INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

**ProQuest Information and Learning
300 North Zeeb Road, Ann Arbor, MI 48106-1346 USA
800-521-0600**

UMI[®]

CAN YOU DROP IT ON YOUR FOOT?
EXPLAINING CANADIAN POLICY PREFERENCES FOR THE CLASSIFICATION
OF ELECTRONIC TRANSACTIONS

by

T. Kendal Hembroff, B.A.

**A thesis submitted to the Faculty of Graduate Studies and Research
in partial fulfillment of
the requirements for the degree of**

Master of Arts

The Norman Paterson School of International Affairs

**Carleton University
Ottawa, Ontario**

July 3, 2001

@copyright 2001, T.K. Hembroff

**National Library
of Canada**

**Acquisitions and
Bibliographic Services**

**395 Wellington Street
Ottawa ON K1A 0N4
Canada**

**Bibliothèque nationale
du Canada**

**Acquisitions et
services bibliographiques**

**395, rue Wellington
Ottawa ON K1A 0N4
Canada**

Your file Votre référence

Our file Notre référence

The author has granted a non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of this thesis in microform, paper or electronic formats.

The author retains ownership of the copyright in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de cette thèse sous la forme de microfiche/film, de reproduction sur papier ou sur format électronique.

L'auteur conserve la propriété du droit d'auteur qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

0-612-66823-1

Canada

The undersigned hereby recommend to the Faculty of
Graduate Studies and Research acceptance of this thesis
submitted by T. Kendall Hembroff as partial fulfilment
of the requirements for the degree of Master of Arts.

Professor Maureen Molot, Director
The Norman Paterson School
of International Affairs

Professor Dane Rowlands, Supervisor

ABSTRACT

With the emergence of a digital economy where goods and services can be traded freely over open, public network platforms such as the Internet, the international trade policy community has been confronted with an important challenge: how to reconcile existing trade rules with the rapid growth in electronic commerce. Central to this development is the question of whether electronically deliverable products should be classified as goods or services under rules created under the World Trade Organization.

This thesis aims to explore Canada's approach to this policy problem with a consideration of two subsidiary questions: (1) how may an examination of ideas shed light on preferences; and (2) what is the role of structure in explaining how preferences affect policy outcomes? It therefore places emphasis on the concept of ideas, viewing ideas as intermediaries between structural conditions and actors' interests.

ACKNOWLEDGEMENTS

This thesis could never have been possible without the participation of a number of individuals who provided substantial insight into the policy process by which the Canadian government has attempted to classify electronic transactions. Barbara Motzney, William Crosbie, Janette Mark, Lynn Fortin and Paul Robichaud were particularly helpful throughout this research, and as such, these individuals should be signaled out for their much appreciated time and effort.

Special thanks must also go out to Dane Rowlands who supervised this thesis and provided numerous helpful suggestions in the way of methodology, organization and style. Max Cameron, Chris Maule, Brian Tomlin, Fen Hampson and Vivian Cummins from the Norman Paterson School of International Affairs also provided assistance along the way in the research and preparation of this thesis.

And finally, I owe an enormous amount of gratitude to my friends and family who continually encouraged me to push ahead. Without the emotional support of these individuals, several of whom who also served as a springboard for ideas this process would have been enormously more difficult. Helgi Maki, Chris Tymofichuk, Dominic Seiterle, Christine Ivory, James Baker, Jason Lavigne and Carla and Jim Hembroff all deserve special thanks. In the best of worlds, family and friends are one and the same.

ACRONYMNS

AMEC	Alliance of Manufacturers and Exporters Canada
APEC	Asia Pacific Economic Cooperation
B2B	Business-to-business e-commerce
B2C	Business-to-consumer e-commerce
CATA	Canadian Advanced Technology Association
CBA	Canadian Bankers Association
CCC	Canadian Chamber of Commerce
CRTC	Canadian Radio-Television and Telecommunications Commission
EDI	Electronic Data Interchange
EU	European Union
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
G7	Group of Seven Nations
G8	Group of Eight Nations
ICT	Information and Communications Technologies
ITAC	Information Technology Association of Canada
ITU	International Telecommunications Union
MFN	Most Favored Nation
NGO	Non-governmental Organization
OECD	Organization for Economic Cooperation and Development
SAGIT	Sectoral Advisory Groups on International Trade
SCFAIT	House of Commons Standing Committee on Foreign Affairs and International Trade
SI	Structured Interviewing
SME	Small and medium sized enterprise
SSI	Semi-Structured Interviewing
UNCITRAL	United Nations Committee on International Trade Law
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

TABLE OF CONTENTS

ABSTRACT	II
ACKNOWLEDGEMENTS	III
ACRONYMNS	IV
TABLE OF CONTENTS.....	V
LIST OF ILLUSTRATIONS.....	VII
CHAPTER 1: INTRODUCTION	1
APPROACH	5
METHODOLOGY	8
ORGANIZATION OF THE PAPER	10
CHAPTER 2: SETTING THE CONTEXT: THE INTERNATIONAL E- COMMERCE ENVIRONMENT.....	13
DEFINING E-COMMERCE	13
THE PROBLEM OF REGULATING E-COMMERCE IN A BORDERLESS WORLD	18
<i>The World Trade Organization</i>	20
The Treatment of Goods and Services	21
Classifying Electronic Transactions	23
The Traditional Goods vs. Services Distinction	24
<i>Comparing Policy Approaches</i>	28
The Canadian Strategy.....	32
PREDICTING POLICY OUTCOMES: INTERNATIONAL VS. DOMESTIC EXPLANATIONS.....	35
CHAPTER 3: THE CANADIAN DOMESTIC ENVIRONMENT: EXPLAINING OUTCOMES	39
UNDERSTANDING POLICY PROCESS: THE PRIMEVAL SOUP.....	39
ADDING POLICY NETWORKS.....	45
EXPLAINING PREFERENCES	50
COMPARING PREDICTIONS.....	58
CHAPTER 4: USING THE MODELS	64
THE ROLE OF IDEAS IN THE FORMULATION OF PREFERENCES	64
<i>Hypotheses 1 and 2</i>	65
<i>Hypotheses 3 and 4</i>	69
THE TRANSMISSION OF IDEAS THROUGH POLICY NETWORKS	80
<i>Hypothesis 5</i>	80
<i>Hypothesis 6</i>	85
<i>Hypothesis 7</i>	89
KINGDON AND THE PRIMEVAL SOUP	103
<i>Hypothesis 8</i>	103
CHAPTER SUMMARY	112

APPENDIX 1: STRUCTURE OF INTERVIEWS.....	121
APPENDIX TWO: LIST OF INTERVIEWS.....	123
BIBLIOGRAPHY	124

LIST OF ILLUSTRATIONS

Figure 1	Value of Electronic Transactions Worldwide
Figure 2	Conditioning factors for Policy Networks
Figure 3	Ideas, Structure, Preferences and the Policy Process

CHAPTER 1: INTRODUCTION

From a trade policy perspective, electronic commerce (e-commerce) is far from new. In fact, including retail transactions that take place by telephone, fax, automated banking machines, credit cards, debit cards, secure private computer networks through electronic data interchange, and business handled over the Internet, e-commerce has been around for some time. What is new, however, is the impact that the shift of e-commerce in the past few years from private or closed networks to open, public network platforms has had on international trade in goods and services. Nowhere is this perhaps more evident than in the instance of Internet e-commerce. In a world where e-commerce is likely to become an everyday reality, the basic role of government in a liberal market economy and the relevance of borders and geography are sure to be drastically redefined.

The problem for those interested in trade policy matters is to identify the extent to which existing rules and regulations governing international trade already apply to e-commerce, or alternatively, whether such rules and regulations require adaptation or reworking. At a most basic level, this dilemma centers on whether the current multilateral trading system, embodied in the World Trade Organization (WTO), is prepared to cover international trade through the medium of e-commerce without radical overhaul.

A contractual framework of rules stipulating the kinds of trade policies and practices its Members may pursue in regulating trade in goods and services and related policies involving investment and the protection of intellectual property rights, the WTO and its predecessor, the General Agreement of Tariffs and Trade (GATT), have contributed enormously to the creation of an open, liberal and multilateral system of trade

and payments since the end of World War II and the creation of Bretton Woods. The hope of many trade policy experts is that the WTO's history of prior success points to the likelihood that current trade rules can be applied to e-commerce. In one author's words, "the issue is less a matter of a policy vacuum than of a clear appreciation of gaps and barriers that may exist in this regulatory framework."¹

The WTO has proceeded with this perspective in mind. Since the WTO's decision on May 20, 1998 to adopt a declaration on global e-commerce at their second Ministerial Conference in Geneva, Switzerland, the WTO has aimed to examine all trade-related aspects of e-commerce in an effort to determine how well existing trade rules work. The WTO has undertaken this task by means of four primary groups. Its Council for Trade in Goods, Council for Trade in Services, Council for Trade-Related Intellectual Property Rights and Committee on Trade and Development have, since May of 1998, separately considered the extent to which existing trade rules and regulations can be shaped in order to apply to e-commerce.²

The issues at hand for the WTO are many, encompassing everything from market access and domain names to consumer protection and taxation and investment. One particularly controversial issue is how it is that the WTO should go about classifying so-called "digital products" – items that can be both ordered and delivered electronically. This particular type of electronic entity has been a serious point of contention among the

¹ Michael Hart and Ramesh Chaitoo, *Centre for Trade Policy and Law Occasional Paper #54: Electronic Commerce and the Role of the WTO* (Ottawa: Renouf Publishing, 1999), 2.

² The WTO is currently considering the creation of an ad hoc horizontal working group in order to deal with the cross-cutting nature of e-commerce in the hopes of concentrating the e-commerce work program into one. At the time that this paper was written, this proposal had not yet been ratified.

WTO Member countries, largely hinging on whether digital products such as books and software should be classified as goods or services according to international trade rules.³

The need to provide something of a taxonomy for the classification of different kinds of output has long perplexed intellectuals of numerous varieties, particularly economists. With world e-commerce expected to grow to \$4.75 trillion by 2003, the classification dilemma has now risen to the fore again, this time challenging governments to decide whether electronic transactions should be considered as equivalent to similar goods and services in their physical format.

In response, the United States and the European Union have taken positions that stand in sharp contrast to one another. While the European Union has publicly argued that all electronic deliverables should be considered as services and therefore fall under the WTO's General Agreement on Trade in Services (GATS), the United States has informally suggested that such products remain goods and be covered by another agreement, the General Agreement on Tariffs and Trade (GATT).

Canada has been left somewhere in the middle, caught between competing international and domestic political and economic interests. Although still early, it would appear that the Canadian government seems to favor the European approach over the American, as indicated by a June 1999 background paper to a later WTO communication.⁴ According to this paper, "A preliminary analysis suggests that on balance, it is in Canada's interest to support the GATS as the preferred trade agreement

³ It is worth noting that Australia asked in 1998 whether electronic transactions constitute a third category of products which are neither goods nor services and for which special provisions need to be devised. This idea was quickly dropped and as such, will not be treated as a serious policy option throughout this paper.

⁴ The background paper entitled "Global electronic commerce," June 1999, www.dfait-maeci.gc.ca/tna-nac/discussion/ecom2-e.asp was written in preparation for a communication registered to the WTO with the code: WT/GC/W/339. This communication can be found at: www.dfait-maeci.gc.ca/tna-nac/discussion/ecom_pr-e.asp

for governing transactions of electronic deliverables, even in circumstances where they can have a physical equivalent.”⁵ This leads one to the central research question of this thesis: **Why is the Canadian government leaning towards a pre-negotiating position that views the treatment of electronic deliverables as services as its best possible policy preference?**

In the instance of e-commerce, little precedent exists to give rise to an explanation of why it is that the Canadian government has approached the classification issue with a preference for identifying electronic deliverables as services. Five years ago, the literature exploring e-commerce was sparse, limited primarily to the discussion of the revolutionary impact of cyberspace. However in recent years, particularly the last, e-commerce has become something of a fad, a favorite subject for economists, businesspersons, journalists, sociologists, and others. It is difficult, if not impossible, to open a newspaper today without seeing some mention of e-commerce.

In the mass media, the primary interest has been how it is that e-commerce affects ordinary individuals, offering opinions on whether producers and consumers have been either hurt or helped by this new form of commercial activity. In the business world, the emphasis has been upon the effect of e-commerce on the workplace and on how business should adapt to a changing marketplace. And finally, lawyers have looked at the ways in which legal principles and rules can be applied to a dimension where transactions have no borders.

What is challenging however, is to find political scientists looking at how decisions are made in the e-commerce context, an area of policy formulation so new that

⁵ Canada, “Global electronic commerce,” June 1999, www.dfait-maeci.gc.ca/tna-nac/discussion/ecom2-e.asp, 4.

it is difficult to identify key players and processes. This paper will attempt to shed light on one area of e-commerce policy: how preferences have been formed by the Canadian government with respect to the classification of electronic transactions.

Approach

Time and time again, political scientists have attempted to explain and understand how it is that policy decisions are made. Students of International Relations (IR) and international political economy for example, particularly those of the realist school, have tended to treat state preferences as the product of self-interested actors serving to maximize their utility. Influenced heavily by public choice models and game theoretic approaches, IR scholarship of this variety has generally emphasized that an actor's preferences and causal beliefs are given and attention focuses on the variation in the constraints faced by actors.⁶ As a consequence, these interest driven modes of analysis often assume the ends of action at the expense of fully appreciating the normative context of the process by which interests are defined. From this viewpoint, "ideas are unimportant or epiphenomenal either because agents correctly anticipate the results of their actions or because some selective process ensures that only agents who behave as if they were rational succeed."⁷

This thesis however, seeks to refute the assumption that ideas are "unimportant or epiphenomenal" and instead aligns itself with a body of literature that has placed greater

⁶ For a realist treatment of the role of ideas see: Stephen Krasner, *Defending the National Interest* (Princeton: Princeton University Press, 1978). For a liberal institutionalist perspective, see: Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).

emphasis upon the importance of ideas. It therefore begins with the initial assumption that policy outcomes cannot be understood using purely structure-based models of policy process.

Instead, Understanding policy outcomes requires a response to two subsidiary questions, namely: (1) how may an examination of “ideas” shed light on how preferences arise; and (2) what is the role of structure in explaining how preferences affect policy outcomes?

The first question proposed in this thesis focuses on the role of ideas and asks how it is that preferences can be explained. A useful approach is that suggested by Judith Goldstein who, in her analysis of ideas and their impact on American trade policy, provides advice to anyone seeking to explore the normative context of the process by which interests are defined by key actors. Arguing that along with changing coalition patterns, analysts must also pay attention to political entrepreneurs and the ideas that they hold, Goldstein proposes a two-stage research program. First, she argues, analysis must focus on the degree to which ideas affect policy; and second, research must focus on why certain policy ideas vary in their salience to political entrepreneurs. On these two points, Goldstein suggests that “analysis should consider both the supply and demand sides; shifting environments and constituencies explain why leaders seek new ideas, but it is the pool and salience of the set of possible solutions that determine policy choice.”⁸

The second subsidiary question posed in this thesis can be answered by looking at structures of trade policy in order to explore whose interests are important throughout the

⁷ Judith Goldstein and Robert Keohane eds., *Ideas and Foreign Policy: Beliefs, Institutions and Policy Change* (Ithaca: Cornell University Press, 1993), 4.

⁸ Judith Goldstein, *Ideas, Interests and American Trade Policy* (Ithaca: Cornell University Press, 1993), 252.

policy process. The model used in this thesis is primarily based on the work of John Kingdon; however it also integrates work undertaken by Michael Atkinson and William Coleman. It therefore starts with the assumption that public policy decision making can be explained as what Kingdon refers to as a “primeval soup,” whereby policy can be understood as consisting of three streams: problem identification and recognition, the generation of policy alternatives, and political process. According to this model, generally these three streams flow through the policy system independently. However, occasionally, particularly at critical times, these streams come together and pass through what Kingdon refers to as a “policy window” or opening for policy change. This process, according to Kingdon, is affected by “specialized policy communities,” which include civil servants, elected officials, the private sector, various lobby groups, the media, and the academic community.

Atkinson and Coleman pick up where Kingdon leaves off and provide a framework from which specific patterns of interaction among key stakeholders can be examined. The two authors use a typology of policy network types derived from three factors: bureaucratic structures of policymaking, the degree of autonomy that a state possesses in relation to societal interests, and business interest mobilization. This typology is particularly useful in providing enormous insight into the relationship between the state and business stakeholders that directly relates to Kingdon’s conceptualization of the relationship between the development of a policy agenda within a community of policy specialists and political manoeuvring. Together, the two models facilitate the understanding of the structural properties of state agencies and organized interest groups.

Methodology

This thesis is primarily based on a series of Key Informant Interviews with Canadian “policy specialists” working in the field of trade and e-commerce policy. These specialists included: officials from the Department of Foreign Affairs and International Trade, Industry Canada, Finance and Heritage Canada; members of the media; various corporate lobby groups; and finally, key academics and consultants. Several of the interviews were rather detailed and lengthy using Semi-Structured Interviewing (SSI), while others addressed only particular issues or provided general context and direction.

A total of 15 interviews were conducted between November 1999 and June 2000, most interviews lasting approximately one hour. The resulting sample of officials was drawn from 4 government departments, 3 firms, 2 business associations, and 1 academic institution. In this instance, the advantage of using Key Informant Interviews was that the interviews could be loosely structured, relying on a list of issues to be discussed while still allowing a free flow of ideas and information. As recognized by Krishna Kumar, among others, Key Informant Interviews are particularly useful when there is a need to understand motivation, behavior, and perspectives.⁹ Accordingly, they are particularly advantageous to the extent that they: provide information directly from knowledgeable

⁹ Krishna Kumar, *Conducting Key Informant Interviews in Developing Countries: AID Program Design and Evaluation Methodology Report No. 13* (December 1986).

people; provide flexibility to explore new ideas and issues not anticipated during the planning; and are inexpensive and simple to conduct.

The drawback of using Key Informant Interviews is that they are not especially appropriate if quantitative data is needed, may be biased if informants are not carefully selected, are susceptible to interviewer biases, and may make it difficult to prove the validity of findings. Accordingly, in this instance, the interview process was semi-structured which enabled the interviewer to be guided by a schedule of questions structured around a particular topic. Unlike Structured Interviewing (SI), Semi-Structured Interviewing (SSI) means that the ordering of questions is less important and the interviewer is freer to probe interesting areas that arise. The respondent therefore shares in the shaping of the interview, since respondents are treated as experts on the subject. Thus while this reduces the control that the researcher has over the situation and the data produced may be harder to analyze, this type of interviewing can facilitate rapport, allow for a greater flexibility of coverage and tends to produce richer data.

Together, the interviews, therefore, offered a compelling picture of the organization of state and society in the domain where trade and e-commerce policy intersect. These interviews are referred to specifically in many parts of this thesis, but their value extends far beyond these references. The discussions that were held stimulated much of the thinking behind the ideas contained within these pages and had an impact on all parts of this study. Although in Chapters 3 and 4 some attention is placed to a discussion of data in order to describe the Canadian policy environment surrounding the classification of electronic deliverables, the purpose of this study is not to make an extensive report on this data set. Rather, findings stemming from the interview process

have served to assist in the refinement of this policy process in Canada and to provide much needed detail. Included in the appendices are the forms used and questions asked.

A considerable amount of time was also spent in reviewing the large volume of web-based material posted regularly by various Canadian, American, European, Japanese, and Australian government departments, as well as by organizations such as the Organization for Economic Cooperation and Development and the World Trade Organization. Much of this material was in the form of formal documentation, however, some of it has included unpublished position papers, lines of communication and meeting minutes. It must be noted that some of this research was obtained while employed at Telelobe Inc., and while not classified material, much of it has never been made public.

Finally, the theoretical lens for this thesis draws heavily upon the wide variety of public policy and international relations literature on the subject of policy decision making, trade policy, and e-commerce. Particular emphasis has been placed upon the work of John Kingdon and his theory of public policy making; various Canadian public policy writings of the same nature, most notably Michael Atkinson and William Coleman; and the work of Robert Keohane and Judith Goldstein, who shed light on how ideas impact the overall result of policy process.

Organization of the Paper

The object of this thesis is to answer two subsidiary research questions – how do preferences arise, and how do preferences affect policy outcomes – with the aim of

explaining why it is that the Canadian government has initially favored the classification of electronic deliverables as services.

Chapter 2 provides a detailed description of e-commerce and the classification issue, in addition to exploring the international context of Canada's policy dilemma in an effort to establish a context for these questions.

Chapter 3 lays out the theoretical foundation necessary for the understanding of public policymaking. Emphasis is placed upon the manner in which ideas affect the construction of preferences, as well as the structural properties of state agencies and organized interest groups, in an effort to explain how preferences lead to policy outcomes. It relies heavily on a model combining three key bodies of scholarly work drawn from Goldstein, Atkinson and Coleman, and Kingdon.

Chapter 4 aims to shed light on how Canadian stakeholders have affected the Canadian government's approach, focusing on the Canadian domestic policy environment surrounding the classification of electronic deliverables with the aim of identifying key structures of trade and e-commerce policy. Moreover, this chapter also aims to demonstrate that the empirical anomalies generated from a purely structural account of trade policy can be resolved by the recognition that ideas affect the manner in which policy entrepreneurs formulate preferences, particularly when faced with few international and domestic policy constraints and when the policy environment is uncertain. It argues that ideas regarding the need to protect Canadian cultural identity have been sufficiently institutionalized within Canadian trade policy circles that despite the obstacles created by technology to the efforts of the federal government to ensure a place for Canadian cultural content, they have become "sticky."

Finally, Chapter 5 examines the implications of these findings for policy research, suggesting that structural and ideational factors can and must be considered in tandem for the purposes of explaining policy.

CHAPTER 2: SETTING THE CONTEXT: THE INTERNATIONAL E-COMMERCE ENVIRONMENT

Defining e-commerce

In the last several years, e-commerce, particularly Internet e-commerce, has experienced rapid and dynamic growth. Today, approximately one hundred countries have access to the Internet, with over 250 million Internet users world-wide, one quarter of which have made purchases on-line.¹⁰ Not surprisingly, this expansion in e-commerce is expected to continue at an ever rapid rate. Forrester Research, a leading expert in e-commerce, has estimated that world e-commerce transactions, that is those transactions between a business and their customers (B2C), will grow from \$13 billion U.S. in 1998 to \$240 billion U.S. in 2003. In the same time frame, business to business (B2B) transactions are expected to catapult from \$68 billion U.S. to more than \$3.2 trillion U.S.

Figure 1:

¹⁰ OECD, ECO/WKP (2000)25

Unfortunately, however, this growth has not been accompanied by an attempt to clarify the terminology used when referring to e-commerce. Today, dozens of concepts including “E-business,” “Internet Commerce,” and “the digital economy,” are used interchangeably with the catch-all phrase e-commerce. Such a loose application of the concept has meant that e-commerce is far too often described as something fundamentally new. In reality, however, including retail transactions that take place by telephone, fax, automated banking machines, credit cards, debit cards, secure private computer networks through Electronic Data Interchange (EDI), and business handled over the Internet, e-commerce has been around for some time.

