NAICS #541511 and #541512).'

'Services' are excluded from consideration by the TAA administration. A 'service' is not an 'article'. This is denial point number 2, and so our petition is denied.

There is a clear contradiction between software being declared an actual 'article' by the Department of Labor and the Department of Commerce saying it is a 'service'. In the 21<sup>st</sup> century, how is such a contradiction possible? We believe there is 'meat on this bone' that Senator Dodd can well make use of in his challenges to the off-shoring of Information Technology jobs.

We hope Senator Dodd will investigate and use these points as he continues to gain support for a halt to the off-shoring of Federally funded projects. We also hope that Senator Dodd will challenge the department of the Treasury and the department of Commerce to move into the 21<sup>st</sup> century and create fair and balanced rulings that truly work together in this global economy.

We will keep your office apprised of our continued commitment to pursue TAA certification and thereby receive funding to cover our health insurance needs and 21<sup>st</sup> century career training.

Again, we thank you very much for your continued support.

Sincerely,

Mark Bain

...as correspondent for TAA co-petitioners Deborah Corkindale and Monali Patel.

**Enclosure:** U.S. Department of Labor TAA Appeal Decision letter of February 13, 2004  
*TAW53209 Appeal decision Feb 3 2004.doc*