At a most basic level, e-commerce is the delivery of information, products, services or payments by telephone, computer or other automated media. In this respect, it can include any kind of transaction made using digital technology in open networks like the Internet, closed networks such as EDI, and credit and debit card transactions. A useful definition, therefore, is that of the World Trade Organization (WTO), which defines e-commerce as the production, advertising, sale and distribution of products via telecommunications networks. The definition therefore distinguishes three stages in the process: searching, ordering and payment, and delivery, involving three types of commercial activity:

1. The sale of products that may be advertised, ordered, and paid for electronically but which are *delivered physically*.
2. The sale of products that may be advertised, ordered, and paid for electronically and are *delivered electronically*.
3. The provision of the infrastructure needed to make these first or second types of transactions possible, such as basic and enhanced telecommunications services.¹¹

¹¹ World Trade Organization, *Electronic commerce and the WTO* (Geneva: WTO, 1998).

In all three cases, e-commerce aims to dramatically reduce the economic distance between producers and consumers. Consumers can make their purchases directly without involving traditional retailers, wholesalers, and in some cases distributors. They benefit from improved information, lower transaction costs and thus lower prices, larger choices which can include products tailored to individual requirements, and instant delivery for intangible services and products in digital form. For sellers, e-commerce also presents many advantages: producers and specialist resellers can gain access to a global marketplace with relative ease, without needing to maintain a physical store and with the possibility that inventory can be managed more efficiently. Start-up capital requirements on the Internet are typically low and the Internet gives enterprises the ability to access an inexpensive, global communications system, through which goods can be marketed, sold and possibly delivered without the existence of intermediaries. For a producer of software, this innovation has meant that it can sell and deliver its products directly to the consumer while likewise, the airline company can offer its consumers the option of purchasing an electronic ticket from a website.

As noted in a recent advisory committee report to Canada's Minister of National Revenue, such advantages are evident in both business-to-business and business-to-consumer transactions.¹² In the instance of the former, business-to-business e-commerce promises to improve corporate productivity and lower transaction costs by streamlining processes such as inventory management, product distribution, supplier relations, and even payment management. This is of particular benefit to many of the one million Canadian small and medium sized enterprises (SMEs) in the areas of market access,

¹² Canada, Revenue Canada, *Electronic Commerce and Canada's Tax Administration: A Report to the Minister of National Revenue from the Minister's Advisory Committee on Electronic Commerce*.

networking and communications. For example, according to the Information Highway Advisory Council created in 1994 by the Canadian government, business-to-business e-commerce will allow SMEs to eliminate some 90 percent of their paper-based transactions, significantly reducing their operating costs.¹³

However, it is e-commerce's impact upon business-to-consumer relations that is most noticeable. One of the Internet's most astonishing effects on business-to-consumer commerce has been to reduce entry barriers by cutting costs in two ways. First, Internet e-commerce reduces the cost of marketing and of consumer information. Anyone with basic computer skills can put up a website, which can then be potentially seen by fifty-seven million people for less than the cost of a poster on a billboard. Secondly, for some products such as computer games, newspapers and software, the Internet reduces the costs of distribution. These products can not only be ordered but also delivered electronically, presenting wider scope, not just for marketing, but for enormous economies of distribution. On-line delivery thus offers an extremely inexpensive way to test-market new products, such as software and games.

Nevertheless, even when the product is physical and requires physical distribution, new models are emerging with lower entry costs as a result of Internet e-commerce. A prime example is Amazon.com, a Seattle-based bookshop that displays on its Web site a catalogue of most English-language book in print. Apart from 400 or so bestsellers, the company keeps no books in stock. Instead it passes on customers' orders to the nearby warehouse of Ingram book, one of America's biggest booksellers, to be wrapped and sent out. Another successful model for the future may be GE Trading Process Network, a secure Internet-based electronic network launched by the General

This figure is given by IHAC as cited in *ibid*, p 10.

Electric company in January 1996. One year later, through its Web site, GE was doing \$1 billion of business per year with about 1400 of its suppliers, a sum that in 1997, exceeded all consumer e-commerce put together.¹⁴ The venture has had extraordinary effects. It has cut the bidding process in GE's lighting division from twenty-one days to ten. Because requesting bids is simple, more firms bid and so the cost of goods has fallen by 5 to 20 percent.¹⁵

With Internet e-commerce, a company's market is no longer its locality or even its nation. International mail-order and electronic distribution will be big business, bringing customers an unprecedented range of choices and driving price competition, creating global brands and global pricing strategies. Where companies are willing to post the prices of products on-line, buyers can search easily for the lowest price; and second, the Internet makes auctions easy and widens the number of bidders who can take part in them. In the end, Internet e-commerce allows well-informed buyers and sellers to deal in all sorts of goods and services at prices that more accurately reflect supply and demand around the world.

Consequently, by raising economic efficiency, e-commerce should increase overall wealth, despite placing short-term pressures on existing economic infrastructures, and possibly on employment. As e-commerce leads to the spatial expansion of markets and to a foundation of new businesses, a number of skilled and unskilled jobs are likely to be created. Moreover, the application of telecommunications network and information technology may also provide flexibility of time and place of work that offers new opportunities for employees. The social benefits of Internet e-commerce are only

¹⁴ Francis Cairncross, *The Death of Distance* (Harvard University Press, 1997), 149.

¹⁵ Ibid.

beginning to be felt by the general public of countries actively promoting and supporting the proliferation of e-commerce technologies.

The Problem of Regulating E-Commerce in a Borderless World

To take the words of one *Globe and Mail* journalist, “Its e-commerce, not Field of Dreams. If you build it, they won’t necessarily come.”¹⁶ To ensure that individuals, corporations and states can reap the benefits of e-commerce, a general recognition has emerged that the diffusion of e-commerce technology must occur across and within all sectors of the global economy. With this in mind, governments will need to develop policies that encourage, rather than, impede the growth of e-commerce.

The international e-commerce policy environment is unfortunately not an easy one to grasp. Various governments such as the United States, Japan, Australia, the European Union, and Canada have actively developed e-commerce strategies designed to provide a set of principles, present a series of policies, and establish a road map for international discussions and agreements to facilitate the growth of commerce on the Internet. Contained within documents such as: the United States’, *A Framework for Global Electronic Commerce*,¹⁷ and Japan’s, *Towards the Age of the Digital Economy*,¹⁸ industrialized countries have largely approached domestic e-commerce policy with the aim of ensuring greater clarity and confidence in electronic transactions, focusing on items of policy importance including: consumer protection, taxation, intellectual property, privacy, and security.

¹⁶ “More to Making Money than Web site,” *Globe and Mail*, Section C, Tuesday, Nov 10, 1998, C2.

¹⁷ United States, *A Framework for Global Electronic Commerce*, www.ecommerce.gov/framework.htm

¹⁸ Japan, *Towards the Age of the Digital Economy*, www.wcoomd/ecjapan.htm

In approaching the prospect of regulating e-commerce, two basic attitudes have emerged. The first has taken a rather benign view, asserting that for the time being, it is best to let market-forces and self-regulation determine how e-commerce will evolve and to keep government intervention at a minimum. This approach has been favoured primarily by the government of the United States which has argued that excessive regulation on the part of government will only lead to the stifling of e-commerce as an industry and to prevent consumers from benefiting fully from its growth. The second school of thought has been more pro-active, moving quickly in an attempt to solve and anticipate problem areas by providing government regulatory solutions. It is well illustrated by the EU *Directive on the Protection of Personal Data*, which significantly restricts the capacity of non-EU members to offer Internet-based products to EU consumers. More generally, such an approach posits the need for governments to act collectively, using the vehicle of trade negotiations to meet a wide variety of non-economic societal objectives.

Despite these differences, however, neither side has attempted to dispute the fact that e-commerce policy cannot succeed in isolation of the recognition of the significance of the border-less nature of e-commerce. Rather, given the global nature of e-commerce, governments have proceeded with the assumption that ultimately all e-commerce policies and activities, whether international, domestic or regional, or public or private sector initiatives, will have limited impact unless they facilitate an international approach. Accordingly, e-commerce has been discussed within a number of different international fora, such as the Organization for Economic Cooperation and Development (OECD), the Group of Seven Nations (G7), Asia-Pacific Economic Cooperation (APEC), the

International Telecommunications Union (ITU), the United Nations Committee on International Trade Law (UNCITRAL), the Free Trade Area of the Americas (FTAA), and the World Intellectual Property Organization (WIPO). The classification issue however, has centered almost entirely on the World Trade Organization (WTO).

The World Trade Organization

Since 1998, WTO members have begun to explore how the organization should deal with the question of e-commerce. Headquartered in Geneva, Switzerland, the WTO was formed in 1995 as a successor to the GATT in an effort to establish a multilateral forum to oversee the administration and functioning of the rules governing international trade. As such, given that the WTO constitutes a contractual framework of rules stipulating the kinds of trade policies and practices its Members may pursue in regulating trade in goods and services and related policies involving investment and the protection of intellectual property rights, the organization has a crucial role to play in ensuring the expansion of e-commerce on a global scale.

On-line trade was recognized by the organization as early as the WTO's creation in 1995, in the context of the GATS Annex on Telecommunications, which guaranteed that whenever a WTO member has specific market access and national treatment commitments for a particular service sector or sub-sector, such commitments apply also to those services sectors and sub-sectors when provided in electronic form. Now, however, discussion of e-commerce by the WTO has progressed far beyond this principle

of technology neutrality. The most comprehensive topic of debate for WTO members is how it is that the WTO's provisions apply to the various forms of electronic transactions.

The Treatment of Goods and Services

International trade in goods and trade in services are governed by two separate agreements under the WTO: the General Agreement of Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). In many respects, the two agreements are complementary to one another: both the GATT and the GATS typically set out the objectives to be attained; a structure of rules; the methods of liberalization; procedures for notification; methods of implementation; a commitment to monitoring and review; and they often prescribe special treatment for developing countries.

Yet significant differences between the architecture of the two agreements exist which subsequently make the classification of electronic deliverables politically and economically sensitive for Member countries. Within each of the agreements are a series of detailed Schedules of commitments made by Members allowing specific foreign good or service providers access to their markets. For the GATT, these take the form of binding commitments on tariffs for goods in general, while for the GATS, each of the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services not subject to Most Favored Nation (MFN) treatment.¹⁹ In the instance of the GATT, therefore, National Treatment (NT) is a broad requirement that applies to all goods and is qualified only by a number of narrow

¹⁹ Two principles provide non-discriminatory treatment among Members: MFN and NT. MFN provides that all Members seeking to reduce tariffs for another Member must do so for all other Members. NT requires that governments not discriminate between foreign and domestic goods within the domestic marketplace.

and specific exceptions. The GATS, however, deals with international trade in services somewhat differently, namely because national treatment under the GATS is a negotiated commitment that may be qualified and limited for those service sectors that are part of the commitment. As a result, the GATS operates on three levels which include: a main text containing general principles and obligations; several annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets. E-commerce accordingly presents Member countries of the WTO with an interesting challenge: to determine which of the two agreements is most applicable to electronic transactions.

Unfortunately, the distinction between goods and services is not explicitly defined by the WTO and its agreements. Goods have generally been characterized by virtue of the physical attributes that they possess. As a consequence, characteristics of color, shape, size, content, function, etc. have been frequently used to compare goods to one another in order to assess whether they are “like products” as defined by the GATT.

By contrast, services have been generally considered as intangible, invisible and perishable, requiring simultaneous production and consumption. The Economist, for example, once described services as anything sold in trade that could not be dropped on your foot. The most widely used definition of services in international trade is that based on the listing of twelve service sectors and 155 subsectors adopted by the GATS:

- Business services (including professional and computer services)
- Communication services
- Construction and engineering services
- Distribution services
- Educational services
- Environmental services
- Financial services (insurance and banking)

Health services
Tourism and travel services
Recreational, cultural and sporting services
Transport services
Other services (not included elsewhere)²⁰

Such a definition has the advantage of being clear cut; however, technology has made it increasingly difficult to categorize commercial activity given that the majority of economic activities that are handled fully on the Internet, such as the capacity to browse, search, order and pay for selected goods and services constitute a combination of information, knowledge and ideas that can be digitalized and used in a variety of formats. For the most part, consensus has emerged internationally that the electronic impulses involved in delivering these products constitute the physical basis of a service transaction from a trade policy perspective. The problem is how to identify the electronic deliverable itself once it has been separated from service transactions such as advertising, credit verification, payment and distribution.

Classifying Electronic Transactions

Given the unique nature of this emerging mode of delivering products, many questions remain unanswered. On the one hand, all services, including electronically-delivered services, are clearly covered by the GATS. Despite several exceptions, commitments by WTO members in their GATS schedules are technology neutral. Thus regardless of whether a service is provided electronically or physically, be it financial, architectural, or medical, for example, commitments in service sectors are binding.

²⁰ Michel Kostecki, "International trade in Services," in *Trade Politics: International, Domestic and Regional Perspectives*, eds. Brian Hocking and Steven McGuire (New York: Routledge, 1999), 67.

Similarly, the classification of goods which can be bought and paid for over the Internet but are delivered physically is also relatively simple: these products are already subject to existing WTO rules on trade in goods under the GATT. An example that could be used here would be how a book purchased from Amazon.com would be treated according to WTO rules.

The situation, however, is far more complicated for products that can be delivered as digitized information over the Internet such as software or music, as a variety of issues arise relating to the appropriate policy regime. In most cases, electronic transactions involve the downloading of information from one computer to another in the form of digitized data. This digitized content can be regarded as distinct from the act of providing the content. The problem, however, is in identifying whether the digital content is itself a good or a service. The fact that physical media such as books, disks, magazines and diskettes can carry the same type of information as the digitized data exchanged in e-commerce make this type of classification difficult. Hence, what is needed for the purposes of applying WTO rules is a set of criteria from which to develop a logical framework for classification of electronic deliverables.

The Traditional Goods vs. Services Distinction

Until recently, the classification issue has received little attention from the academic trade policy community, much less from political scientists and economists on the whole. In fact, over the last several decades, there has been very minimal discussion of what constitutes a good and what constitutes a service. With the expected growth in e-

commerce, however, new efforts have been put forth towards the development of a taxonomy for the classification of different kinds of output.

The issue is important by virtue of the impact that the classification of electronic transactions can have for the commercial activities of business. However, this question also carries with it implications for tax and customs procedures, particularly in light of the 1998 WTO Ministerial Declaration to apply a one year moratorium on the collection of customs duties applied to electronic transmissions. The moratorium, which has since been extended, has created an element of discrimination to the extent that a product such as a book, magazine or computer program delivered electronically is not charged customs duties or taxes while charges may be levied on a directly substitutable or competing product delivered as a physical good. Thus if the two suppliers are in two different countries, there could arise some concerns regarding contravention of the MFN principle.

As a consequence, attention has recently been directed to the possibility of establishing a precise distinction between goods and services. One of the most recent and controversial works on this subject is that of Peter Hill who, in a 1997 paper, has considered why it is that the traditional distinction between goods and services has been frequently explained as equivalent to a distinction between physical commodities and intangible products.²¹

As Hill observes, for nearly two centuries, economists including Adam Smith, J.B. Say, Nassau Senior, John Stuart Mill, and Alfred Marshall have contributed to the almost universal practice of identifying services as immaterial products. From Smith's description of services as the product of "unproductive laborers" to Say and Senior's

references of “immaterial products,” the terminology used to describe services has been misleading. The consequence of this practice has meant that the essential difference between goods and services has been frequently overlooked, with services most often described as intangible and incapable of being stored.²²

In many instances, however, the tendency of economists to identify services as either immaterial or intangible products has been merely a product of the use of inappropriate terminology. For instance, Say considers the example of a physician who prescribes a remedy and takes his leave without depositing any product and then asks rhetorically:

Has the industry of the physician been unproductive? Who can for a moment suppose so? The patient’s life has been saved perhaps. Was this product incapable of becoming an object of banter? By no means: the physicians advice has been exchanged for his fee; but the want of this advice ceased the moment it was given. The act of giving was its production, of hearing its consumption, and the consumption and production were simultaneous.
This is what I call the immaterial product.²³

At the time, Say’s central point was not to emphasize that services should be identified as immaterial products, but rather, that the difference between goods and services is more economic than physical. As Hill has paraphrased: “Service producers never have unsold outputs.”²⁴ If one takes this analysis to be correct, the answer to the question of whether electronic deliverables should be classified as goods or services becomes clearer: theoretically, “digital products” have much in common with goods and nothing in common with services.

²¹ Peter Hill, “Tangibles, Intangibles and Services: A New Taxonomy for the Classification of Output.”

²² Michel Kostecki, “International trade in services,” in *Trade Politics*, 68.

²³ Hill, “Tangibles, Intangibles and Services: A New Taxonomy for the Classification of Output,” 6.

²⁴ *Ibid*, 21.

Indeed, it seems clear that, as Hicks observed, goods have to be produced before they can be consumed – their production and consumption are separate and sequential – so that they must enter into inventory, even if only momentary, after they are produced.²⁵ Services, on the other hand, cannot enter inventory because they are not entities that exist independently of their producers and their consumers. In theory, therefore, services are not to be defined in terms of their tangibility relative to goods.

Hill's argument is a contentious one, particularly for policymakers who have argued that, for the purposes of policy, it is necessary to look beyond the theoretical distinction between goods and services that Hicks develops and to recognize that the classification issue is as much political as it is economic. On the one hand, various private sector entities have lobbied government to ensure that their approach to the classification of electronic deliverables permits businesses to choose the most efficient methods of delivering their goods and services. In order to achieve this efficiency, business groups, particularly those in the software industry, have argued that policy must therefore aim to have a neutral impact on a particular company's decision to offer a product in either physical or electronic form. In their view, any classification regime that unfairly or unnecessarily targets e-commerce or that artificially subjects it to GATT or GATS rules would have severely detrimental effects to the industry as a whole.

On the other hand, however, governments have also been challenged to respond to a number of other policy concerns related to the classification of electronic deliverables, particularly in the area of culture. For governments such as Canada and the European Union, the fear is that the classification of digital products as either goods or services may have a negative impact on the ability of government to ensure a place for indigenous

²⁵ J.R. Hicks, *The Social Framework* (Oxford: University of Oxford Press, 1942).

cultural products when transmitted in a digital form. The preference from this perspective has been to view electronic deliverables as services under the GATS, where governments can take advantage of the agreement's unique structure in order to decline to undertake international obligations relating to trade in cultural services.

The response of various governments to such concerns has varied from country to country, differences that are particularly visible when one looks at the United States, Japan, the European Union, and Canada as examples. In each case, the policy preference indicated by each of the countries' governments reflects key international and domestic political, economic and social factors. The policy approaches of each will be reviewed briefly in this chapter. The focus of Chapters 3, 4 and 5 will be an exploration of Canada's particular policy stance towards the classification of electronic deliverables, and how policy preferences on the issue have been shaped within the Canadian policy environment.

Comparing Policy Approaches

With the 1998 adoption by the WTO General Council of a Work Programme on Electronic Commerce, member countries were asked to consider various trade-related aspects of e-commerce, one of which included how to go about classifying different types of electronic transactions. Among key players within the organization, a wide range of opinions have been voiced, agreeing on some issues while sharply disagreeing on others.

For the most part, members have reached consensus on how to view transactions where products may be advertised, ordered, and paid for electronically but which are delivered physically. In these types of transactions, the physical deliverable should be classified as either a good or a service in exactly the same way that it would if the product

were advertised, ordered or paid for in a non-electronic world.²⁶ Moreover, member countries have also been largely united on the treatment of electronically delivered services. In a submission to the General Council of the WTO, the Council for Trade in Services was clear in its approach to the classification of electronic services: to identify electronic services as falling within the scope of the GATS since the Agreement applies to all services regardless of the means by which they are delivered.²⁷

Where classification issues are more murky, however, is in how so-called “digital products” such as music and software which are delivered in an electronic format should be classified when their physical equivalent is clearly a good covered under the GATT. On this issue, some delegations have been of the view that all electronic deliveries constitute services and are therefore subject to GATS rules. Others however, have pointed to the example of certain digital products such as software, electronic greeting cards, clip-art, and Web-pages which can be created, distributed and used entirely within a network, never acquiring a physical form, and have argued that many of these products may constitute goods.²⁸

The European Union (EU) and its member countries have been clear in their approach to the classification of electronic transmissions: according to a March of 1999 communication, “all electronic deliveries, including digitalized products, are services and therefore the GATS applies.”²⁹ This policy decision is premised on a rather specific attention to the concept of technology neutrality by ensuring that perfect competition will

²⁶ WTO, Council for Trade in Goods, *Work Programme on Electronic Commerce: Progress Report to the General Council* (July 19, 1999), G/C/W/58.

²⁷ WTO, Council for Trade in Services, *Work Programme on Electronic Commerce: Progress Report to the General Council* (July 19, 1999), S/C/8.

²⁸ WTO, General Council, *Submission by the United States to the WTO Work Programme on Electronic commerce* (February 12, 1999), WT/GC/16, G/2/7, IP/C/16, WT/COMTD/17.

²⁹ European Commission, “Digital Products: The Case for Services,” March 26, 1999.

not be distorted by the uneven treatment of the provision of similar content. According to the EU,

Films, news, music, games and multimedia contents are services. They are not tangible and do not have any entity on themselves. When they are incorporated in goods (tape, CDs, paper) they remain being services. In the absence of the goods (tapes, CDs or paper) the services nature of the product is the only relevant one.³⁰

The EU's approach draws heavily on the Computer Carrier Media Remission Order established under the GATT in 1984 which declared that customs duties would not be assessed on the value of data content, but rather, only on the value of the carrier medium itself and on the cost of reproducing the information onto the medium. In this respect, the EU has argued that content is distinctly separate from its carrier, in much the same way that music can be distinguished from the CD on which it is placed.

In sharp contrast to the EU, the United States and, to a certain extent Japan, have argued that while the transmission of digital products constitutes a service, the products themselves may be analogous to goods and therefore fall under the GATT.³¹ The reasoning of the United States behind this position is twofold: first, it is predicated on the fact that other "intangible" entities such as oxygen, gas and electricity are considered goods under WTO rules; and second, their argument is that given the broader reach of WTO disciplines accorded by the GATT, there may be an advantage to a GATT versus GATS approach to such products which could provide a more trade liberalizing outcome for e-commerce. Japan, likewise, has also indicated a preference for the classification of electronic deliverables as goods under the GATT, suggesting that GATT principles of most-favoured-nation treatment, national treatment and the general elimination of

³⁰ European Commission, "Digital Products: The Case for Services," March 26, 1999.

quantitative restrictions would be more favorable to the WTO's goal of trade liberalization.³²

The overall objective of the United States and Japan in their approach to the classification of electronic deliverables is clear in this respect. Their fear is generally that since the GATS is not as comprehensive as the GATT, the classification of electronic deliverables as services would constitute something of a step backward for the organization's aim of liberalization in the international trade of goods and services. In particular, the two countries are concerned that the manner in which classification is approached could have an impact on the physical equivalents of digital products, software representing a particularly sticky example. In their view, it is unclear what will happen to sectors that currently enjoy a virtual global free trade environment, where few market access barriers exist and where WTO members have committed themselves to fully open, liberalized markets.

In approaching the question of how to go about the classification of electronic deliverables, the Canadian government has therefore been faced with a difficult challenge: to argue for the classification of electronic deliverables as services following the example of the EU, or to identify these products as goods in much the same way as the United States and Japan. To some extent, its approach parallels other policy initiatives in the area of e-commerce.

³¹ United States, *Submission by the United States for the General Council, the Council for Trade in Services, the Council for Trade in Goods, and the Committee on Trade and Development*, WT/GC/16 (February 11, 1999), 5-6.

³² Japan, *Communication from Japan as part of the WTO General Council Preparations for the 1999 Ministerial Conference*, WT/GC/W/253 (July 14, 1999), 2.

The Canadian Strategy

In September 1998, the Canadian federal government released a document outlining its e-commerce policy entitled *Canada's Electronic Commerce Strategy*,³³ a document that was produced in collaboration with the provinces, territories, private sector and other stakeholders. The Strategy outlined initiatives designed to establish Canada as a world leader in the adoption and use of e-commerce, emphasizing four principal aims (1) to ensure that Canadian consumers and business have trust in the digital economy by addressing security, privacy and consumer protection concerns, (2) to remove barriers to e-commerce by clarifying and updating the rules that govern how business is transacted to ensure that they apply to the digital world, (3) to strengthen the information infrastructure, and (4) to fully realize the opportunities presented by e-commerce, ensuring that they are diffused to all Canadians.

With this in mind, the Strategy emphasized the need for a close partnership between the private sector, including businesses, consumers and public interest groups, and all levels of government. The government therefore proposed to support the private sector-led development of e-commerce by developing a supportive and responsive domestic policy environment that would allow market flexibility while maintaining minimum baselines for a fair marketplace and consistent treatment of electronic and paper-based commerce.

Unfortunately, this has meant that Canada's approach to e-commerce policy is an inconsistent one. On the one hand, trade and industry officials, attracted by the exciting possibilities associated with e-commerce, have tended to be suspicious of any rush to regulate the Internet. For these individuals, emphasis has been placed on a hands-off

approach, with an expectation that e-commerce is likely to be inhibited by a web of rules and regulations. On the other hand, officials charged with various regulatory responsibilities, ranging from consumer protection and law enforcement to the preservation of Canadian cultural values, have worried that e-commerce may undermine their capacity to carry out their mandates. When faced with the prospect of leaving the Internet to regulate itself, their temptation has been to find the means to place more onerous restrictions on e-commerce.

The consequence of this diversity of views within the Canadian policy community has had a significant impact on the way in which e-commerce policy has developed in Canada. In some areas, particularly those in which government has worked closely with the private sector, the federal government has been relatively successful. Successful policy initiatives have included a policy on the use of cryptography for the conduct of e-commerce, legislation for the creation of a legal framework for the protection of personal information (Bill C-6), a “technology-neutral” approach to e-commerce taxation which avoids Internet-specific taxes, and a private sector organization responsible for registration and governance of top level domain names (ICANN).

In other areas, however, most notably in the area of classification, the Canadian government has been much less pro-active. Thus far, the Canadian government has failed to produce a *formal* position on the classification of electronic deliverables. Instead, Canada has opted to postpone a policy decision in this area, proposing that premature action could unintentionally hurt Canadian producers and consumers. Moreover, Canada has also proceeded with the view that this matter must be resolved domestically before a formal position is made public.

Much of the discussion surrounding the classification of electronic deliverables is framed by a sea of bewilderment and confusion, perhaps best illustrated by an examination of classification in a June 1999 Department of Foreign Affairs and International Trade (DFAIT) Discussion Paper: (emphasis in original text)

The issue of how the WTO agreements cover **electronic deliverables that have or can be made to have a physical equivalent** raises some difficult questions. If a book, a software or a piece of music is delivered electronically, **is this a good or a service?** The telecommunications service (e.g., Internet service) that provides for the transmission of the software is a service covered by the GATS. The distribution service that rides on top of the transmission service, the service that responds to a request for the software by distributing it from a server to all points requesting the software - this too is a service covered by the GATS. The on-line advertising promoting the software or promoting other items while the buyer was deciding whether to buy the software - this is a service. The electronic payment system that allows the buyer to send his credit card information to the seller and then have the credit card company pay the seller for the cost of the software - this too is a service. Hence, at the very least, we can say that most of the commercial transactions surrounding the electronic deliverable in this case are services covered by the GATS.

What about the electronic deliverable itself? In many cases, these electronic transactions consist of the downloading of information. This information is placed on the consumer's computer in the form of digitized data. This digital content can be regarded as distinct from the act of providing the content, which is clearly a service. But is the digital content a service? The fact that physical media (books, disks, magazines, diskettes) can carry the same type of information (text, music, images, software codes) as the digitized data exchanged in electronic commerce make the classification difficult. What is needed is a set of criteria on which to develop a logical framework for classification of electronic deliverables for the purposes of applying WTO rules.³⁴

Thus far, the position of various government departments has been that, upon preliminary analysis, it is in Canada's interest to support the GATS as the preferred trade agreement for governing transactions of electronic deliverables, even in circumstances where they can have a physical equivalent. This preference was indicated publicly in September 1999 in conjunction with the Canadian government's proposal to the WTO on e-

³⁴ Canada, Department of Foreign Affairs and International Trade, *Global E-Commerce* (Discussion Paper, June 1999), www.dfait-maeci.gc.ca/tna-nac/discussion/ecom2-e.asp

commerce for the Seattle Ministerial.³⁵ However, the statement was made with little reference to the reasons behind the particular approach. From the perspective of the individuals interviewed, this was a conscious move due in large part to the fact that Canadian officials were not ready to support their decision with a series of justifications regarding classification. In one interviewee's words: "We would like to see electronic deliverables classified as services. The problem is how to justify this position."³⁶

One year later, the federal government has still not specified the rationale behind its proposed strategy, begging the question of why it is that Canada has taken the position that e-deliverables represent services for the purposed of classification. Has the country been motivated primarily by international pressures? Is Canada's policy direction the product of lobbying from numerous internal, domestic interest groups? Can the decision be explained using some other means?

Predicting Policy Outcomes: International vs. Domestic Explanations

In cyberspace, the real power will lie with those who make the rules.³⁷

Identifying the means by which certain policy alternatives come to dominate over others has long perplexed political scientists. At a most basic level, the dilemma is one of attempting to explain exactly when it is that an idea's time comes to be – how it is that beliefs shared by large numbers of people about the nature of their world have implications for human action.³⁸ However, this issue is only a subset of the larger

³⁵ Ibid.

³⁶ Interview with Heritage Canada, January 31, 2000.

³⁷ Debora Spur and Jeffrey Bussgang as cited by Walid Mougayar, *Opening Digital Markets: Battle Plans and Business Strategies for Internet Commerce* (McGraw-Hill, 1998), 139.

³⁸ Judith Goldstein and Robert Keohane, "Ideas and Foreign Policy: An Analytical Framework," in *Ideas and Foreign Policy: Beliefs, Institutions and Policy Change*, eds. Judith Goldstein and Robert Keohane (Ithaca: Cornell University Press, 1993), 7.

question of how certain problems surface on a government's foreign policy agenda, and why certain choices are selected in response.

The first question that must be asked is how it is the Canadian government would be *expected* to behave. One way of looking at this problem would be to suggest that trade is a foreign policy issue and that one must look to international structure as a central determinant of state interests. International systemic explanations, particularly those of the realist school, would assume here that Canada, like other states, is simply a unitary actor responding to external constraints, primarily driven by the country's position relative to others in the international state system. As Thucydides put it, "the strong do what they can and the weak suffer what they must." This more traditional view of international politics would posit that leaders will act and think in terms of interest defined as power, and if this national interest is not calculated in terms of a state's position relative to other states, the results will be catastrophic.

Early on in this study, this realist conception of policy formation was quickly eliminated. All 15 of the respondents from this study confirmed that the Canadian government has been under little pressure from foreign governments to conform in one way or another, nor has Canada approached this issue with consideration of how other countries would react to its policy direction. Canada has not been driven primarily by interests derived from its position relative to others in the international system. The majority of respondents felt that this reality may persist only in the short-term and that once WTO member countries establish formal positions on the classification issue, attempts to sway international opinion may arise. For the moment, however, policy preferences have been formed in isolation of direct international pressures, particularly since this process is

still in what some have referred to as the “pre-negotiation” stage.³⁹ Thus whereas many scholars can realistically draw on analogy of a “two-level game” where domestic and international negotiating contexts co-exist,⁴⁰ the question of how Canada has approached the classification of electronic deliverables does not yield this type of explanation since no negotiation is actually taking place. Rather, WTO Members are still in the process of identifying the problem at hand and the range of possible options before them, which can be most appropriately treated as first stages of pre-negotiation.⁴¹

In this instance, other explanations beg consideration, particularly those stressing domestic factors. In fact, the more predominant tendency among trade policy analysts has been to emphasize social pressures, positing that trade policy is best understood as the aggregate outcome of industry battles over protection. A micro-based perspective, this approach presumes that special interest groups shape the pattern of protection within a given country, thereby often leaving the impression that government policy is either a weighted sum of the preferences of special interest groups adopted in a passive fashion, or the end product of a calculation by a group of politicians primarily motivated by keeping themselves in office. Such explanations may be economically or politically based, but above all, they suggest that trade policy is defined by social forces.

From the start, the interview process confirmed that a study based on domestic pressures would prove to be significantly more productive than one emphasizing

³⁹ See Brian Tomlin, “The Stages of prenegotiation: the decision to negotiate North American free trade,” *International Journal* (Spring 1989); Harold Saunders, “We need a larger theory of negotiation: the importance of pre-negotiation phases,” *Negotiation Journal* (July 1985); and Fen Hampson, “Headed for the Table: US approaches to arms control prenegotiation,” *International Journal* (Spring 1989).

⁴⁰ See for example: Robert Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games,” *International Organization* (Volume 42, 1998); and Andrew Moravcsik, “Taking Liberal Preferences Seriously: A Liberal Theory of International Politics,” *International Organization* (Autumn 1997).

⁴¹ Saunders, “We need a larger theory of negotiation: the importance of pre-negotiation phases,” *Negotiation Journal* (July 1985).

international factors, particularly given the time frame in which this issue was being discussed by WTO Members. Since Seattle failed to yield a comprehensive new round of trade negotiations, Members have largely felt no substantial pressure to give weight to the emerging views of one another and have instead proceeded to continue discussions at a domestic level. Emphasis in the following chapters has therefore been given to the evaluation of theoretical models stressing domestic structures of public policy and the role of ideas in explaining and understanding the Canadian government's approach to the classification of electronic deliverables.

CHAPTER 3: THE CANADIAN DOMESTIC ENVIRONMENT: EXPLAINING OUTCOMES

This chapter will examine a range of approaches in the public policy literature, particularly literature related to the discussion of policy communities and networks, in an attempt to provide a framework from which policy predictions can be made. In Chapter 4, the analytical implications of the domestic structure-based model will then be compared against the empirical evidence gathered throughout the interview process in preparation for this thesis. The focus will subsequently shift to a discussion of Canada's domestic policy environment in order to highlight key actors and processes involved in the classification of electronic deliverables.

Understanding Policy Process: The Primeval Soup

Perhaps the best known attempt to discuss public policy making from a domestic structure perspective is the work of John Kingdon, whose book, Agendas, Alternatives and Public Policies undertakes to explore how patterns of public policy can be most appropriately understood. According to Kingdon, public policy making is best conceptualized as consisting of three separate process streams -- problem identification, the generation of policy alternatives, and political maneuvering -- that flow through a policy system on largely independent courses, but that come together at critical times in order to permit policy change.

The first stream that Kingdon identifies in his model is *problem identification*. Kingdon's argument is that various mechanisms such as indicators, focusing events, and

feedback, can serve to bring problems to the attention of government officials.⁴² In some cases, it is objective indicators, especially quantifiable ones, which can point to the presence of a problem long before political pressure has a significant impact. With governmental and non-governmental agencies routinely monitoring various activities and events such as highway deaths and disease rates, the potential for government officials to use indicators in order to assess both the magnitude of and change in a problem is frequently present. At other times, however, it is a dramatic event such as a disaster or the personal experience of a policymaker that captures an individual's attention. In these instances, the focusing event often requires accompaniment in the form of preexisting perceptions which they reinforce, firmer indicators, or combinations with other such events.⁴³ Finally, as Kingdon argues, feedback from the operation of existing programs whether in the form of systematic monitoring, complaints and casework, or bureaucratic experience, can also encourage attention to a particular problem. In his words, "feedback gives information on current performances that may not square with legislative or higher administrative intent, indicates a failure to meet stated goals, or suggests unanticipated consequences."⁴⁴

All of these elements may be present, however, and a problem may still not make it on to a government's policy agenda. According to Kingdon's model, this failure is because the policy process consists of more than a stream of problems waiting to be identified; it also includes a second stream of *policy alternatives* that must be ultimately linked to problems. The problem is in identifying exactly how this stream of policy alternatives can be defined.

⁴² John Kingdon, *Agenda's, Alternatives and Public Policy* (New York: HarperCollins, 1995), 90.

⁴³ Kingdon, *Agenda's, Alternatives and Public Policy*, 98.

On the whole, most students of the policy process seek to generalize. They may be experts in one area or another of policy, but typically, they aspire to say something about policy-making in general, ideally something that applies to a number of different political systems. The search for a “magic bullet,” a concept or image that travels across policy domains and political systems, therefore dominates the majority of public policy discourse.

And yet, as Michael Atkinson and William Coleman point out, such fragmentation has become a particularly significant obstacle to the generation of a coherent body of knowledge:

Study after study has shown us that, within the same political system, things work differently in agriculture, transportation, monetary policy, and so on. We have been forced to accept that, in advanced capitalized economies, the policy process differs considerably across policy domains. Nor do sectors provide a way out: studies of the same policy sector across different states yield diverse findings as well. Some domains are dominated by a few actors representing a limited set of interests; in others the organization ecology is complex and the interests are widely varied.⁴⁵

According to these same authors, the tendency of relevant communities of specialists to vary tremendously from one policy area to another may be especially true in Canada, where bureaucratic independence from political and business interference generally leads to a pluralistic policy making environment where no particular interest group dominates the setting of agenda.⁴⁶

The answer, therefore, seems to lie in the need to see state decisions as part of a unique and somewhat insulated policy process involving a complicated interrelationship

⁴⁴ Kingdon, *Agenda's, Alternatives and Public Policy*, 113.

⁴⁵ Michael Atkinson and William Coleman, “Policy Networks, Policy Communities and the Problems of Governance,” *Comparative Public Policy Reader* (Jawahar: Ajanta Books International, 1999), 26.

⁴⁶ Michael Atkinson and William Coleman, *The State, Business and Industrial Change in Canada* (Toronto: University of Toronto Press, 1989), 77.

of diverse interests, actors and processes that may or may not be common to other policy areas.

John Kingdon refers to this “larger policy process” as a “primeval soup” – much like the molecules that floated around prior to life coming into being, ideas float around in communities of specialists before they eventually confront one another, with some dying and others prospering depending upon whether they meet a specific criteria.⁴⁷ The use of this analogy is interesting because in suggesting that policy ideas exist within the confines of what Kingdon labels “policy communities,” our attention is diverted away from the prospect of developing a grand theory of public policy.

Other scholars have also turned to this concept of “policy community” in order to describe a community of specialists in a particular policy area. Heclo and Wildavsky for example, use the term to describe the “shared framework” within which decision-making takes place. Rhodes, more specifically, defines a policy community as a network characterized by stable relationships, restrictive membership, vertical independence and the insulation from other networks and institutions. For Wilks and Wright, a policy community refers to all actors or potential actors who share either an interest in a policy area or a common “policy focus” and who over time, succeed in shaping policy. In Kingdon’s case, policy communities are described relatively simply as being composed of specialists in a given policy area which can include a myriad of bureaucrats, researchers, academics, professional lobbyists, corporations and labor unions who have in common not only their concern with one area of policy problems, but also their interactions with one another.

⁴⁷ Kingdon, *Agendas, Alternatives and Public Policies*, 116

According to Kingdon's model, ideas float freely throughout the policy community, softened up by policy entrepreneurs in their attempts to make the general public, more specialized public, and the policy community itself ready for new ideas. These entrepreneurs are motivated by a variety of concerns including the promotion of personal interests, the promotion of values, or to simply "play the game," acting much akin to policy groupies.⁴⁸ Regardless of their incentives, however, they can play a pivotal role in the creation of an environment suitable for policy innovation, floating ideas and providing information. Once these ideas have been floated, certain criteria must be applied to proposals: technical feasibility, value acceptability, high unlikelyhood to force various external constraints. Proposals that meet these requirements are most likely to survive and are therefore placed on a short list of ideas. Some ideas attract acceptance and, as Kingdon argues, something akin to a bandwagon effect often occurs, emphasizing persuasion and diffusion.⁴⁹ The notion is that gradually an idea catches on, wherein knowledgeable people refer to a widespread feeling or common approach.

The final stream identified by Kingdon in the development of his model consists of *political manouevering*. According to Kingdon, it is developments in the political stream that have their most powerful effects on government agenda. Here, electoral, partisan and pressure group interests, and the manner in which these interests are interpreted by government participants, can have an important impact upon the policy process. Swings of national mood, election results, changes in administration, changes of ideological or partisan distributions, interest group pressure campaigns and disputes over jurisdiction all affect the political stream in Kingdon's model. The implication of this

⁴⁸ Kingdon, *Agendas, Alternatives and Public Policies*, 123.

⁴⁹ Kingdon, *Agendas, Alternatives and Public Policies*, 140.

dynamic is that while consensus in the policy stream is built through persuasion and diffusion, in the political stream, it is achieved through bargaining and coalition building among participants in the selection of a course of action.⁵⁰ Once participants sense that there is some movement, they protect their interests, contributing to sharp agenda change both because various interests receive some benefit from their participation and because a generalized image of movement is created.⁵¹

Kingdon's attempt to simplify the complex nature of public policy by breaking the process into a number of stages was not the first of its kind. Rather, his work represented something of an extension of attempts by Harold Lasswell and Gary Brewer⁵² to portray public policy making as a series of processes. But whereas scholars such as Lasswell and Brewer provided assistance in the simplification of public policy by allowing each stage to be isolated and examined separately before putting the process back together, these early models contributed very little to questions of causation to the extent that they offered no illustration of what or who drives a policy from one stage to another.⁵³ Kingdon, on the other hand, concludes that the three streams identified in his model can come together at critical times, so that a problem can be recognized, a solution can be developed and made available in the policy community, a political change makes the time right for policy change, and potential constraints are not so severe. According to Kingdon, this is most likely to occur when a "policy window" opens and policy

⁵⁰ Brian Tomlin, "On a Fast-Track Ban: the Canadian Policy Process," *Canadian Foreign Policy*, Volume 5, Number 3 (Spring 1998), 6.

⁵¹ Kingdon, *Agendas, Alternatives and Public Policies*, 163.

⁵² Lasswell divided the policy process into seven stages: 1) Intelligence, 2) Promotion, 3) Prescription, 4) Innovation, 5) Application, 6) Termination, and 7) Approval; whereas Brewer divided it into six: 1) Invention/Initiation, 2) Estimation, 3) Selection, 4) Implementation, 5) Evaluation, and 6) Termination.

⁵³ Michael Howlett and M. Ramesin, *Studying Public Policy: Policy Cycles and Policy Subsystems* (Toronto: Oxford University Press, 1995), 12.

entrepreneurs are particularly active, thereby permitting policy change. Reform in this context is, therefore, best viewed as the development of a set of converging preferences in public and private spheres that act simultaneously to open a policy window and prompt a move towards change.

Adding Policy Networks

Another body of public policy literature takes this notion of converging process streams further and delineates specific patterns of interactions that are only partially captured by Kingdon's conceptualization of the political stream. Political scientists refer to this phenomenon as displaying the existence of a "policy network," a series of dependency relationships that emerge between both organizations and individuals who are in frequent contact with one another in particular policy areas. Coleman and Skogstad, for example, use the term to describe the "properties that characterize the relationships among the particular set of actors that forms around an issue of importance to the policy community."⁵⁴ In other words, whereas the concept of policy community refers to the actors involved in policy discussion, the term policy network describes the relationships that exist among the actors, particularly in sub-government.⁵⁵

The concept finds its roots in the work of Peter Katzenstein, who in 1978 introduced the term in order to bring order to the variety of relations that prevail between

⁵⁴ Coleman and Skogstad as cited by Atkinson and Coleman, "Policy Networks, Policy Communities and the Problems of Governance," 28.

⁵⁵ How to distinguish between the two concepts represents something of a controversy for the world of public policy. For the purposes of this paper, the two will be treated as exemplifying the same idea. For a discussion of how the concepts have been treated in other works, see: Atkinson and Coleman, "Policy Networks, Policy Communities and the Problems of Governance," *Comparative Public Policy Reader*.

public and private sector actors in advanced capitalist systems, arguing that the amount of centralization in society and in the state, and the degree of differentiation between the two, were critical variables in the establishment of policy networks.⁵⁶ Katzenstein's use of the term policy network introduced three important factors to the policy process – (1) the degree of centralization visible in state apparatuses, (2) state autonomy at the sectoral level, and (3) business interest mobilization -- shedding light on how policy decisions are made in the context of state-society relations.

Not surprisingly, the context of these three factors has led to some rather strong and often divergent conclusions from the academic community regarding the relationship between state structures and the organization of business within policy networks. Poulantzian neo-Marxism for example, has posited that an “autonomous” state, capable of wide-ranging and coherent interventions in socio-economic relations, increases the social power of both leading state officials and the dominant class, because the state necessarily functions to meet the objective, collective demands of the dominant class.⁵⁷ By contrast, others such as Alvin Gouldner have approached the concept with a more Weberian imagery in mind, suggesting that state autonomy tends to produce more zero-sum propositions.⁵⁸ From this perspective, the increased ability of a bureaucratic state to realize internally generated goals supposedly reduces the power of all societal groups “outside” the state; conversely, the existence of well-organized social groups with control over the disposition of politically relevant resources implies a less autonomous state.

⁵⁶ Peter Katzenstein, *Between Power and Plenty: The Foreign Economic Policies of Advanced Industrial States* (Madison: University of Wisconsin Press, 1978).

⁵⁷ Nicos Poulantzas, *Political Power and Social Classes*, trans. Timothy O'Hagen (London: New Left Books, 1973).

⁵⁸ Alvin Gouldner's perspective is discussed by Theda Skocpol, “A Reflection on Gouldner's Conceptions of State Power and Political Liberalism,” *Theory and Society* 11 (1982).

The more common tendency however, particularly among political economists, has been to recognize that state autonomy and state capacity for effective socio-economic interventions do not necessarily go hand in hand.⁵⁹ Perhaps the most useful of these studies is that of Atkinson and Coleman who, in looking at industrial change in Canada, outline a taxonomy of policy network types based on the framework as set out by Katzenstein. Using the three factors that Katzenstein emphasizes as important in contributing to the nature of policy networks, Atkinson and Coleman develop a useful framework for attempting to classify policy networks.

The first factor that Atkinson and Coleman suggest is important when looking at the establishment of policy networks is the degree of centralization or decentralization visible in state structures. Borrowing from Hall, they argue that decision-making power is most likely to be concentrated within the hands of a relatively small number of individuals when a single agency or bureau, of the several that are active, is able to dominate relations in a given sector, giving them the capacity to aggregate authority from regional instances of government and draw information from sectoral actors, whether firms or interest associations.⁶⁰ By contrast, the state is said to be weak in a given sector when authority is dispersed and no one group of officials can take the lead in formulating policy for the industry. Under these circumstances, authority is typically diffused among the several bureaus and between levels of government, resulting in overlapping jurisdictions and bureaucratic competition.⁶¹

⁵⁹ For example see: Peter Evans, "The State as Problem and Solution: Predation, Embedded Autonomy and Structural Change."

⁶⁰ Peter Hall, "Policy Innovation and the Structure of the State: The Politics-Administrative Nexus in France and Britain," *The Annals of the American Academy of the Political and Social Science* (March 1983).

⁶¹ Ibid.

The second criterion that Atkinson and Coleman identify as significant in the establishment of a policy network is the degree to which state organizations are distinct from societal organizations, what many scholars of public policy, comparative politics and international relations have referred to as the relative autonomy of the state. In recent years, this concept of state autonomy has been something of a favorite subject for political scientists, provoking what Theda Skocpol refers to as “bringing the state back in” as a central element of political analysis.⁶² For individuals who place emphasis on this idea of state autonomy, the concept is used to describe a situation where “states conceived of as organizations claiming control over territories and people may formulate and pursue goals that are not simply reflective of the demands or interests of social groups, classes or society.”⁶³ In short, the more autonomy a state possesses, the more capable it is of undertaking independent policy decisions.

According to Atkinson and Coleman, the conditions necessary for state autonomy at the sectoral level may be divided into four parts:

1. The bureaus involved should have a clear conception of their role and a value system consistent with and supportive of that mandate. Strong political support for the bureau’s role is critical: bureaucrats and ministers should cooperate easily.
2. While bureaucrats are charged with conveying and interpreting the demands of clientele groups, they should possess a professional ethos distinct from that prevailing among professionals in industry. Autonomy will always be more difficult to maintain for those bureaus with a clientele rather than a functional mandate.
3. Individual bureaus will be more autonomous when they administer a corpus of law and regulation that define their responsibilities and those of the industry. These rules will not be subject to negotiation, either in their interpretation or in their implementation.
4. Bureaus will be more autonomous when they themselves generate the information, technical or otherwise, required for the pursuit of their mandate.

⁶² Theda Skocpol, “Bringing the State Back In,” *Strategies of Analysis in Current Research*,” Peter Evans et. al. eds. (New York: Cambridge University Press, 1985), 9.

⁶³ Ibid, 9.

Information may still be collected from firms and associations, but the autonomous bureau will require an in-house capacity to evaluate and employ this information.⁶⁴

Finally, the third criterion cited by Atkinson and Coleman as necessary to understanding the operation of policy networks is the nature of business-interest mobilization. Atkinson and Coleman assert that how business is organized at the sectoral level will help to determine whether and in what way major socio-economic producer groups can make a contribution to the development and implementation of policy. For the two authors, a highly mobilized sector is characterized by six factors:

1. A horizontal division of labor will mark the associational system with separate associations or divisions representing different products, service groups, or territories. Such a division of labor implies the absence of overlapping organizations on the one hand, and of gaps in the associational system on the other. There will be no competition for members.
2. One and (normally) only one association will speak for the sector as a whole. Either sub-sectoral organizations will belong to this sector-wide association (so that a vertical division of labor is sustained), or individual firms will associate directly.
3. Both sectoral and sub-sectoral associations will have a high density, that is, a high proportion of the firms (or of the production) in a given sector will be represented by the association.
4. In oligopolistic sectors, where major firms enjoy the option of direct contact with the state, these firms will retain a high profile of activity in the association, thereby employing both direct and indirect means of securing influence.
5. Firms and associations will possess considerable in-house capacity for the generation of information, both technical and political.
6. In a highly mobilized sector, associations will have the capacity to bind member firms to agreements negotiated with the state and to offer assurances of individual firm compliance with policy decisions.⁶⁵

Using these three measures of bureaucratic autonomy, concentration of authority and business-interest mobilization, Atkinson and Coleman identify six categories of policy networks as shown in Figure 3.

⁶⁴ Atkinson and Coleman, *The State, Business and Industrial Change in Canada*, 80.

⁶⁵ *Ibid.*, 81-82.

Figure 2:

Conditioning factors for policy networks

	State structure			
	High autonomy High concentration	Low autonomy High concentration	High autonomy Low concentration	Low Autonomy Low concentration
Mobilization Of business Interests				
Low	State Directed	Pressure Pluralism	Pressure pluralism	Parentela pluralism
High	Concertation	Clientele Pluralism	Corporatism	Industry dominant parentela pluralism

Atkinson and Coleman, *The State, Business and Industrial Change in Canada*

The six categories represent an interesting addition to the organizational structure for public policy analysis provided by Kingdon. They are particularly useful to the extent that they imply several important implications for the development, stability and success of policy, provided that no serious political or economic obstacles stand in the way.⁶⁶

Explaining Preferences

Finally, one additional body of literature proves useful in the description of a particular policy process, highlighting the importance of “preferences” to policy outcomes. The models provided by Kingdon and Atkinson and Coleman show that the concepts of policy “community” and “network” are significant to any attempt to apply a structural approach to policy process because of their evident relevance for two key questions of policy analysis, namely who participates and who wields power. In the first instance, each of the two terms convey “the impression of order in the midst of chaos,” shedding light on the relationships that exist among individuals in a particular policy

domain. As a consequence, it is possible to explore how the boundaries of a policy process may be defined.

Moreover, policy communities, and particularly policy networks, are useful to the extent that they say something about how the structural properties of state agencies and organized interest groups affect the policy process. When these structural properties are used in order to develop a typology of policy networks based on distinctive patterns of power and dependency, they add enormously to the creation of a body of knowledge capable of looking at key actors and the structures that govern their interactions.

Nevertheless, the application of concepts of policy community and policy network tends to be appropriate only in the sense that one learns about patterns of interaction among various actors, the content of those interactions and the structures that channel communication. Where they are less useful is in their ability to shed light on the normative context of the processes by which interests are defined by key players.

Ideas do not, as a structure-based approach might suggest, float freely. Rather, decision-makers are always exposed to several and often contradictory policy concepts. Unfortunately, research on policy networks has so far failed to specify the conditions under which certain ideas are selected and influence policies while others are largely ignored. As a consequence, empirical anomalies generated from a purely structural account of trade policy present a substantive obstacle to the explanation of policy outcomes. The formulation of preferences must also be taken into account.

On a superficial level, one can understand policy outcomes by looking at domestic structures of trade policy in order to delineate key actors and processes. Neither

⁶⁶ According to Atkinson and Coleman, in the instance of such obstacles, policy network types are unlikely to occur. See Atkinson and Coleman, *The State, Business, and Industrial Change in Canada*, 82.

explanation, however, is sufficient in describing the very ideas that affect how stakeholders in a particular policy issue define their interests, an argument recognized by several authors in recent years. Recognizing this deficiency, Goldstein has argued that:

Markets and material interests should not be ignored; they form a formidable constraint in the setting of policy in that they direct domestic interests and determine the payoffs from an economic policy. Such analysis, however, is rarely sufficient. The international economy, as Peter Gourevitch correctly points out, works “through domestic actors, shaping their policy preferences and their propensities to conflict and align with other groups. Accepting the importance of markets however, does not mean that markets alone explain policy decisions. As Peter Hall suggests, “structural accounts tell us a great deal about the constraints facing policymakers, but policy making is based on creation as well as constraint. Thus market forces may explain the preferences of social actors but rarely policy itself. Along with changing coalition patterns, analysts must pay attention to political entrepreneurs and the ideas they hold; their beliefs are a critical link between market forces and policy outcomes.⁶⁷

If Goldstein’s analysis is correct, a thorough examination of policy process requires one to look at both structures and ideas in order to understand both how preferences are structured and how preferences translate into decisions.

The predominant tendency among students of political science and particularly political economy has been to treat state preferences as the product of self-interested actors serving to maximize their utility, thereby focusing on structural factors such as key actors, processes, and external and internal constraints. In such public choice models, actors’ preferences and causal beliefs are given and attention focuses on the variation in the constraints faced by actors.⁶⁸ As a consequence, “ideas are unimportant or epiphenomenal either because agents correctly anticipate the results of their actions or

⁶⁷ Goldstein, *Ideas, Interests and American Trade Policy*, 251.

⁶⁸ For a realist treatment of the role of ideas see: Stephen Krasner, *Defending the National Interest* (Princeton: Princeton University Press, 1978). For a liberal institutionalist perspective, see: Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).

because some selective process ensures that only agents who behave as if they were rational succeed.”⁶⁹

Couched in terms of the familiar prisoner’s dilemma,⁷⁰ this scholarship has far too often emphasized the prospects for realizing mutual gains from cooperation within a group of self-interested actors at the expense of failing to shed light on why one particular cooperative solution is chosen over another. The problem with this type of model, therefore, is that it does not explain the form of cooperation established in an instance where more than one set of “rules of the game” would allow the actors to realize mutual gains and if more than one set of institutions can monitor adherence to these rules. Hence, while the Prisoner’s Dilemma may be useful in explaining why cooperation has occurred among key Canadian stakeholders with respect to the classification of electronic deliverables, it is not particularly appropriate in providing insight as to the policy choice upon which these actors have settled. It does not explain how these preferences have been formed, which requires consideration of ideas and how these ideas are interpreted by key actors in the formulation of interests.

In a review of international norm dynamics and political change, Martha Finnemore and Kathryn Sikkink argue that normative and ideational concerns have always informed the study of international politics.⁷¹ Indeed, Aristotle and Plato frequently acknowledged the impact of ideas about justice and good upon human

⁶⁹ Judith Goldstein and Robert Keohane eds., *Ideas and Foreign Policy: Beliefs, Institutions and Policy Change*, 4.

⁷⁰ Prisoner’s dilemma models can tell us why the set of cooperative arrangements that was chosen represents an “efficient” (Pareto-improving) solution to the collective action problem facing the participants, but they are not particularly useful when put in the context of a situation where there are multiple paths to cooperation. This is especially significant for the study of politics, since as Garrett and Weingast point out, interactions in domestic and international politics are quite likely to have several possible solutions that cannot be distinguished from one another in Paretian terms.

behaviour in the fourth century B.C.E. in much the same way as E.H. Carr did in the twentieth century with his recognition that "Political action must be based on a coordination of morality and power."⁷² This conviction regarding the role of ideas was particularly essential to understanding politics throughout the 1950s and 1960s, evident in much of the scholarly writing produced at the time. Inis Claude's work on the legitimization function of the United Nations dealt precisely with this issue. The work of integration theorists such as Ernst Haas was implicitly, and often explicitly, about creating shared social purpose. Even realists such as Hans Morgenthau wrote extensively about the way in which ideational and normative factors such as nationalism, morality and international law limit states' exercise of power.

With the behavioural revolution and its enthusiasm for measurement, reinforced by the emerging infatuation of political scientists with economic models in the late 1970s and 1980s, however, scholarly attention shifted away from normative concerns. The emergence of this school of thought had a profound impact on the way in which politics was generally conceived. As Finnemore and Sikkink recount:

Realists began recasting the pursuit of power as "utility maximization" and, following the economists, tended to specify utility functions in material terms only. Liberals drew on microeconomic analyses of collective action games (Prisoner's Dilemma, Stag Hunt) to reinvigorate their long-standing debate with realists and show that cooperation, welfare improvement, and "progress" were possible even when given some of realism's pessimistic assumptions about self-seeking human nature. In fact, these "neos," both realist and liberal, might more appropriately be called "econorealists" and "econoliberals" since what was new in both cases was an injection of microeconomic insights.⁷³

⁷¹ Finnemore and Sikkink, "International Norm Dynamics and Political Change," *International Organizations*, Volume 52, Number 4 (Autumn 1998), 887.

⁷² Ibid.

⁷³ Ibid, 890.

Interest in ideational and normative phenomena has been recently revived nevertheless, beginning with the regimes project and later by constructivists led by John Ruggie, Friedrich Kratochwil and Alexander Wendt. The consequence of this movement has been the creation of a growing body of literature on the role of ideas and foreign policy. For these scholars, Max Weber provides something of a guide: ideas as well as interests have causal weight in explanations of human action. As Hall explains:

To neglect the role of ideas in political economy . . . is to miss an important component of the economic and political worlds. It is ideas, in the form of economic theories and the policies developed from them, that enable national leaders to chart a course through turbulent economic times, and ideas about what is efficient, expedient, and just that motivate the movement from one line of policy to another.⁷⁴

From the school of public policy, the work of George Hoberg provides some insight, particularly his study of pesticide regulation in the United States, which elaborates the transformation in regulatory regimes through a careful analysis of the interaction of structural and ideational factors. In addition to looking at the institutional characteristics of state and societal actors, and the notions of boundary and decision-making rules normally found in network studies, he adds three other components: the dominant values guiding public policy, the knowledge base available to public policy makers, and the norms that legitimize various approaches to policy.

From the school of International Relations, scholars such as Peter Hall, Peter Gourevitch, and Peter Cowhey have also looked at the interplay between structure and ideas. Hall, for example has shown that policy outcomes are shaped by the interaction of ideas – on the one hand, with the orientation of the governing party, the structure of the

⁷⁴ Peter Hall, *The Political Power of Economic Ideas: Keynesianism Across Nations* (Princeton: Princeton University Press, 1989), 362.

state, and state-society relations and on the other, with the nature of political discourse.⁷⁵ Similarly, Gourevitch has looked at the influence of ideas versus interest group pressure in a 1989 study of the adoption of Keynesianism by various countries.⁷⁶ Finally, Cowhey's study of the international telecommunications regime also highlights the relationship between structure and ideas, arguing that political coalitions implicitly align with cognitive frameworks.⁷⁷

Perhaps the most comprehensive work on the subject, however, has been undertaken by Robert Keohane and Judith Goldstein, who together have attempted to specify the conditions under which ideas can shape policy outcomes, whether the principled or causal beliefs they embody provide road maps that increase actors' clarity about goals or ends-means relationships, whether they affect outcomes of strategic situations in which there is no unique equilibrium, or whether they become embedded in political institutions.⁷⁸ According to Goldstein and Keohane, "ideas as well as interests have causal weight in explanations of human action."⁷⁹

Essential to this argument is the means by which the role of ideas can be measured. For Goldstein in particular, the impact of ideas upon policy preferences is dependent upon two factors: (1) the range of feasible economic and political policies available to political entrepreneurs; and (2) the degree of policy uncertainty present in a given environment.⁸⁰ In the first instance, the greater the range of possible economic and

⁷⁵ Hall, *The Political Power of Economic Ideas: Keynesianism Across Nations*.

⁷⁶ Peter Gourevitch, "Keynesian Politics: The Political Sources of Economic Policy Changes," *The Political Power of Economic Ideas: Keynesianism across Nations*, Peter Hall ed., (New Jersey: Princeton University Press, 1989).

⁷⁷ Peter Cowhey, "The International Telecommunications Regime: the Political Roots of Regimes of High Technology," *International Organization* (Volume 44).

⁷⁸ Goldstein and Keohane eds., *Ideas and Foreign Policy: Beliefs, Institutions and Policy Change*, 3-4.

⁷⁹ Ibid, 4.

⁸⁰ Goldstein, *Ideas, Interests and American Trade Policy*, 252.

political directions, the greater the tendency of actors within a particular policy community to rely upon ideas. Thus the fewer constraints placed upon a country, the more ideas play a factor in determining policy outcomes. In the case of the second factor, uncertainty in a policy environment should translate into a greater role for ideas since the uncertain environment forces the actor to rely upon theoretical models to help translate interest into policy. According to this logic, ideas are critical not only because they serve as mechanisms by which entrepreneurs choose from a wide range of policies but also by virtue of their role as road maps supplying policy-makers with a vision of cause-effect relationships.⁸¹ Where the interests of a state's constituents' or of the nation itself are unclear, ideas have much more of an impact providing the entrepreneur with a means for linking actions with outcomes.

Also important to Goldstein is the process by which "ideas" compete against one another for recognition among key actors. Goldstein suggests that two variables may play a role in determining why one particular policy choice might be perceived as preferable to another: the degree of perceived divergence between underlying social values and a policy prescription, and extent of institutionalization. In the first instance, the greater the difference between social values and policy approaches, the less likely it is that a particular "idea" will be selected. This variable is based on the assumption that objectively functional policies are not necessarily politically salient. Rather, ideas must be understood in the context of the time and space framework within which they develop.

The second variable that Goldstein suggests is important is the degree to which institutions and ideas may be perceived as "sticky." In this respect, the greater the institutionalization of a policy idea, the longer lasting and more pervasive will be its

and Keohane, *Ideas and Foreign Policy*, 12.

impact on the policymaking process. Thus, “It is not the objective worth of an idea that predicts its longevity but the extent to which other policies, institutions, and/or social groups form a protective belt around the idea, making it difficult for entrepreneurs to disentangle interests from a given set of causal beliefs.”⁸² In many instances therefore, once created, institutions can live beyond the mandate they originally served.⁸³

An examination of the importance of “ideas” therefore has two clear advantages: first, it provides insight into the conditions which may lead to a policy outcome heavily influenced by a particular set of ideas; and second, it provides assistance in delineating why one particular idea may be preferable to another. Thus, when juxtaposed against structure-based models such as the ones provided by Kingdon and by Atkinson and Coleman, this model has the potential to provide for a more clear and accurate explanation of how policy positions are developed.

Comparing Predictions

Goldstein aims to demonstrate that the empirical anomalies generated from a purely structural account of trade policy can be resolved by the recognition that ideas affect the manner in which policy entrepreneurs formulate preferences, particularly when faced with few international and domestic policy constraints and when the policy environment is uncertain. Furthermore, for Goldstein, two variables are of particular significance in the choice of one position over another: the degree of perceived divergence between underlying social values and a policy prescription, and the extent to which an “idea” is institutionalized, becoming sticky.

⁸² Goldstein, *Ideas, Interests and American Trade Policy*, 256.

⁸³ Goldstein, *Ideas, Institutions and American Trade Policy*, 238.

Atkinson and Coleman would explain Canada's preference for the classification of electronic deliverables as services using a taxonomy of policy network types that they develop in their discussion of state structure, state autonomy from social forces and business interest mobilization. This model would therefore lead one to conclude that the interplay of these three elements has had a significant impact upon patterns of interaction that exist among members of a particular policy community and therefore suggests a methodology in which the transmission of ideas through policy networks can be explored.

Finally, Kingdon's model suggests that policy change is best explained as an event that occurs when three independent process streams – problem identification, the generation of policy alternatives and political maneuvering – come together at a critical time in order to open a policy window, thereby permitting policy reform. Accordingly, it would predict that the Canadian government's policy preference for the classification of electronic deliverables has arisen as a consequence of some change or event in the political stream or the emergence of a pressing problem that captures the attention of government officials, which in turn causes a policy window to open permitting policy entrepreneurs to play a critical role in the coupling or integration of Kingdon's three streams. Thus once ideas are translated into preferences as described by Goldstein, they are subsequently transmitted by means of policy networks, and policy change is facilitated by this coupling of streams.

Together, the three models identify several factors as significant to understanding the policymaking process. Ideas transmitted, and to some degree filtered, by different policy networks leads to an environment where a particular problem is identified, policy

Figure 3:

As shown in Figure 3, ideas do not float freely throughout the policy community as described by Kingdon, but rather, are filtered by a variety of different policy networks (Policy Networks I and II) characterized by particular relationships between business and government. The overall effect of these ideas is greatest in the generation of policy alternatives (Stream 2), where policy entrepreneurs are most free to play a role in the development of a range of possible options for government officials. Ideas, however, are also important in the movement of the policy process from this generation of policy alternatives to a stream characterized by political manoeuvring (Stream 3), to the extent that policy entrepreneurs can prepare the landscape for political actors to hear policy options. Thus while structure plays an important role in the transmission of ideas from one stream to the next, and may aid in the opening of a policy window, the very strength of specific ideas are significant in the shaping of the patterns by which these structures operate.

From this synthesis of models, a number of hypotheses can be formulated which serve to highlight how a particular policy position can emerge. To begin with, Goldstein's analysis lends itself to four different hypotheses which focus, first, on the conditions under which policy-makers may have an incentive to rely on ideational factors as a guide for action, and second, the reasons why one policy choice might be preferable to another:

(H1) Numerous policies are consistent with the political interests generated by market forces. *The greater the range of feasible economic and political policies, the greater the reliance of political entrepreneurs on policy ideas.*

(H2) Policy making occurs in highly uncertain environments, forcing political actors to rely on theoretical models that suggest how to translate interest into policy. *The greater the policy uncertainty, the role of ideas increases.*

(H3) Objectively functional policies are not necessarily politically salient. *The greater the perceived divergence between underlying social values and domestic institutions and a policy prescription, the less likely the policy idea will be selected.*

(H4) Institutions are sticky; once an idea is institutionalized, its impact may outlive its functional efficacy. *The greater the institutionalization of a policy idea, the longer lasting and more pervasive will be its impact on the policy making process.*

When considered together, these four hypotheses make possible an attempt to look at *the impact of both structure and ideas upon policy process* and to undertake more meaningful policy analysis.

The work of Atkinson and Coleman is similarly useful and yields three hypotheses relevant to the manner in which ideas may be transmitted by means of policy networks:

(H5) Decision-making power is most likely to be concentrated within the hands of a small number of people when a single agency is able to dominate relations in a given sector. *In this instance, the degree of centralization visible in state apparatuses results in an environment where a particular group of individuals can take the lead in formulating policy for the industry.*

(H6) *The more autonomy a state possesses, the more capable it is of undertaking independent policy decisions.* This autonomy is dependent upon factors such as clearly identified roles and mandates, the degree to which this mandate is separate from that of clientele groups, a well-acknowledged corpus of law and regulation, and whether information needed for its mandate can be generated by the state itself.

(H7) The degree to which business interests are mobilized affects whether and in what way socio-economic producer groups can make a contribution to the development and implementation of policy. *Where business interest mobilization is strong, the interests of these groups are likely to be clearly interpreted by the state as important to the generation of policy alternatives.*

Finally, Kingdon's description of the policy process as a primeaval soup lends itself to one last hypothesis:

(H8) Where policy entrepreneurs are particularly active, a coupling of streams -- where concurrently a problem is recognized, solutions are developed and presented to a policy community, and a political event or change makes the time right -- becomes more likely to occur. *The development of a set of converging preferences in public and private spheres can act simultaneously to open a policy window and prompt movement towards change.*

Each of the theories therefore has the advantage of simplicity, and when considered in tandem, they provide an interesting framework for describing the structure and pattern of public policy in Canada. And while the Canadian government has yet to make a formal decision regarding the classification of electronic transactions, particularly in the area of electronic deliverables, they may be able to provide important insight into some of the variables that have fed into Canada's approach to date.

CHAPTER 4: USING THE MODELS

Chapter 4 will apply the theoretical model formulated in Chapter 3 to empirical evidence gathered by means of Key Informant Interviews. It will subsequently aim to test the 8 hypotheses generated from Goldstein, Atkinson and Coleman, and Kingdon, with the overall objective of explaining why it is that the Canadian government has adopted a preliminary policy position that views the classification of electronic deliverables as services. It is expected that this Chapter will subsequently demonstrate that ideas transmitted by means of several different policy networks leads to an environment where the problem of how to classify electronic deliverables is identified, various policy alternatives are formed, and political entrepreneurs translate these alternatives into political maneuvering, such that a particular event or change in the political stream is capable of opening a policy window, thereby facilitating the Canadian government to take a particular policy stance. Accordingly, it will therefore place considerable emphasis upon the concept of ideas, viewing ideas transmitted by means of several policy networks as intermediaries between structural conditions and actors' interests.

The Role of Ideas in the Formulation of Preferences

“Economic ideas are always and intimately a product of their own time and place; they cannot be set apart from the world they interpret.”

-- John Kenneth Galbraith

As discussed in the previous chapter, Goldstein and others have highlighted the importance of looking at ideas as well as structure in the explanation of policy process.

According to this perspective, underlying social, institutional and cognitive patterns affect how political entrepreneurs regard ideas. In Goldstein and Keohane's words:

Ideas help to order the world. By ordering the world, ideas may shape agendas, which can profoundly shape outcomes. Insofar as ideas put blinders on people, reducing the number of conceivable alternatives, they serve as invisible switchmen, not only by turning action onto certain tracks rather than others, but also by obscuring the other tracks from the agent's view.⁸⁴

From this emphasis upon the role of ideas in the formulation of preferences, four hypotheses thereby emerge which have relevance for the problem of how to explain the Canadian government's preliminary position on the classification of electronic deliverables which can have a physical equivalent.

Hypotheses 1 and 2

In her analysis of the beliefs that filter between interests and policy, Goldstein puts forth several variables that prove pivotal in the identification of two hypotheses relevant to the conditions under which policy makers may rely on ideational factors as a guide for action: (H1) *ideas are most important when constraints are less acute*; and (H2) *policy uncertainty clears a path for ideas to have an important role in the determination of how one views interests*. These two propositions are closely related to one another to the extent that they each attempt to explain the degree to which ideas generally are significant to the development and expression of preferences. The data collected in support of each is therefore closely linked and should be examined together.

⁸⁴ Goldstein and Keohane, *Ideas and Foreign Policy*, 12.

From the perspective of those interviewed, particularly government officials, the policy environment surrounding e-commerce has given rise to a multitude of possible policy preferences, providing little in the way of a precedent for political entrepreneurs in their selection of choices from among a set of possible of options. In one respondents view, at this early stage in the game, the Canadian government has faced no observable pressure from foreign governments or international organizations also working on the classification issue.⁸⁵ As a consequence, few constraints pose a challenge to the ability of Canadian policymakers to select a particular policy direction over another. Some or all e-deliverables can be classified as goods, some or all e-deliverables can be classified as services, or e-deliverables can be classified on their own. The range of choices available to policy entrepreneurs is essentially infinite, suggesting, as Goldstein argues, that ideas may play a more determining factor in policy outcomes.

Respondents also quickly recognized that the newness of this policy area has had an impact upon the ability of policymakers and stakeholders to develop something of a short-list of ideas. With no clear precedent for the classification of intangible assets readily available to those in the policy community, so-called policy experts have found it extraordinarily difficult to provide solutions to this problem. One interviewee, for example, likened the process to writing a piece of fiction, full of a range of possible directions.⁸⁶

Furthermore, the majority of respondents seemed to agree that this reality is compounded by the relative uncertainty that surrounds the policy environment in which

⁸⁵ Bill Crosbie, Interview with the Department of Foreign Affairs and International Trade, January 16, 2000.

⁸⁶ Paul Robichaud, Interview with Department of Finance, January 28, 2000.

central players are operating. Since it is unclear what implications the classification of electronic deliverables as either goods or services will have upon key stakeholders, particularly business stakeholders, it has been rather difficult for decision-makers to accurately assess overall Canadian interests. One interviewee, in particular, was especially concerned with the relative lack of information regarding the pros and cons of different approaches to classification, to the point of casting considerable doubt upon the ability of the Canadian government to deal with this issue quickly.⁸⁷

Finally, as was recognized by those interviewed, this uncertainty in the domestic policy environment is compounded by the fact that few international constraints have been imposed on domestic actors given the fact that discussions of the classification issue remain stalled in the pre-negotiation phase. As discussed in Chapter 2, the international environment surrounding the classification of electronic deliverables is highly uncertain with few substantial factors constraining policy options. While the EU has taken a formal position on classification and is of the view that e-deliverables should be treated as services, the US and Japan have not been as clear in their preferred approach and have preferred to state their preferences more informally, while the majority of Member countries have taken no position at all. This point was recognized by officials at the Department of Foreign Affairs and International Trade as particularly salient in the sense that Canada is operating without a clear sense of what room exists internationally for the discussion of possible options.⁸⁸ The consequence of this dichotomy of views internationally, therefore, is that the domestic policy community lacks a clear sense of how

⁸⁷ Tom Oommen, Interview with the Department of Foreign Affairs and International Trade, March 22, 2000.

⁸⁸ Interview with the Department of Foreign Affairs and International Trade, January 16, 2000.

their ultimate policy position will be received by other WTO Members once negotiations on the classification of electronic deliverables are underway.

The most probable explanation, therefore, for Canada's initial policy stance on classification is that policy makers have relied less on clearly defined interests determined by market forces and more upon ideas. In this instance, ideas have potentially served as a filter between interests and policy, causing ideas to both select and legitimate particular strategies for political entrepreneurs.

Furthermore, to some degree, policy uncertainty may have cleared a path for ideas to have an important role in the determination of how key decision-makers have viewed interests. According to Goldstein, "Ideas are critical not only because they serve as mechanisms by which entrepreneurs choose from a wide range of policies but also by virtue of their role as road maps supplying policy makers with a vision of cause-effect relationships."⁸⁹ Goldstein also makes the point that policy makers live in a world of uncertainty.⁹⁰ For example, the interests of their constituents or of the nation as a whole may be unclear or contradictory, or even when policy makers are aware of the interests that they serve to maximize, they are still often uncertain about which policy is optimal. The implication of this view is that where a clear delineation of interests and unambiguous feedback on the appropriateness of particular strategies exists, ideational models provide the entrepreneur with a means for linking actions with outcomes.

The international and domestic policy environment surrounding the classification of electronic deliverables is highly uncertain with few substantial factors constraining policy options. According to the assumptions developed here, this should cause policymakers

⁸⁹ Ibid, 254.

⁹⁰ Ibid.

within Canada to rely more on ideational factors than they would if the policy environment were more certain. As Goldstein argues:

In policy arenas where there is a clear delineation of interests and unambiguous feedback on the appropriateness of particular strategies, beliefs should be less important in explaining the behaviour of policymakers. Where elites have less information about constituents' interests or where the environment cannot quickly select out "bad" policies, however, there should be increased reliance on ideas both in the selection and constitution of a policy and its application over time.⁹¹

In this respect, therefore, ideational factors may have served a key role in the determination of preferences.

Hypotheses 3 and 4

Goldstein further suggests that two variables may play a role in determining why one particular policy choice might be perceived as preferable to another: the degree of perceived divergence between underlying social values and a policy prescription, and extent of institutionalization. From this argument, 2 further hypotheses can be delineated which cannot be explored independently of one another since both deal with surrounding social values embedded in domestic institutions: (H3) *The greater the difference between social values and policy approaches, the less likely it is that a particular "idea" will be selected;* and (H4) *The greater the institutionalization of a policy idea, the longer lasting and more pervasive will its impact be on the policymaking process.*

This third hypothesis is based on the assumption that objectively functional policies are not necessarily politically salient. Rather, ideas must be understood in the context of the time and space framework within which they develop, since social norms and values play a key role in the manner in which certain ideas are formulated into policy

preferences. Similarly, the fourth hypothesis which can be drawn from Goldstein's analysis reflects the degree to which institutions and ideas may be perceived as "sticky." In this respect, the greater the institutionalization of a policy idea, the longer lasting and more pervasive will its impact be on the policymaking process. In sum, once an idea is institutionalized, its impact may outlive its functional efficacy.

In the case of how to classify electronic deliverables, two sets of ideas were identified by those interviewed as being of particular salience. On the one hand, several respondents emphasized ideas related to the importance of trade liberalization as significant to the shaping of their views on the classification of electronic transactions. Shirley Ann George of IBM, Jonathan Andresen of Teleglobe, Matthew Wilson of the Alliance of Manufacturers and Exporters, and Eric Iankalevic of the Canadian Chamber of Commerce were particularly careful to acknowledge the impact that the classification issue could have on the maintenance of an open, liberal trading regime.

On the other hand, however, other individuals identified closer with the need to ensure that Canadian policy makers maintain maximum ability to realize Canadian public policy objectives in the area of culture. Of those that were interviewed, Janette Mark,⁹² for example, asserted that as Canadians, we acknowledge that preserving local culture is one of the essential activities of the modern state. In one individual's words, "A country that loses its voice and its ability to communicate with itself is not a country at all."⁹³ In their view, left to the free operation of markets, Canadian culture would be swept away as a consequence of a variety of technological and economic forces.

⁹¹ Goldstein, *Ideas, Interests and American Trade Policy*, 254.

⁹² Interview with Canadian Heritage, April 26, 2000.

⁹³ Richard Stursberg, *Trade and Culture, Keynote Address for the Canadian Institute of International Affairs* (November 25, 2000).

Each of these two sets of ideas have had a relatively long tradition of significance within Canada over the years, and have historically waged a battle against one another for recognition and resources. They form what Goldstein and Keohane have referred to as roadmaps, subsequently limiting choice by logically excluding other interpretations of reality.⁹⁴

The Canadian government has long supported the world-wide liberalisation of international trade, beginning in 1948 with its commitment to the General Agreement on Tariffs and Trade as one of the agreement's 23 initial signatories. Due to its historical reliance upon resource-based exports and low-level processing, Canada has always been something of a trading nation, depending upon exports of fur, fish, wheat, forest products, metals and minerals as a means of accumulating wealth. Prior to 1948, however, any desire for the creation of rules and regulations to govern international trade was directed primarily at Great Britain and the United States, Canada's two largest trading partners at the time. It was not until the creation of Bretton Woods in the post-war years that Canada began to think seriously about the possibility of a multilateral agreement to govern trade practices.

Despite a certain level of pragmatism when compared to the approach of the United States towards the proposal for the creation of a sound set of rules built around the principle of non-discrimination, Canadian officials generally favoured the creation of an agreement to deal with international trade. This commitment to multilateralism and non-discrimination in the early post-war years reflected the need for multilateral settlement of accounts and open access to all markets, due in large part to the fact that Canada sold the

⁹⁴ Keohane and Goldstein, *Ideas and Foreign Policy*, 12.

preponderance of its goods to only two countries.⁹⁵ As Hart notes, “Canada could no longer look to the mother country for direction and support. Britain’s mantle of world leadership has been assumed by the United States, but Canada’s ties to the United States were of a different order... Into this world of changing loyalties and realities, multilateralism proved a godsend.”⁹⁶ The Canadian ministers and officials who had participated in the negotiation of the GATT had been deeply influenced by their experience of depression and war. In their view, it was essential that Canada hold on to and expand its foreign markets if the economy was not to collapse.

Over the years, Canada’s commitment to principals of free trade has been continuously reinforced, demonstrated by its involvement in successive rounds of the GATT in addition to the negotiation of other trade agreements including the Canada-US FTA, the North American Free Trade Agreement, the Free Trade Area of the Americas, and various bilateral agreements with countries such as Chile and Israel. Granted, Canada’s approach has been to “seek much, and give little,” preferring to sometimes zealously seek market access for its resource-based exports while maintaining high levels of protection for its manufacturing sector.⁹⁷ Nevertheless, it is fair to say that Canada has proceeded with the view that a rules-based system of international trade is ideally suited to the requirements of a medium-sized country such as itself. Today trade liberalization is perhaps even more important to Canada than it was in 1948. International trade currently accounts for one in every three jobs in Canada and represents 43.2 percent of the country’s GDP, higher than any other G7/G8 nation.⁹⁸

⁹⁵ Hart, 27.

⁹⁶ Ibid, 28.

⁹⁷ Ibid, 222.

⁹⁸ Stats Canada, February 18, 2000.

To some degree, the negotiation and implementation of the GATT and the WTO coincided with the development of a circle of specialists in the area of Canadian trade policy. Individuals such as Norman Robertson and John Deutsch to Mel Clark, Frank Stone, and Simon Reisman served to further reinforce the institutionalisation of free trade within Canadian policy circles.

In sum, one would therefore expect to find a high degree of institutionalisation in the instance of the notion of trade liberalisation in the Canadian trade/e-commerce policy community. However, given the preliminary position of the Canadian government in favour of the classification of e-deliverables as services which could potentially serve to weaken the current liberal trading environment enjoyed by exporters of physical equivalents such as books and software, this proposition would not seem to hold true. When compared to the much higher degree of institutionalisation of cultural values in the Canadian public policy apparatus, ideas regarding the importance of liberal trade would seem to pale in comparison.

The relationship that exists between a state and its culture is one that is longstanding and intimate, particularly so since political authority ultimately rests on an effective system of communications.⁹⁹ Without a vibrant culture, a nation's viability as an independent country would be called into question. In Canada, this point is believed to be especially true, given the country's historical social roots, reflecting three founding peoples, two official languages, a vibrant French-language culture centered in Quebec, strong regional loyalties and geographical proximity to the United States. Together, these factors have enormously sharpened awareness within Canada of the distributive effects of cultural policy thereby making the means of disseminating information and influencing

opinion a matter of great public importance. As a consequence, the Canadian government has long recognized the need to support the development of culture, with various attempts on their part going back to the early days of Confederation.¹⁰⁰ Initially, federal cultural intervention centered around the creation of various public institutions that stimulated the establishment of museums, a public radio broadcaster, and the production of wartime films. Well-known examples of cultural institutions include the National Gallery of Art (established in 1880 and incorporated in 1913), the Public Archives (1912), the National Film Board (1939), and the National Library (1953).¹⁰¹ The rationale surrounding state intervention at this time was articulated perhaps best by the 1929 Report of the Aird Commission, which in many respects, marked something of a watershed for early Canadian government cultural objectives, arguing that "Canadian radio listeners want Canadian broadcasting...as an instrument of education...entertainment and...informing the public on questions of national interest."¹⁰²

From 1957 onwards, Canadian cultural policy development achieved a new level of activity as a direct consequence of a recognition by the 1951 Report of the Royal Commission on National Development in Arts, Letters and Sciences that Canada lacked an adequate presence of domestic content, viable organizations and professional talent dedicated to cultural expression in Canadian society. According to the Report, Canadians were so "intellectually under-nourished" that many of them felt no hunger."¹⁰³ Beginning in the late 1950s, therefore, the Canadian government committed itself to the

⁹⁹ Stephen Brooks, *Public Policy in Canada: An Introduction*, 297.

¹⁰⁰ Victor Rabinovitch, "The Social and Economic Rationales for Domestic Cultural Policies," *The Culture/Trade Quandary: Canada's Policy Options*, Dennis Browne ed., 25.

¹⁰¹ *Ibid.*, 33.

¹⁰² Report of the Royal Commission on Radio Broadcasting, 1929, 6.

¹⁰³ Report of the Royal Commission on National Development in Arts, Letters and Sciences 1949-1951, 1951, 110.

development of various federal support instruments including the Canada Council, now known as the Canada Council for the Arts, the Canadian Radio-television and Telecommunications Commission (CRTC), and Telefilm Canada.

Today the sentiment surrounding Canadian culture is much the same. There exists something of a general consensus that culture represents something of a “public good” requiring concerted government intervention where necessary to promote domestic content production and distribution capacity, in order to compete effectively with cultural goods and services of other countries. In many respects, this vision, and the policies and programs needed to achieve it, are based on the premise that sustaining Canada’s national existence requires indigenous cultural expression and an audience for that expression.¹⁰⁴

Accordingly, Canada’s approach to the negotiation of rules for international trade in goods and services has focused on attempting to make it clear that cultural products and services must remain separate from other commodities. From the FTA to NAFTA, to the GATT and the WTO, to bilateral agreements with countries such as Israel and Chile, Canada has always maintained the same bargaining position – everything but culture is on the table.

In Canada’s favor is the fact that the treatment of cultural goods and services by rules of international trade is anything but straight-forward.¹⁰⁵ In fact, the field is rife

¹⁰⁴ Victor Rabinovitch, “The Social and Economic Rationales for Domestic Cultural Policies,” *The Culture/Trade Quandary: Canada’s Policy Options*, Dennis Browne ed., 27.

¹⁰⁵ The issue of culture became part of the services negotiation in the Uruguay Round when consideration was given to the inclusion of a specific annex on audiovisual services. Some parties argued for a cultural exemption similar to the FTA, while the United States opposed, and continues to oppose, such an exemption and argues for an open market for cultural products. Under the WTO, audiovisual services are identified as a service activity subject to the obligations of the GATS. In the next WTO round of negotiations, the issue of the treatment of cultural goods and services will almost certainly be raised. In the OECD negotiations for a Multilateral Agreement on Investment (MAI), which ended in 1998, considerable attention was given to the possible treatment of the cultural industries.

with controversy if one considers the growing number of conflicts that have arisen in the last several years having to do with trade and culture. From 1995 until 1998, seven complaints concerning cultural products were brought before the World Trade Organization.¹⁰⁶ One issue pervading these discussions has been whether the output of the cultural industries is a good or service because of the differing obligations under GATT 1994 in the case of a good and the GATS in the case of a service. The WTO panel decision on periodicals brought the goods-services question to the fore. The distinction determines the obligations that a country faces in international trade agreements. In the periodical decision, the production and distribution of periodicals was considered by the dispute panel to be both a good (the hard copy of the magazine) and a service (the editorial and advertising content that can be transmitted in non-tangible forms). Both the obligations of the GATT and the GATS were seen to apply.

As Dennis Browne, among others, has observed, generally speaking, international trade law does not recognize the specificity of culture.¹⁰⁷ Several exceptions to this rule exist. For example, Article IV of the GATT on Special Provisions relating to Cinematographic Films permits governments to set screen quotas for the exhibition of domestically produced films; and article XX(f) of the GATT which permits governments to take measures to protect national treasures of artistic, historic or archaeological value.¹⁰⁸ The WTO and the GATS, however, treat cultural goods and services the same as other goods and services.

¹⁰⁶ Ivan Bernier, "Cultural Goods and Services in International Trade Law." *The Culture/Trade Quandary*, 108.

¹⁰⁷ Dennis Browne, "Canada's Cultural Trade Quandary," 368.

¹⁰⁸ The GATT 1994 subjects all goods to non-discrimination disciplines (i.e. most-favoured nation (MFN) and national treatment), although it recognises two exceptions for cultural goods. Article IV of the GATT permits countries to establish quotas for the exhibition of domestic films, and Article XX(f) permits measures related to the protection of national treasures of "artistic, historic and archeological value." The

Canada's approach to international regulation of cultural trade has therefore been to seek exemptions, such as the cultural exemption that it fought for and won in the context of the FTA and NAFTA, as well as cultural exemptions negotiated in various bilateral agreements with countries such as Chile and Israel. While no formal exemption for cultural services exists within the GATS, Canada, along with several other countries, took advantage of the peculiar structure of the agreement simply to decline to undertake international obligations relating to trade in cultural services.¹⁰⁹

Since the conclusion of these agreements, Canada's international partners, particularly the United States, have applied a significant amount of pressure on Canadian cultural policy makers. Trade in cultural products now represents an important sector of the world economic system and is viewed as crucial to the new economy. Adding to this political pressure is the fact that new technologies are also eroding the ability of Canadian policy-makers to reinforce the border and to ensure shelf-space for Canadian products. The Internet in particular, has made this challenge very real, permitting any number of unlicensed foreign radio stations to broadcast over the web.

In 1951, Massey-Levesque warned that "the tidal wave of technology can be more damaging to us than to other countries with older cultural traditions possessing firmer bulwarks against these contemporary perils."¹¹⁰ Today Massey-Levesque's words contain

ASCMs establishes three categories of subsidies for goods: those that are prohibited, those that are actionable and those that are non-actionable. Prohibited subsidies would be those conditioned on export performance or on the use of domestic rather than imported inputs. Subsidies must also be paid directly to the producers, as in the case of postal subsidies to periodical producers. This means that tax credit schemes that are widely used to support audiovisual production may be considered in contravention of national treatment provisions. TRIMs prohibits the establishment of certain performance requirements as a condition for foreign investment. Both of these examples are discussed by Dennis Browne, "Canada's Cultural Trade Quandary," *International Journal*, 368.

¹⁰⁹ Ibid, 369.

¹¹⁰ Victor Rabinovitch, "The Social and Economic Rationales for Domestic Cultural Policies," in Browne, *The Culture/Trade Quandary*, 39.

much wisdom about the manner in which new technologies can potentially reduce Canada's ability to maintain a cultural voice. New industries and new products have meant that sectors that were once quite different from one another such as broadcasting, cable satellite, telecommunications and multimedia are now in a state of convergence. In such a dynamic environment, it is not always clear how the rights and obligations of existing trade agreements will apply, a point recognized by the February 1999 Cultural SAGIT Report.¹¹¹

The emergence of so-called "new media," defined broadly as interactive video, audio, and text-based services rooted in the growing convergence of telecommunications, computing and broadcasting, poses a particularly challenging dilemma for Canadian cultural policy officials since new high-tech distribution networks offer foreign products more highways into the Canadian market, making it more difficult for government to ensure a place for Canadian content on these networks. Moreover, the new media environment also raises an issue based on copyright and other measures designed to ensure appropriate compensation for artists and right holders.

A particularly striking characteristic of the cultural sector is that, unlike other industries, the everyday activities of the cultural industries crucially affect electoral prospects. For this reason, the cultural industries' pressure groups have a competitive advantage over those of other industries in influencing policy and public opinion. Goldstein and others would interpret this observation with an explanation of the "causal pathways" through which ideas come to influence policy change, which centers on the embedding of ideas in rules and norms which constrain policy choice.¹¹² Keohane and

¹¹¹ Ibid, 25.

¹¹² Keohane and Goldstein, *Ideas and Foreign Policy*, 12.

Goldstein's findings lead them to conclude that "ideas embedded in institutions specify policy choice in the absence of innovation"¹¹³ or as Goldstein argues in a study of her own, "institutions are sticky; once an idea is institutionalized, its impact may long outlive its functional efficacy."¹¹⁴

As emphasised by those interviewed, the Canadian trade policy community is well aware of the challenges faced by policymakers in the pursuit of Canadian cultural policy objectives. Respondents were quick to point out the impact that the classification issue could potentially have upon Canada's cultural sector. In many respects, this sentiment also finds resonance in the general Canadian public. One of those interviewed¹¹⁵ pointed to the view expressed by one author for support:

While the general public years ago had been sceptical of domestic capability in the arts and culture, there is now much more confidence in the quality of Canadian artistic creation and there is much greater recognition of cultural achievements. Opinion surveys consistently show that the public expects their governments will encourage and support distinctive Canadian expression. A 1997 Goldfarb poll records that 80 percent of Canadians feel that it is important that Canadians own and control companies that produce cultural products. On the question of quantity, 86 percent of Canadians believe that Canadian books and magazines are of equal or better quality than foreign products, and 90 percent believe that music by Canadian artists is of equal or better value than foreign music. There is, in other words, a clear sense of pride in the calibre and relevance of domestic cultural output.¹¹⁶

Ultimately, the belief in the importance of promoting Canadian cultural values have become so firmly embedded within Canadian public and private institutions that the institutions that embody these ideas have caused resistance to change by defending the status quo. As a consequence, the policy community involved in the classification issue has come out largely in favor of the view that Canada's cultural policy objectives would

¹¹³ Ibid, 13.

¹¹⁴ Goldstein, *Ideas, Interests and American Foreign Policy*, 256.

¹¹⁵ Interview with Chris Maule, March 21, 2000.

be best served by the classification of electronic deliverables as services. Thus to return to Kingdon's analogy of a political stream that is comprised of electoral, partisan and pressure group interests, it is deeply entrenched ideas on the need to preserve and promote Canadian cultural values that has led to a generalized image of movement towards a preference for the application of GATS rules to electronic transactions. Here, consensus is built through bargaining and coalition building among participants in the selection of a course of action.

The Transmission of Ideas through Policy Networks

Hypothesis 5

According to Atkinson and Coleman, (H5) *decision-making power is most likely to be concentrated within the hands of a small number of people when a single agency is able to dominate relations in a given sector.* When this is the case, this agency or group of individuals is likely to take a lead in the formulation of policy, given the key role that these groups play in transmitting ideas.

The individuals interviewed all agreed that at the federal level, Canada does not have a department of government charged solely with e-commerce. Instead, several departments share this responsibility, the Canadian government proceeding with the mindset that the issues inherent to e-commerce cut across traditional bureaucratic lines. As a consequence, e-commerce policymaking has involved a number of different government actors acknowledged by respondents as including: Industry Canada (IC), the

¹¹⁶ Browne, *Culture/trade Quandary*, 32.

Department of Foreign Affairs and International Trade (DFAIT), Canada Customs and Revenue Agency, Department of Finance, Canadian Heritage, Department of Justice, the Treasury Board of Canada Secretariat, and the Communications Security Establishment. Out of these government departments, four – Industry Canada, DFAIT, Finance and Heritage – were highlighted as departments who have dealt substantively with the various trade-related aspects of e-commerce.

Interviewees were careful to emphasize that since these four government departments have found themselves with sometimes overlapping priorities and jurisdictions, some effort has been made to establish among them a point of policy coordination, resulting in the expansion of an Electronic Commerce Task Force that was created in 1998 under the auspices of Industry Canada. According to the former Manager of this group, the Task Force was originally created to serve two fundamental purposes: to develop a Canadian e-commerce strategy, which it did in October of 1998, and to deliver an international agenda that included preparations for the 1998 OECD Ministerial Conference on Global Electronic Commerce. As such, it had a finite mandate and was not supposed to exist beyond the two years for which it was created. However, after a review of the Task Force and a realization of the relatively advanced stage of Canadian e-commerce policy, it was decided that the organization should become a permanent aspect of Canada's e-commerce strategy and was formalized as a policy branch under the auspices of Industry Canada. Today, the Electronic Commerce Policy Branch exists to serve as a focal point and catalyst for the development of a comprehensive policy, regulatory, and legal framework for e-commerce, and to promote the growth and use of e-commerce in Canada.

A number of respondents also made reference to the creation of an ad hoc interdepartmental group that deals with issues such as customs duties, modes of delivery, procurement, transparency and domestic regulation, standards, intellectual property and classification. This group is a relatively informal one with fluid membership enabling anyone within government with an interest in trade and e-commerce to attend meetings and provide input with the aim of providing a point of policy coordination for government departments. The committee is primarily comprised of a core group of 10 or so individuals representing DFAIT, IC, Finance and Heritage; however, others such as the Privy Council Office and the Department of Justice have also been in attendance depending upon the agenda of each meeting. There are two subcommittees within the group: stakeholder consultations and classification issues, putting the question of how to go about classifying electronic deliverables at the forefront of the group.

The importance of these two groups is that they provide some degree of centralization for the state in an otherwise decentralized structure of authority. With DFAIT, Industry Canada, Heritage and Finance working together, the aim has been to provide a forum through which different government bureaucrats involved in trade and e-commerce can coordinate their efforts. According to Atkinson and Coleman, in sectors with strong state characteristics, task forces, coordinating committees, or working liaison groups encourage the independent thinking and broader perspectives required for long-term planning.¹¹⁷ Yet in neither of these groups is there a single department capable of dominating policy discussion. In one interviewee's words, "a fairly clear division of

¹¹⁷ Atkinson and Coleman, *The State, Business and Industrial Change in Canada*, 80.

labor exists among government departments although a lot of toe-stomping may occur.”¹¹⁸

Of all the departments, Industry Canada’s role within the context of the Electronic Commerce Task Force and the Interdepartmental Working group was perhaps the easiest for interviewees to define: to create an environment favorable to the growth of e-commerce in Canada. The department’s mission on the whole has been to foster a growing competitive, knowledge-based Canadian economy. Within the context of e-commerce, this has manifested itself in the emphasis that IC has placed on promoting sector interests, driven largely by a view that the interests of business must play an important role in the determination of e-commerce policy in Canada.

Respondents were also quick to acknowledge that the primary aim of DFAIT has also been easy to identify. Although trade policy experts exist across a wide variety of Canadian government departments, DFAIT has been charged primarily with providing technical expertise on the structure, organization and rules of international trade embodied within the WTO. Moreover, the department has also assumed something of an administrative role, distributing information, arranging meetings and providing a point of overall coordination, particularly within the ad hoc interdepartmental group. Finally, the promotion of Canadian prosperity through international trade and the projection of Canadian cultural values abroad represent two of the three pillars of Canadian foreign policy. As a consequence, DFAIT has a much more encompassing mandate that incorporates ideas regarding the importance of free trade as well as ideas regarding the necessity of Canadian cultural values. This multi-faceted role has meant that DFAIT has assumed some of the broadest objectives with respect to trade and e-commerce.

¹¹⁸ Interview with Canadian Heritage, April 26, 2000.

The Department of Finance, by contrast, was identified as a somewhat smaller player, important nevertheless because of the expertise that it has provided in the area of process. For Finance, the key question has been how to reconcile the classification of electronic transactions with Canada's present system of taxation and the collection of customs duties.

Finally, the role of Canadian Heritage within each of these committees is probably the most controversial from the perspective of those interviewed, due in large part to its mandate to (1) ensure shelf space for Canadian content, and (2) aid companies in producing Canadian content for export. From the perspective of one of Industry Canada's more influential representatives who actually sought to keep the department out of discussions on e-commerce, "finding a role for the Department of Heritage was the most difficult since e-commerce in Canada has been characterized as exactly that – e-commerce. Little attention has been devoted to content."¹¹⁹ For Industry Canada particularly, the presence of Canadian Heritage has been a somewhat thorny issue. Nevertheless, the department has managed to define a role for itself within the context of these two committees that largely involves working with key stakeholders on the cultural side, particularly the work of the Cultural Industries SAGIT, in order to help other departments develop e-commerce policy with an attention to Canada's third pillar of foreign policy: the projection of Canadian values and culture abroad.

Despite the existence of two cross-departmental groups, many respondents agreed that the lack of a single government department to dominate discussions of trade and e-commerce policy has meant that influence is relatively dispersed within government in the area of e-commerce. Given this decentralization of authority, the bureaucracy

supporting trade and e-commerce is perhaps best characterized as a somewhat weak state structure, where a wide range of politicians and bureaucrats can claim some jurisdiction, few institutions exist to link their activities, and a more traditional division of labor prevails. The implication of this weak state structure is that, in the words of Atkinson and Coleman, “such ‘bureaucratic pluralism’ encourages incremental, short-term decision-making that is based on the lowest common denominator criteria and always vulnerable to the introduction of a partisan political calculus.”¹²⁰

Hypothesis 6

The second hypothesis that flows from Atkinson and Coleman’s analysis is that (H6) *state autonomy from societal organisations affects its ability to make independent policy decisions*. This autonomy is dependent upon factors such as clearly identified roles and mandates, the degree to which this mandate is separate from that of clientele groups, a well-acknowledged corpus of law and regulation, and whether information needed for its mandate can be generated by the state itself.

According to the respondents, each of the four government departments dealing with trade and e-commerce have a more or less clear conception of their role in the discussion of the classification issue: Industry Canada to ensure that any government decision does not impede their efforts to create an environment favorable to e-commerce in Canada, DFAIT to stand as an expert on the rules of international trade as expressed by the WTO, Finance to provide input regarding taxation, and Canadian Heritage to act as a representative for Canadian cultural policy interests. Moreover, this bureaucracy is also well-supported by various political actors. John Manley and then Brian Tobin as

¹¹⁹ Interview with the former Manager of International Policy, Industry Canada, April 26, 2000.

Ministers of Industry, Sheila Copps as Minister of Canadian Heritage and Pierre Pettigrew as Minister of International Trade were all mentioned as being enormously interested in and supportive of the activities of their respective departments' in the area of e-commerce. Paul Martin of the Department of Finance was listed as the only exception to this rule, one Finance employee remarking that it was very difficult to get the attention of their Director let alone the Minister on issues of classification.¹²¹

To a large extent, government departments working in the area of trade and e-commerce have also been able to identify their interests and responsibilities as separate from those of industry groups. Increasingly, it has been suggested that the Canadian trade policy community needs to undergo something of a change in the way that it interacts with actors outside of government circles, due in large part to recent events such as the protest of NGOs in response to the Seattle Ministerial in December 1999. Some scholars such as Jan Aart Scholte have suggested that this could signal the beginning of shared governance between substate authorities, states, supranational agencies and civil society associations.¹²² For the moment however, this trend has yet to materialize substantively within the context of Canadian trade policy.

Public consultations, such as the ones recently organized by the House of Commons Standing Committee on Foreign Affairs and International Trade (SCFAIT), have undertaken what some scholars have referred to as the democratization of Canadian foreign policy. The SCFAIT consultations which were held two years ago under the direction of Canada's then Minister for International Trade, Sergio Marchi, aimed to

¹²⁰ Ibid.

¹²¹ Interview with Lynn Fortin. Department of Finance, January 28, 2000.

¹²² Jan Aart et al, "The World Trade Organization and civil society," in Brian Hocking and Steven McGuire, *Trade Politics: International, Domestic and Regional Perspectives*, 175.

bring many segments of Canadian society together in an effort to discuss a full range of issues relating to the agendas of both the WTO and the proposed Free Trade Agreement of the Americas (FTAA). E-commerce did not materialize as a central issue for the SCFAIT consultations however. While several dozen witnesses presented views on international trade and e-commerce, this group represented only a small fraction of the consultations undertaken. Moreover, where submissions were made with respect to e-commerce, the predominant tendency was to keep the presentation at a very general level, implying to the government that more analysis was needed before a formal approach could be developed.¹²³

Similarly, submissions on e-commerce received by DFAIT in response to the Canadian Gazette Notice, "Consultations for Trade Negotiations" published February 9, 1999 said very little about the classification of electronic transactions. Of the six received in total, only 2 parties (BCE and CBA) made definitive arguments in favor of a particular approach.

Canadian officials have also undertaken consultations with various business and consumer groups in the form of informal Focus groups, two of which were held in 1999. By and large these sessions were of an information-gathering nature, asking invited participants to comment on a wide range of e-commerce issues. While each of these sessions was a day long however, few substantive comments were made with respect to the classification issue, most participants preferring to wait until more information could be gathered.

Finally, the Canadian government has also undertaken a more intensive public consultation process related to e-commerce, with hearings held across Canada in Ottawa,

¹²³ Observations from a Canadian Council for International Business, Meeting 123, April 28, 1999.

Toronto, Vancouver, Edmonton, Montreal and St. John. These meetings permitted federal officials from DFAIT, IC, Heritage and Finance to meet with representatives from the private sector, universities, provincial governments, law firms, and consumer and business associations in order to discuss e-commerce and international trade rules. The question of how to classify electronic deliverables was subsequently posed to the participants, producing a wide range of responses. Some participants, for example, stressed the importance of “technological neutrality,” arguing that goods and services should continue to be treated as goods and services, irrespective of the means of delivery. Others indicated a clear “sectoral interest” perspective, highlighting the difference in opinion between the cultural industries and the software sector. Finally, some participants went as far as to suggest that perhaps a third category of products could be created for which new rules would have to be developed, in many instances arguing for the classification of electronic deliverables as intellectual property rights.

Taken together, these consultations have failed to produce a single, preponderant view on the classification of electronic transactions upon which the Canadian government could build a domestic position. If the list provided by Atkinson and Coleman accurately reflects the conditions necessary for an autonomous state, it is therefore fair to say that in the case of trade and e-commerce, the state in fact has a great deal of autonomy from the demands and interests of social actors.

Ultimately, however, respondents were reluctant to credit federal government officials for Canada’s preliminary position with respect to the classification of electronic deliverables. On the contrary, many spoke of the fact that it is the Canadian cultural sector that has had greatest weight on the decision-making abilities of key officials,

suggesting that the state has not acted in an autonomous manner. Several respondents were particularly critical of the manner in which this position has been developed, suggesting that Canadian government may be once again neglecting the interests of the domestic ICT industry in favor of the preservation of Canadian cultural values.¹²⁴ Thus, the proposition implied as part of Hypothesis 6 that the more autonomy the state possesses, the more capable it is of undertaking independent policy choices, does not apply directly to this particular policy process.

Hypothesis 7

The third hypothesis that stems from Atkinson and Coleman's model of policy network types is that (H7) *where business interest mobilization is strong, the interests of these groups are likely to be clearly interpreted by the state as important to the generation of policy alternatives.*

From the private sector, two groups of interests were acknowledged by the respondents as being particularly vocal in policy discussions of trade and e-commerce: (1) the cultural industry made up of a variety of producers, distributors, and creators; and (2) the information and communications technologies sector comprised of telecommunications, e-commerce, software, and computer and related services stakeholders, many of which are represented formally in the Information Communications Technology SAGIT. According to those interviewed, within each of the two industries, coordination is a common occurrence; however among them, there exists very little interaction among key stakeholders, oblivious in some instances to the

¹²⁴ Anonymous interview.

existence of a dichotomy of interests dividing the two groups. One interviewee, for example, was surprised to learn that much of cultural industry has favored the approach of classifying digital products as services while they were aware that various members of the IT industry have argued for their classification as goods.¹²⁵ Consequently, it was suggested that the two industries can be best understood as representing two very separate sectoral interests that exist within the policy community.

Respondents, government respondents in particular, characterized business interest mobilization as somewhat weak in the Canadian Information Communications Technologies (ICT) industry where many business associations co-exist without a comprehensive peak organization to gather specialized groups and enhance the capacity of business to define common interests such as is the case in most other capitalist democracies.¹²⁶ By contrast, several business associations claim to represent the concerns of business in the various trade-related aspects of e-commerce, each of which enrol firms directly as members. Of these, four associations were mentioned by individuals interviewed as being particularly active: the Canadian Chamber of Commerce (CCC), the Alliance of Manufacturers and Exporters Canada (AMEC), the Information Technology Association of Canada (ITAC), and the Canadian Advanced Technology Alliance (CATA). The four associations are in constant competition, with each trying to rally members from the same pool of interests, resulting in businesses frequently being a member of more than one or even all of the associations.

¹²⁵ Interview with *Telegraph*, April 19, 2000.

¹²⁶ Canada and the United States are the only two capitalist democracies without peak associations defined broadly as associations whose members are other associations. See Atkinson and Coleman, *The State, Business and Industrial Change in Canada*, 48.

Of the associations, the CCC was described by the interviewees as perhaps the most broadly based, a federation of six hundred Chambers of Commerce and Boards of Trade, which in turn embrace 170,000 businesses across Canada. The breadth of this membership often forces the CCC to shift its lobbying strategy away from narrow issues of concern to specific segments of its membership in order to push broad positions that will not offend any of its members. Its E-Commerce Working Group, for example, was described by one member as “a sometimes overly broad association lacking a clear sense of mandate and purpose.”¹²⁷ When asked why they thought that this was the case, the respondent replied: “The group just deals with far too many issues. Some members are more interested in telecommunications infrastructure issues, others care more about consumer protection. No substantive positions are ever able to be taken.”

AMEC was identified as facing similar problems. Its membership representing 25 percent of all manufactured output and 90 percent of the country’s merchandise exports, AMEC is also challenged to deal with a wide variety of needs. This structure of interests has manifested itself in the ambiguous manner that AMEC has dealt with the classification of electronic deliverables. Here, AMEC’s position has been one of “wait and see,” as formalized in a January 2000 discussion document, “More understanding is required before determining whether electronically ordered products are goods or services. Canada should not rush to deal with electronically ordered classification issues.”¹²⁸

¹²⁷ Anonymous Interview

¹²⁸ Matthew Wilson, “E-commerce,” Discussion paper: AMEC: www.the-alliance.com/amecsite/pages/allianccpages/EBUS.ZIP

ITAC, by contrast, lays claim as the voice of the Canadian information technology industry and is therefore the most narrow of the major business associations. Together with its partner organizations across the country, the association represents 1,300 companies in the computing and telecommunications hardware, software, services and electronic content sectors. This network of companies accounts for more than 70% of the 500,000 jobs, \$100 billion in revenue, \$3.6 billion in R&D expenditure and \$27 billion in exports that IT contributes annually to the Canadian economy. Compared to the CCC however, ITAC is much less involved in issues of trade as they apply to e-commerce. The problem for ITAC is resources, both in terms of labor and finance. As a consequence, ITAC has had little opportunity to participate actively in the preparation of a Canadian position regarding the classification of electronic deliverables. Instead, the association's focus has been on domestic regulation, as reflected in its response to the 1999 Gazette Notice in preparation for the Millenium round of the WTO and the FTAA negotiations.

CATAAlliance, likewise, has had similar resource problems. Comprised of approximately 1000 "new economy" enterprises, CATA's small membership has meant that it is only able to exist as a smaller player within Canadian policy circles. Consequently, the association has had somewhat inconsistent participation in trade/e-commerce issues, much less in the area of classification. One interviewee put it fairly accurately: "Whereas the CCC/CCIB, AMEC and to some extent ITAC, are capable of interacting closely with government on e-commerce as it relates to international trade, CATA is a relatively smaller player in broader e-commerce consultations. The classification issue is simply not a priority."

On the whole, the respondents argued that private sector entities in the ICT industry have simply not taken a major interest in the subject of classification. Several of the individuals interviewed attributed this to the novelty and technical nature of the subject matter, which has made it difficult for individual firms and business associations to collect enough information to make informed decisions regarding whether electronic transactions should be considered as goods or services. Several of the respondents commented that they simply didn't have time to look at how the classification issue would have an impact on their commercial activities. In one interviewee's words, "I'm currently waiting on DFAIT to provide me with a list of pro's and con's for the classification of digital products. Once I've seen that, then I'll be able to develop a position based on our company's interests."¹²⁹ This lack of technical expertise in the bureaucracy has been compounded by a recent reduction in the number of individuals working as professional lobbyists for multinational corporations,¹³⁰ significant since it is generally these individuals who have the technical expertise needed to participate within the trade policy community. Together, the two factors have meant that perspectives from the ICT industry have been conspicuously absent from policy discussions on classification.

Where views have been identified, it has been in the context of what Doern and Phidd refer to as "a broad official series of values and ideas," which include a belief in efficiency, profit and in the freedom of the market; in individual freedom and the work ethic; and in a suspicion of organized labor and of bureaucratic government.¹³¹ Within

¹²⁹ Interview with Teleglobe, April 19, 2000.

¹³⁰ Teleglobe, Newbridge and IBM were all cited as examples by various interviewees of corporations deciding to reduce the number of jobs available in government relations in the year 1999.

¹³¹ Doern and Phidd, *Canadian Public Policy*, 85.

the context of e-commerce, private sector interests have been relatively hesitant to push for any kind of policy decision in respect to classification. This hesitancy is perhaps best exemplified by a joint paper produced by the Canadian Chamber of Commerce and the Canadian Council for International Business which argues that:

For global electronic commerce, trade classification issues are extremely difficult to reconcile. Accordingly, governments should avoid premature classifications that may result in delivery choices based on tax, customs or other considerations unrelated to technical efficiency. In order to achieve this goal, classifications of information-based products must, to the extent possible, have neutral effects on a business's choice to offer a product in tangible or online form.

Any classification scheme, whether it treats all online commercial transfers of information as services or treats some of those transfers as services and others as goods, will have consequences that must be identified and evaluated closely before classification decisions are made.¹³²

The approach of the Canadian ICT industry has been very much akin to that of international business at large, which have come out strongly in favor of a hands-off approach, asserting the desirability of a commitment to self-regulation and market based evolution in documents such as that presented to Ministers at the Ottawa Ministerial Conference on E-commerce in October 1998.

Certain firms, IBM Canada and Bell Canada being two of the most prominent, have had a fair degree of direct interaction with government outside of their participation within various business associations and were identified as relatively more vocal than other firms. Led by Government Relations specialists such as Shirley-Anne George in the case of IBM and Bob Tritt of Bell, these companies have considerable in-house capacity for the generation of information related to international trade and e-commerce policy. Moreover, more often than not, these more powerful stakeholders have taken a

¹³² Canadian Council for International Business and the Canadian Chamber of Commerce, International Trade and Electronic Commerce, April 28, 1999, www.ccib.org/international_trade_and_electronic_commerce.htm

lead in the business associations to which they belong, permitting their interests to be heard both directly and indirectly.¹³³

Subsequently, where views have been identified by ICT as a whole, they have generally reflected the interests of software producers. From IBM's perspective in particular, the strong export oriented approach of the Canadian software industry has meant that it would be in the best interests of the Canadian ICT to ensure that trade in e-commerce is not subject to the potentially more restrictive commitments of the GATS when trade in software in its physical form falls under the GATT. On the whole, therefore, business associations in Canada have indicated a preference, albeit muted, for the classification of electronic deliverables as goods.

Nevertheless, the fact that these associations have found it difficult to mobilize interests around specific policy positions has meant that overall, business interest mobilization in ICT is low. Without a clearly focused agenda around which to lobby the Canadian federal government, private sector interests in these sectors have been somewhat muted. As a result, specific patterns of interaction between the two have developed that have had significant implications upon the overall policy outcome. These patterns are perhaps more clearly noticeable when the cultural sector is taken into account.

Several respondents were particularly useful in providing insight into business interest mobilization in the cultural sector which in theory, should be somewhat weaker than in the case of ICT due to the fact that the cultural sector is forced to deal with an even wider diversity of actors and interests. Chris Maule for example, pointed to a

¹³³ Bell and IBM currently co-chair the Canadian Chamber of Commerce Working Group of Electronic commerce.

distinction that he and Keith Acheson have made between the two types of groups that have had a sustained interest in cultural policy: industry associations and cultural nationalist organizations. With respect to the first group, the two authors argue that the position of industry groups on protection depends upon whether members foresee more profit from protection than from being able to invest and sell in foreign markets. That is to say that those members that are motivated by commercial considerations obviously prefer both protection and foreign access, but if that is not available, they will choose depending upon the balance of advantage. Should near consensus on this balance of advantage exist among its members, the association will therefore be capable of speaking with a clear voice.

Cultural nationalist organizations, by contrast, are described by Acheson and Maule, as much more easy to read, clearly favoring protection with the argument that commercial cultural products made by Canadians differ significantly from those made by foreigners. State support is consequently necessary because the costs of producing Canadian cultural products far exceeds their value in the marketplace.

According to Maule and others interviewed, this structure of interests within the cultural sector has meant that the objectives of different stakeholders – owners, creators, distributors, and hardware suppliers – are often quite different in a broader cultural policy context. This diversity of interest is heightened by the development of technological factors which have created even more discord among key players. As Acheson and Maule explain,

When a uniformity of interests exists among the cultural industries, one expects policy to be particularly industry friendly. In contrast, policy issues that arise when new technologies threaten rather than complement older ones create discord among the different interests within the sector and generate particularly intense

and divisive domestic and international debates. Whether policy becomes supportive of or opposed to beneficial change depends to a great degree on how the various groups in the industry assess the impact.¹³⁴

Indeed, the Canadian cultural sector is a tangled web of diverse actors and interests, making it frequently difficult for the sector to put forward a single, united position on a wide variety of key issue areas. One would therefore expect to find a relatively weak level of business interest mobilization in the Canadian cultural sector on the problem of how to classify electronic deliverables.

Clearly, the convergence of once distinct sectors such as broadcasting, cable, satellite, computers and telecommunications has had two clear opposing effects. On the one hand, convergence is making it easier and less expensive for magazine and book publishers to do business, and has helped artists to create whole new multimedia products such as CD-Roms, video games, virtual reality, digital animation and interactive education and training programs.¹³⁵ In an important respect, therefore, new technologies, particularly the Internet, offer important opportunities to Canadian cultural sector stakeholders seeking to export their goods and services.

On the other hand, however, new technologies also challenge the ability of Canada to maintain a distinctively Canadian voice by ensuring that there is a place for Canadian goods and services within the Canadian domestic market. The emergence of so-called “new media” defined broadly as interactive video, audio, and text-based services rooted in the growing convergence of telecommunications, computing and broadcasting poses a particularly challenging dilemma for Canadian cultural policy officials since new high-technology distribution networks offer foreign products more

¹³⁴ Acheson and Maule, *International Agreements and the Cultural Industries*, 24.

highways into the Canadian market, making it more difficult for government to ensure a place for Canadian content on these networks. Moreover, the new media environment also raises an issue based on copyright and other measures designed to ensure appropriate compensation for artists and right holders.

Already, the Internet has provided the means by which music can be downloaded and played back on a home computer with a sound card, radio broadcasts can be accessed, and small-scale television programming can be found. All of these phenomena point to the difficulties of trying to regulate cultural products that can be transmitted digitally. This has led many individuals and groups to conclude as Jim Carroll, author of some 25 best-selling books on the Internet, did in his submission to SCFAIT Consultations, “trying to regulate culture in this new era of technology is a virtual impossibility.”¹³⁶

As was cited by a number of respondents, segments of the Canadian cultural industry have therefore responded to federal government e-commerce consultations with a clear preference for the carving out of Canadian cultural interests by means of an interpretation of electronic deliverables such as music and books as services under the GATS. These individuals and groups acknowledge that the unique structure of the GATS affords cultural policy-making officials with greater flexibility in the exclusion of certain sectors of economic activity than can be found under the GATT. As a consequence, a large contingent of Canadian cultural sector stakeholders have lobbied the Canadian government to take a position in the WTO for the classification of e-deliverables as services.

¹³⁵ Cultural Industries SAGIT, *Canadian Culture in a Global World: New Strategies for Culture and Trade* (February 1999), p 25.

In many respects, this approach is consistent with the strategy that Canadian officials have utilized in the negotiation of international trade agreements. The consequence of this strategy however, has been that Canada has found itself in a relatively weak bargaining position when faced with a trading dispute. As Richard Stursberg noted in a November 2000 speech to the Canadian Institute of International Affairs,

The limitations of this approach became particularly clear in the magazine case, where the United States threatened countervails in a whole series of unrelated areas. Without the benefit of rules legitimizing Canada's policies, the WTO found against Canada's split-run regulations and associated excise taxes, resulting in a wholesale revision of Canada's magazine support policies. The net effect was to weaken or eliminate the array of existing support measures and force the Canadian public to pay an extra \$150 million in new subsidies to replace them.¹³⁷

An increasing number of Canadian cultural industry representatives have therefore begun to challenge the traditional approach of Canadian policy makers in the pursuit of cultural exemptions and have begun to articulate a proposal for a new international instrument that would be designed to safeguard cultural diversity. In one interviewee's view, "Instead of leaving the evolution of cultural policy to the anarchy of the exemption, the Instrument would establish rules for determining how governments may or may not behave."¹³⁸

The most vocal industry proponents of this view are members of Canada's Cultural Industries SAGIT, whose views are presented in a report provided to federal government officials on trade and culture. This report states:

A kind of blueprint for cultural diversity and the role of culture in a global world, the Instrument would clearly define what was covered and stress the importance of cultural sovereignty. The new instrument would identify the measures that

¹³⁶ Evidence, Meeting No. 99, March 16, 1999.

¹³⁷ Stursberg, 4.

¹³⁸ Interview with Chris Maule, Carleton University, March 21, 2000.

would be covered and those that would not, and indicate clearly where trade disciplines would or would not apply. It would also state explicitly when domestic measures would be permitted and not subject to trade retaliation.¹³⁹

Support for the creation of an international instrument designed to preserve and promote cultural diversity among industry stakeholders has subsequently had a strong impact upon how the sector has viewed the classification of electronic deliverables. According to key government officials, it will be some time before such an instrument could be created, if ever. Without some means of resolving the problem of how to deal with cultural goods and services in the context of international trade therefore, cultural sector stakeholders have therefore been extremely hesitant to consider the classification of cultural “digital products” as anything other than services for fear that it could constrain the ability of Canadian government officials to ensure shelf-space for Canadian producers.

Despite a diversity of interests on the broader cultural policy front, the cultural sector has consequently been somewhat successful in the articulation of a unified argument in favor of the classification of electronic deliverables as services and the subsequent application of GATS rules to trade in electronic transmissions. Whether favoring the carving out of Canadian interests using a cultural exemption or the creation of an instrument for cultural diversity, several key stakeholders have favored the GATS over the GATT in respect of e-commerce. As a consequence, Canadian government officials have been forced to reconcile competing interests among ICT and Cultural sectoral views.

From hypothesis 7, one would have predicted that the ICT industry would be in a better position than the cultural industries to effectively affect this policy process.

¹³⁹ The Cultural Industries Sectoral Advisory Group on International Trade, *Canadian Culture in a Global World: New Strategies for Culture and Trade*.

Business interest mobilization is much stronger in the instance of the Canadian ICT industry by virtue of the fact that it is faced with a more narrow diversity of actors and interests. Where business interest mobilization is strong, the interests of these groups are supposed to be interpreted by the state as important to the generation of policy alternatives. Thus, from a purely structural account, the Canadian government should be approaching the classification of e-deliverables with more attention to the interests of these stakeholders, particularly those of the software sector who have been the most vocal.

Yet government officials have been more compelled to argue for the treatment of these products as services, an argument that has been made by several key stakeholders from the cultural industries side, as well and the Department of Canadian Heritage. Unfortunately, hypothesis 7 provides little in the way of an explanation for this observation.

The typology of policy networks provided by Atkinson and Coleman in their analysis of industrial change in Canada, however, provides a more useful explanation for how policy preferences with respect to the classification issue have been shaped within the Canadian trade and e-commerce community. The policy network that exists among members of the Canadian trade/e-commerce policy community is perhaps best characterized as pressure pluralism which Atkinson and Coleman define as a situation where:

....the particular circumstances of economic development and the organizational evolution of the bureaucracy in a sector combine to deny the state both autonomy and concentration of decision-making power. Business interests cannot be accommodated to one another, either because the organization of business is hopelessly rudimentary, or because there exist diametrically opposed interests in the same industry. As a result, these interests are fragmented, with groups

operating on their own in narrow, specialized and overlapping domains. No one is discouraged from organizing and no one group possesses a monopoly of power. But groups are confined to the task of policy advocacy, and no power sharing is countenanced. The objectives of state officials emerge in the process of competition among contending interests.¹⁴⁰

On the issue of how to classify electronic transactions, two sets of competing business interests have combined to create an environment where the state is considerably weakened. As a consequence, Canadian departments and agencies, each intent on organizational survival, have pursued narrow, short-term goals that bring them into conflict with other departments and agencies doing precisely the same thing. In the instance of the classification issue, this tendency has manifested itself in what one interviewee referred to as interdepartmental “toe-stomping.”¹⁴¹

The existence of a pressure pluralist policy network that affects the ability of the state to make decisions and to separate itself from the interests of mobilized business, would therefore seem to suggest that some other group is responsible for the development of a particular policy direction. According to Atkinson and Coleman, decision-making in cases where weak state autonomy are combined with somewhat weak business interest mobilization can be explained as the emergence of government objectives through the competition of contending interests. In this instance, Canadian officials have moved towards taking a position on the classification of electronic transactions that would view e-deliverables as services subject to obligations under the GATS. Hypothesis 7, and to a certain extent, Hypothesis 6, leave open the question of pivotal actors in this particular policy process. It would seem, therefore, that some supplementary explanation is necessary in order to understand precisely how state objectives arise under these

¹⁴⁰ Atkinson and Coleman, *The State, Business and Industrial Change in Canada*, 82.

¹⁴¹ Christina Green, Interview with Canadian Heritage, February 9, 2000.

conditions. Kingdon's discussion of policy entrepreneurs and their role in the policy process should consequently be added to this discussion.

Kingdon and the Primeval Soup

Hypothesis 8

As highlighted in Chapter 3, Kingdon argues that policy process is best understood as a set of three independent but converging policy streams that can come together at critical times resulting in the opening of a policy window. This policy window permits specific individuals, whom he refers to as policy entrepreneurs, to push for certain ideas, which may result in policy change provided that the window of opportunity stays open long enough. (H8) *Where policy entrepreneurs are particularly active, this coupling of streams is most likely to occur.*

The first stream that Kingdon identifies in his model of public policy is problem identification. The majority of respondents agreed on the context within which the classification of electronic deliverables was first recognized by Canadian policymakers as a problem requiring their attention. Discussion of the classification issue within Canadian policy circles appears to have begun with the preparation of a report written by the Cultural Industries Sectoral Advisory Group on International Trade (SAGIT),¹⁴² a group created by the federal government in 1986 to allow officials from the Department

¹⁴² There are a total of 13 SAGIT's, each SAGIT comprised of senior business executives with some representation from industry associations, labor/environment and academia. Members serve in their individual capacities and not as representatives of specific entities or interest groups. Members are appointed, for a two year (renewable) term, by the Minister for International Trade to whom the SAGITs report. Each SAGIT meets three to four times annually and members serve without remuneration.

of Foreign Affairs and International Trade and the Department of Canadian Heritage to consult with representatives of Canada's cultural industries to discuss the relationship between trade and culture. In the early part of 1999, members of the Cultural Industries SAGIT had identified e-commerce and culture as a basket of issues necessitating government attention. The words "electronic commerce" were not used initially, but the concern was primarily that technological convergence would make it more difficult to define cultural products for the purposes of trade agreements.¹⁴³

According to those interviewed, these concerns were motivated by the early example of *Time Magazine* which, after closing its Canadian editorial office in 1976, found its way around a Canadian tariff code that prohibited companies from physically importing split-run magazines into the country by transmitting the editorial content for the Canadian edition into Canada via microfilm.¹⁴⁴ The early precedent set by *Time* encouraged others such as *Sports Illustrated* to do the same.¹⁴⁵ The fear, shared among the majority of the 16 members of the SAGIT, was that new distribution networks associated with e-commerce would offer foreign products more highways into the Canadian market, making it more challenging for government to ensure a place for Canadian content.¹⁴⁶

This concern was reinforced as a result of the June 30, 1997 WTO Appellate Body decision regarding Canada's imposition of a prohibitive excise tax upon Sports

¹⁴³ Interviews with Jane Taylor, DFAIT and Tom Oommen, DFAIT were particularly useful in clarifying this point.

¹⁴⁴ Interview with Chris Maule, Carleton University, March 21, 2000.

¹⁴⁵ In 1990, *Sports Illustrated* found its way around this tariff code by transmitting the publication to printers in Canada via satellite.

¹⁴⁶ The Cultural Industries Sectoral Advisory Group on International Trade, *Canadian Culture in a Global World: New Strategies for Culture and Trade*, 22.

Illustrated in its attempt to publish a split-run edition of the magazine in Canada.¹⁴⁷ Canada's principal reasoning was that the tax applied to advertising as a traded service under the GATS, and not to the periodicals themselves which are regarded as a traded good under the GATT. Since the Canadian government had not made any commitments regarding trade in advertising as part of its commitments under the GATS, it argued that it was not contravening any obligation. The United States by contrast, countered that the GATS should not take priority over the GATT since article III of the GATT 1994 prohibits the possibility of discrimination by services attached to goods such as distribution and transportation.

The WTO panel ruled that Article III of the GATT did apply to the excise tax, which affected trade in periodicals, disagreeing with Canada that because of the two agreements, GATT 1994 and GATS, both of which may apply the tax measure, "it is necessary to interpret the scope of application of each such as to avoid overlap." Rather, once it was decided that GATT Article III applied, the panel found that the tax discriminated between like products, namely foreign split-run and domestic non-split-run periodicals, and that while the tax was applied to advertising, it also applied indirectly to periodicals, placing it in contravention of GATT Article III.

This decision highlighted to members of the Cultural Industries SAGIT the importance of classifying electronic transactions, particularly those possessing cultural content. As Chris Maule, a Cultural Industry SAGIT member pointed out, if the Canadian government could not "pick and choose" among the two agreements, electronic deliverables would have to be classified as either goods or services.

Maule, *Much Ado About Culture*, 186-205.

Respondents were also quick to point out that the classification issue was additionally being discussed at the international level within the context of several international and regional fora including the OECD's Trade Committee, the FTAA Expert Community, the APEC Ad Hoc Task Force on E-Commerce and the TransAtlantic Economic Partnership between the United States and the European Union. According to those individuals interviewed, discussion of how to classify electronic transactions was most intense within the parameters of the WTO Work Programme on Electronic Commerce, adopted by the General Council on September 25, 1998. As part of its decision in May of that year to adopt a declaration on global e-commerce, the WTO began to look at various trade-related aspects of e-commerce by means of 4 primary groups. Issues relevant to the classification of electronic deliverables were introduced by two of these four groups, the WTO Council for Trade in Goods and the WTO Council for Trade in Services. Each of these committees requested input from committee members in order to make recommendations for action to the November 1999 session of the General Council, thereby forcing Canadian bureaucrats to look more seriously at classification.

Together, these events forced the classification issue onto the agenda of Canadian government officials. As was highlighted in the model combining ideas and structure in Chapter 3, ideas do not play an integral role in the problem identification stream as described by Kingdon. Rather, in this instance, the identification of a problem by a policy community is the result of more structural factors and triggers, quite independent of what occurs when ideas are filtered through policy networks into the two other streams of the policy process.

The second stream identified by Kingdon's model is the generation of policy alternatives which takes place within the confines of what he refers to as a policy community. The respondents spoke broadly of a community of specialists that interact in much the same way as that described by Kingdon. The Canadian trade/e-commerce community was said by the respondents to include: various individuals from federal government departments, representatives of several business associations, numerous private sector lobbyists, and a handful of academics. Their interactions were described as close-knit, by one interviewee as "almost incestuous."¹⁴⁸ Observations therefore highlighted that members of the community seem to know each other well, and in several instances, individuals had jumped from one government department to another or had left government to pursue government relations work in the corporate world, all the while still remaining within the community and working on the same issues.¹⁴⁹ This community of experts was also described by many of those interviewed as being relatively small in comparison to other issue areas. It was often suggested that this small size is mainly due to the fact that in an increasing number of policy areas, possessing technical capacity and detailed information has become crucial to effective participation. For those who have such expertise, the exchange of information between state and private actors can create privileged relationships from which the uninitiated can be excluded.

This community draws on a number of different government actors acknowledged by the respondents as including Industry Canada, the Department of Foreign Affairs and International Trade (DFAIT), Canada Customs and Revenue Agency, Department of

¹⁴⁸ Jonathan Andresen, Interview with Teleglobe, April 19, 2000.

¹⁴⁹ Examples here include Barbara Motzney who left Industry Canada's Task Force on Electronic Commerce in order to work on the international instrument project at Heritage and Eric Iankelevic who before joining the Canadian Chamber of Commerce, worked for DFAIT.

Finance, Canadian Heritage, Department of Justice, the Treasury Board of Canada Secretariat, and the Communications Security Establishment. Of these government departments, four – Industry Canada, DFAIT, Finance and Heritage – were highlighted as departments that have dealt substantively with the various trade-related aspects of e-commerce.

Also included within this policy community is a web of private sector and business association representatives comprised of organizations such as: IBM Canada, Bell Canada, Teleglob, Price Waterhouse Coopers, Osler Hoskin and Harcourt, CANARIE Inc., AOL Canada, the Canadian Association of Broadcasters, CATA, AMEC, TELUS, Consortium Multimedia CESAM, Societe professionnelle des auteurs et des compositeurs du Quebec and the Canadian Magazine Publishers Association, many of whom who have been active participants in this debate either through the Canadian government's formal consultations or through more informal channels.

Finally, a handful of consumer associations and academics were also identified by the respondents as belonging to this group of specialists. Included in this list were: the Public Interest Advocacy Centre, the Canadian Union of Postal Workers, Chris Maule, and Michael Hart, all of whom are Ottawa based.

Interviewees described the exchange of ideas within this community of specialists as a relatively open and equal process. Nevertheless, of all the individuals, several were signaled out as particularly active – Tom Oommen of DFAIT, Janet Mark of Heritage Canada, Robert Pilon of l'Association quebecoise du disque, du spectacle et de la video, and Shirley Ann George of IBM – suggesting that these individuals could be considered as policy entrepreneurs for the purposes of Kingdon's model.

The activities of these persons were described by the respondents as similar to the softening-up of a particular policy environment in order to prepare it for political change as described by Kingdon. Of these four individuals, three were consistently cited by the respondents as indicating a preference for the classification of electronic deliverables as services, albeit to differing degrees. Robert Pilan and Janet Mark, for example, have spoken often of the need to ensure that the classification of electronic transactions does not interfere with the Canadian government's ability to regulate, particularly in the area of culture. Tom Oommen, similarly, has been of the personal opinion that the classification of electronic deliverables as services could provide Canada with needed flexibility in certain sensitive sectors. Of the four, however, Shirley Ann George of IBM Canada has been the only clear proponent of a "goods approach" to classification in the area of software. As George indicated, "due to the small size of the Canadian market, Canadian software developers are export-focused, thereby requiring a more trade liberalizing set of rules than the GATS can provide."

These entrepreneurs could be observed advocating their views in a variety of fora, ranging from informal lunches to broad-based industry consultations. By no means, however, were these entrepreneurs identified as directly affecting policy change. Rather, their impact was said to be more "consensus building" than path-breaking. What is key is how these actors operate within the policy network described by Coleman and Atkinson.

Policy entrepreneurs, in this instance, play a pivotal role in the development of policy alternatives. The model developed in Chapter 3 describes a process in which ideas filtered by means of several separate yet interrelated policy networks are picked up by policy entrepreneurs working in the policy community and are translated into a range of

policy alternatives on the basis of the preferences of entrepreneurs. In the case of how the Canadian government has approached the development of possible policy options with respect to the classification of electronic deliverables, two policy networks – one among government officials and the domestic ICT industry, the other amongst Canadian cultural stakeholders and government – serve as a filter through which ideas are transmitted to policy entrepreneurs. Here, ideas regarding the importance of the promotion of Canadian cultural values have been more readily picked up by policy entrepreneurs who have an interest in the classification of digital products as services. As a consequence, the development of a range of possible alternatives in this stream has been skewed by the interactions of these entrepreneurs.

According to Kingdon, policy entrepreneurs can also have a strong effect on the way in which the generation of policy alternatives feeds into developments in the political stream. Kingdon argues that it is developments in the political stream that have their most powerful effects on government agenda and that one would, therefore, expect to find electoral, partisan and pressure group interests as having an important impact upon the policy process. Here, swings of national mood, election results, changes in administration, changes of ideological or partisan distributions, interest group pressure campaigns and disputes over jurisdiction all affect the political stream in Kingdon's model.

In the instance of the classification of e-deliverables, little evidence exists in support of strong movement of this issue throughout the political stream. No apparent change in national sentiment surrounding e-commerce, trade, or culture could be observed by the respondents at the time of interviewing, nor has any major change

occurred in the nature of federal political leadership over the last five years. As a consequence, it would seem that policy entrepreneurs have not yet successfully brought this particular issue into the political stream as a subject for debate.

In the end, Kingdon's model explains policy outcomes as the development of a set of converging *preferences* in public and private spheres that act simultaneously to open a policy window and prompt a move towards change. In the instance of the classification of electronic deliverables, Canadian stakeholder preferences have been formed in the context of two sets of competing ideas: both with strong historical precedent, but one that has appeared to become more deeply embedded in Canadian institutions. As a consequence, the preliminary Canadian position on the classification of electronic transactions has gravitated towards the interests of the Canadian cultural sector which has taken the view that the application of GATS rules over those of the GATT would provide Canada's cultural policy officials with the flexibility needed to adequately achieve Canadian cultural objectives.

From Kingdon's model, one test exists in order to determine whether a policy window has been opened: successful advocacy. This test would therefore imply that one would expect to find a policy entrepreneur who attempts to take advantage of the particular opening of the window and to rely on either a claim to hearing, either because of their expertise on an issue or their leadership of organized groups; political connections or negotiating skills; and persistence and tenacity. Such characteristics would thereby provide the entrepreneur with the ability to engineer a coupling of the three streams and make policy change possible.

To a certain extent, a policy window has opened, given that the Canadian government has taken a position on the classification of electronic deliverables, even if only on a preliminary basis. However, the very fact that Canada has yet to take a position on this issue internationally would seem to suggest that a policy window has not opened sufficiently wide enough in order to allow policy entrepreneurs to take advantage of this opening in order to encourage a more clear position to be taken. This may be particularly the case given the fact that this issue has had very little effect upon the political maneuvering stream. Furthermore, it may also be the case that this window has since closed, and will therefore require a coupling of the three streams by policy entrepreneurs once again once the conditions for this are more appropriate.

In sum, at the point in which policy entrepreneurs were most active, a coupling of the three streams most likely did occur, as Hypothesis 8 would suggest. However, given that this was not accompanied by an event or decision in the political stream, which could have been partially stimulated by active involvement of these entrepreneurs, the window was only sufficiently large enough to allow Canadian government officials to take a preliminary position on the classification of e-deliverables.

Chapter Summary

Chapter 4 has taken the eight hypotheses outlined in Chapter 3 that stem from the development of a model synthesized from three bodies of scholarly research – Keohane and Goldstein; Atkinson and Coleman; and Kingdon – and has then compared empirical evidence gathered from Key Informant Interviews against each hypothesis. From

Goldstein, four hypotheses were developed, two of which focused on the conditions under which policy makers may have an incentive to rely on ideational factors as a guide for actions, and another two which offered an explanation as to why a particular policy choice might be viewed by individuals as preferable to another. Hypotheses 1 and 2 suggested that: (H1) *The greater the range of feasible economic and political policies, the greater the reliance of political entrepreneurs on policy ideas*; and (H2) *Policy uncertainty clears a path for ideas to have an important role in the determination of how one views interests*. The interviews confirmed that ideational factors have played a key role in the determination of preferences regarding the classification of e-deliverables and provided support in demonstrating the existence of a range of possible policy alternatives available to government officials in this area of policymaking, as well as a certain degree of policy environment uncertainty as a direct consequence of the newness of the subject matter as well as the lack of clear stakeholder interests. As a consequence, ideas have served as an intermediary between interests and policy, causing ideas to select particular strategies for policy entrepreneurs.

Hypotheses 3 and 4 suggest the underlying factors that may help determine the selection of one particular idea over another: (H3) *The greater the perceived divergence between underlying social values and domestic institutions and a policy prescription, the less likely the policy idea will be selected*; and (H4) *The greater the institutionalization of a particular policy idea, the longer lasting and more pervasive will its impact be on the policymaking process*. Empirical evidence confirmed the institutionalization of two main sets of ideas: the importance of an open, liberal trading environment, and the significance of the promotion of Canadian cultural values. The interviews demonstrated that each of

these two sets of ideas are well-institutionalized within structures of trade policy, particularly in the case of culture given that culture is also firmly embedded in larger structures of Canadian public policy making. Canada's approach to the international regulation of culture in the context of trade negotiations is especially entrenched, and shows little substantial probability of changing, given the emergence of new media and the absence of an appropriate international mechanism designed to preserve and promote cultural diversity. Since the everyday activities of the cultural sector crucially affect electoral interests, ideas regarding the importance of Canadian cultural values have a competitive advantage over other ideas such as those reinforcing the necessity of open and liberal free trade.

When considered together, these four hypotheses make possible an attempt to look at *the impact of both structure and ideas upon policy process* and to undertake more meaningful policy analysis.

From Atkinson and Coleman, three hypotheses were developed which are relevant to the manner in which ideas may be transmitted by means of policy networks. The first of these is that: *(H5) Decision-making is most likely concentrated within the hands of a small number of people when a single agency is able to dominate relations in a given sector. Where this is the case, this agency or group of individuals is likely to take a lead in the formulation of policy, given the key role that these groups play in the transmission of ideas.* The interviews suggested that, within the Canadian federal government, influence is relatively dispersed such that the bureaucracy supporting trade related e-commerce policy can be characterized as a somewhat weak state structure, making it more vulnerable to the effects of partisan political calculus.

Hypothesis 6 suggests that: (H6) *State autonomy from societal organizations affects its ability to make independent policy choices.* The interviews pointed to two main factors that would seem to suggest that the Canadian government possesses a relatively strong of autonomy: first, a clearly identifiable role and mandate for the state as expressed through each of the four main government departments involved in the classification issue; and second, an ability to separate this mandate from the mandate of clientele groups which has been aided in part by the relative slowness of consultations to produce a single, preponderant view regarding the approach that should be taken on this issue. Respondents, however, failed to recognize the federal government as acting independent of domestic interest groups, particularly of the cultural industries. Nevertheless, as was seen by comparing empirical evidence to Hypothesis 7, the fact that government officials have not responded to business interests stemming from the ICT sector where business interest mobilization is relatively strong, suggests that the state must have some autonomy from societal organizations. Thus, while this point was not supported by those individuals interviewed, it is not clear that Hypothesis 6 should be rejected.

The final hypothesis stemming from Atkinson and Coleman is that: (H7) *Where business interest mobilization is strong, the interests of these groups are likely to be clearly interpreted by the state as important to the generation of policy alternatives.* From the data collected, two groups of interests were identified as being particularly salient: the ICT sector, and the cultural industries. The interviews pointed to the existence of slightly stronger business interest mobilization in the case of the ICT sector

than is in the instance of the cultural industries due to the existence of a more narrowly focused set of interests among key players.

From this hypothesis, the interviews should have observed government officials approaching the classification of e-deliverables with more attention to the interests of these stakeholders, particularly those of the software sector who have been the most vocal. However, evidence would seem to suggest that the Canadian government's position is much closer in line with the interests of the cultural industries, particularly those charged with regulatory responsibilities in the area of culture and trade policy. When combined with the findings in respect of Hypothesis 6, it would therefore seem that government officials may be acting more autonomously from business interests than was observed by the respondents. In particular, empirical anomalies generated from these two hypotheses suggested that some factor may have been at work, possibly the role of policy entrepreneurs.

Finally, one hypothesis was drawn from the work of Kingdon which was then applied against the interviews: (H8) *Where policy entrepreneurs are particularly active, a coupling of three streams – problem identification, the generation of policy alternatives, and political maneuvering – is most likely to occur thereby leading to the opening of a policy window.* The Interviews confirmed the active participation of four policy entrepreneurs in the generation of policy alternatives, three of which who have tended to view the classification of electronic deliverables as services under the GATS as Canada's best policy option. Furthermore, policy entrepreneurs could also be observed as significant to the opening of a policy window to the extent that government officials have taken preliminary steps to argue for the classification of e-deliverables as services;

however, it must be noted that this policy window was not opened wide enough to allow for this position to be taken in any firm manner. Finally, it could be argued that from the information collected, this window of opportunity has now closed, and will need to be re-opened by policy entrepreneurs at a later date. Hypothesis 8 could therefore be validated.

In sum, Chapter 4 has demonstrated the utility of a model combining structural and ideational factors as an explanation for the Canadian government's preliminary position with respect to the classification of electronic deliverables. When considered in tandem, they provide an interesting framework for describing patterns of public policy in Canada. And while the Canadian government has yet to make a formal decision regarding the classification of electronic transactions, particularly in the area of electronic deliverables, this model, as well as the hypotheses that support it, provide important insight into some of the variables that have fed into Canada's approach to date.

CHAPTER 5: CONCLUSION

This thesis has shown that ideas do not float freely throughout the policy community as described by Kingdon, but rather, are filtered by a variety of different policy networks. The ultimate impact of these ideas is greatest in the generation of policy alternatives, since policy entrepreneurs are most free to play a role in the development of a range of possible options for government officials. Ideas, however, are also important in the movement of the policy process from this generation of policy alternatives to a stream characterized by political maneuvering, to the extent that policy entrepreneurs can prepare the landscape for political actors to hear policy options. Thus, while structure plays an important role in the transmission of ideas from one stream to the next, and may aid in the opening of a policy window, the very strength of specific ideas are significant in the shaping of the patterns by which these structures operate.

In the instance of how the Canadian government has responded to the challenge of how to classify electronic deliverables, this combination of structural and ideational factors has led to the adoption of a preliminary position that e-deliverables should be treated as services under the GATS. Here, ideas regarding the importance of open, liberal markets juxtaposed against ideas stressing the significance of the preservation of Canadian cultural values have become sufficiently embedded in Canadian trade policy institutions such that they have served as a guide for action for key participants in the trade/e-commerce policy community. These ideas have been subsequently filtered through two central policy networks, out of which two opposing views regarding classification have emerged. For the most part, the preferences that have been put forth by these policy networks have centrally affected the development of policy alternatives

within this community since it is in this stream that policy entrepreneurs have had the most flexibility to float ideas; however, they have also, to some degree, had a role in the opening of a policy window allowing for the Canadian government to take a preliminary position with respect to classification of e-deliverables as services. The opening of this policy window by policy entrepreneurs was been minimal, but it was opened wide enough to allow for this position to be made, albeit on an initial basis. The ultimate result has been that Canada has taken a pre-negotiating position that favors the classification of e-deliverables as services.

The explanation of how it is that a particular policy decision is made is not an easy task for political scientists. Defined most often as “a set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation where those decisions should, in principle, be within the power of those actors to achieve,”¹⁵⁰ public policy is a process involving a number of different actors, interests and complex processes. In order to address these concerns, many individuals have turned to structural based explanations as a means of simplifying the policy process, breaking it down into a series of more manageable stages. Models of this sort are particularly helpful in delineating who participates in the policy process and who wields power. In this respect, they are useful to the extent that they say something about the structural properties of state agencies and how organized interest groups affect the policy process. The work of Kingdon and of Atkinson and Coleman serve as good examples which highlight the utility of structural-based approaches.

¹⁵⁰ William Jenkins, *Policy Analysis: A Political and Organizational Perspective* (London: Martin Robertson, 1978).

Nevertheless, structural-based models are less useful in the explanation of the normative context within which interests are defined by key actors. Thus, while they may describe the process by which preferences affect policy outcomes, they are not particularly helpful in exploring how preferences arise in the first instance, nor in how these preferences, to some extent, partially shape domestic structures of policymaking. Ideas, however, play a crucial role as intermediaries between structural conditions and actors' interests and therefore contribute to the determination of preferences which are then channeled through policy networks.

This thesis has demonstrated that a truly accurate account of a particular policy process must take into consideration, ideas as well as structure, and examine the relationship that exists between the two. In the context of the classification of electronic deliverables that have a physical equivalent, the linkages between structure and ideas has resulted in a situation where the Canadian government has moved towards an initial policy position that views electronic deliverables such as software and music as services subject to obligations under the GATS. In this instance, ideas regarding the importance of preserving and promoting Canadian cultural values, juxtaposed against ideas regarding the importance of open, liberal markets, have served as intermediaries between structural conditions and actors' interests and have therefore forced open a policy window allowing the Canadian government to take a position on this issue.

APPENDIX 1: STRUCTURE OF INTERVIEWS

1. **Job Description**
 - Could you describe your own particular job function?
 - What are the program run by this branch that you are directly involved with?
2. **Bureau's Mandate**
 - What function does your bureau serve?
 - How are you supported by other departments/firms/associations
3. **Policy Goals, Instruments and Formulation**
 - How would you describe the overall goal of e-commerce policy in Canada?
 - How would you describe the approach of the Canadian government to the issue of classification?
 - Does this policy goal represent a change in direction or is it a long-standing policy orientation?
 - Who do you feel has been responsible for this direction?
 - What have been the main obstacles to the achievement of this policy goal?
 - Could you describe the process by which this policy approach has been pursued?
 - When were you first approached with the problem of how to classify electronic deliverables? Who approached you and what was the context of the discussion?
 - What was your initial reaction?
 - How did this position evolve?
 - How did you attempt to make your position heard? (ie. Process: focus groups, position papers, lobbying, etc)
 - How important have senior civil servants been?
 - Politicians?
 - Industry?
4. **Industry**
 - How would you characterize industry positions with respect to classification?
 - What firms/associations have been particularly vocal about their views?
 - How would you characterize interest mobilization within each of the two central sectors?
4. **Bureaucracy**
 - What government departments have been involved in this policy direction?
 - Have certain departments been more active than others? If so, why?
 - Are questions of jurisdiction ever a problem?
5. **Academia**
 - What role have academics played?

- Can you name several academics who have been particularly active?
6. **Alternative Approaches**
- Have you given much thought to alternative approaches?
 - How do you think the Canadian position compares to that of the United States and the European Union?
 - What about to the suggestions put forth by Indonesia and Singapore? To Australia?
7. **What international pressures have shaped the issue?**
8. **Is this issue likely to get caught up with other bilateral/multilateral issues?**
9. **Closing**
- How critical is the classification issue for Canada? For the success of e-commerce?
 - Can you name any other people that may be useful to speak to?

APPENDIX TWO: LIST OF INTERVIEWS

Comprehensive Interviews

William Crosbie, Department of Foreign Affairs and International Trade
Jennifer Chandler, Department of Foreign Affairs and International Trade
Shirley Ann George, IBM Canada
Chris Maule, Carleton University
Janet Marks, Canadian Heritage
Lynn Fortin, Department of Finance
Barbara Motzney, Former Manager International Policy, Industry Canada
Paul Robichaud, Department of Finance
Jennifer Drysdale, Canadian Heritage

Background Interviews and Information

Jonathan Andresen, Teleglobe
Eric Iankalevik, Canadian Chamber of Commerce/Canadian Council for International Business
Tom Oommen, Department of Foreign Affairs and International Trade
Mike Skinner, Progestic
Jane Taylor, Department of Foreign Affairs and International Trade
Christina Green, Canadian Heritage

BIBLIOGRAPHY

- Acheson, Keith and Christopher Maule. *Much Ado About Culture: North American Trade Disputes*. Ann Arbor: University of Michigan Press, 1999.
- Acheson, Keith and Christopher Maule. *International Agreements and the Cultural Industries*.
- Alliance for Global Business. "Trade related Aspects of Electronic commerce" (Unpublished Discussion Paper), May 1999.
- Atkinson, Michael and William Coleman. *The State, Business and Industrial Change in Canada*. Toronto: University of Toronto Press, 1989.
- Atkinson, Michael and Marsha Chandler (eds.). *The Politics of Canadian Public Policy*. Toronto: University of Toronto Press, 1983.
- Agnew, J. "The Territorial Trap: The Geographical Assumptions of International Relations Theory," *Review of International Political Economy*, Volume 1, 1994.
- Baylis, J. and Steve Smith. *The Globalization of World Politics*. New York: Oxford University Press, 1997.
- Bernier, Ivan. "Cultural Goods and Services in International Trade Law," *The Culture/Trade Quandary: Canada's Policy Options*, 1999.
- Brooks, Stephen. *Public Policy in Canada: An Introduction*. Toronto: McClelland & Stewart Inc., 1989.
- Browne, Dennis. "Canada's Cultural Trade Quandry," *International Journal*, Volume LIV, No. 3 (Summer 1999).
- Cairncross, R. *The Death of Distance*. Harvard University Press, 1997.
- Caporaso, James. "Across the Great Divide: Integrating Comparative and International Politics," *International Studies Quarterly*, Volume 41, Number 4 (December 1997).
- Court, Randolph. "Dell's Magic Formula." May 28, 1998. (<http://www.wired.com>).
- Doern, Bruce and Peter Aucoin (eds.). *The Structures of Policy-Making in Canada*. Toronto: St. Martin's Press, 1971.
- Drucker, Peter. "Beyond the Information Revolution," *The Atlantic Monthly* (October 1999).

- . “A Punch-Up in Plastic.” *The Economist*, (8 June 1996).
- . *The Economist*, London (February 15, 1997).
- . *The Economist*, London (May 4, 1997).
- Elkins, David. *Beyond Sovereignty: Territory and Political Economy in the Twentieth-First Century*. Toronto: University of Toronto Press, 1995.
- Evans et al. *Double-Edged Diplomacy: International Bargaining and Domestic Politics*. Berkeley: University California Press, 1993.
- Fliess, Barbara A. and Pierre Sauvé. *Of Chips, Floppy Disks and Great Timing: Assessing the WTO Information Technology Agreement*. Paris: Institut français des relations internationales, 1998.
- Frieden, Jeffry and David Lake (eds.). *International Political Economy: Perspectives on Global Power*. New York: St. Martin’s Press, 1995.
- Finnemore, Martha and Kathryn Sikkink. “International Norm Dynamics and Political Change,” *International Organization*, Volume 52, Number 4 (Autumn 1998).
- Gilpin, Robert. *The Political Economy of International Relations*. Princeton: Princeton University Press, 1987.
- “Special Supplement on E-Commerce,” *Globe and Mail*, Tuesday, November 10, 1998.
- “Special Supplement on E-Commerce,” *Globe and Mail*, Tuesday, March 30, 1999.
- Goldstein, Judith and Robert Keohane (eds.). *Ideas and Foreign Policy: Beliefs, Institutions and Political Change*. Ithaca: Cornell University Press, 1993.
- Government of Canada. *Canada and the World Trade Organization: The Millenium Round*. October 1999.
- Government of Canada. *Electronic Commerce and Canada’s Tax Administration: A Report to the Minister of National Revenue from the Minister’s Advisory Committee on Electronic Commerce*. April 1998.
- Government of Canada. *Electronic Commerce and Canada’s Tax Administration: A Response by the Minister of National Revenue to his Advisory Committee’s Report on Electronic Commerce*. September 1998.
- Government of Canada. *Report of the Standing Committee on Foreign Affairs and International Trade: Canada and the Future of the World Trade Organization: Advancing a Millenium in the Public Interest*. June 1999.

- Government of the European Union. *A European Initiative in Electronic commerce*. April 1997. <http://www.ispo.ccc.bc/ccommerce>.
- Government of Japan. *Toward the Age of the Digital Economy*. May 1997. <http://www.wcoomd.org.ecjapan.htm>.
- Government of the United States. *A Framework for Global Electronic Commerce*. July 1, 1997. www.ecommerce.gov.
- Government of the United States: United States Department of Treasury. *An Introduction to Electronic commerce Money Issues: Toward Electronic Money and Banking, The Role of Government*. September 19-20, 1996.
- Hart, Michael and Ramesh Chaitoo, *Electronic Commerce and the Role of the World Trade Organization*, (Unpublished Discussion Paper).
- Hocking, Brian and Steven McGuire (eds.). *Trade Politics: International, Domestic and Regional Perspectives*. London: Routledge, 1999.
- Howlett, Michael and M. Ramesh. *Studying Public Policy: Policy Cycles and Policy Subsystems*. Toronto: Oxford University Press, 1995.
- Howlett, Michael and M. Ramesh. *The Political Economy of Canada: An Introduction*. Toronto: McClelland and Stewart, 1992.
- Hufbauer, Gary C. and Erika Wada (eds.). *Unfinished Business: Telecommunications after the Uruguay Round*. Washington: Institute for International Economics, 1997.
- Jackson, Robert and Alan James. *States in a Changing World*. New York: Oxford University Press, 1993.
- Johnston, Richard. *Public Opinion and Public Policy in Canada*. Toronto: University of Toronto Press, 1986.
- Keohane, Robert. *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton: Princeton University Press, 1984.
- Keohane, Robert. "The Demand for International Regimes," *International Organization*, Volume 36, Number 2 (Spring 1982).
- Keohane, Robert and Joseph Nye. "Power and Interdependence in the Information Age," *Foreign Affairs* (September/October 1998).

- Kingdon, John. *Agendas, Alternatives and Public Policies*. New York: HarperCollins, 1995.
- Kobrin, Stephen. "Electronic cash and the End of National Markets," *Foreign Policy*, Number 107 (Summer 1997).
- Krasner, Stephen. *International Regimes*. Ithaca: Cornell University Press, 1983.
- Kratochwil, F. *Rules, Norms and Decisions*. Cambridge: Cambridge University Press, 1989.
- Litan, Robert E. and William A. Niskanen. *Going Digital: A Guide to Policy in the Digital Age*. Washington: Brookings Institution and Cato Institute, 1998.
- March, James and Johan Olsen. "The Institutional Dynamics of International Political Orders," *International Organization*, Volume 52, Number 4 (Autumn 1998).
- Mann, M. *The Sources of Social Power*. Cambridge: Cambridge University Press, 1986
- McLuhan, Marshall. *Understanding Media*. London: Routledge, 1964.
- Moravcsik, Andrew. "Taking Liberal Preferences Seriously: A Liberal Theory of International Politics," *International Organization*, Volume 51, Number 4 (Autumn 1997).
- Nye, Joseph and William Owens. "America's Information Age," *Foreign Affairs*, March/April 1996.
- OECD. *A Borderless World: Conference Conclusions OECD Ministerial Conference on Electronic Commerce*. October 7-9, 1998.
- OECD. Electronic Commerce. Policy Brief No.1, 1997.
- OECD. *Electronic Commerce: Taxation Framework Conditions: A Report by the Committee on Fiscal Affairs*. DAF/CF/98)38/REV3, June 30, 1998.
- OECD. *Dismantling the Barriers to Global Electronic Commerce*.
<http://www.oecd.org//dsti/sti/it/electroniccommerce/prod/tukufin.htm>
- OECD Ministerial Conference on Electronic Commerce. *Report on International and Regional Bodies: Activities and Initiatives in Electronic Commerce*. Ottawa 7-9 October 1998.
- OECD Ministerial Conference on Electronic Commerce. *Report on International and Regional Bodies: OECD Action Plan for Electronic Commerce*. Ottawa 7-9 October 1998.

- OECD Ministerial Conference on Electronic Commerce. *Report on International and Regional Bodies: A Global Action Plan prepared by Business with Recommendations for Governments*. Ottawa 7-9 October 1998.
- OECD Ministerial Conference on Electronic Commerce. *Report on International and Regional Bodies: Conference Conclusions*. Ottawa 7-9 October 1998.
- OECD. *Dismantling the Barriers to Global Electronic Commerce*.
www.oecd.org/dsti/sti/it/ec/prod/DISMANTL.HTM.
- OECD. *OECD Work on Electronic Commerce: An Overview*. Paris: OECD, nd.
- OECD. *The Economic and Social Impact of Electronic Commerce: Preliminary Findings and Research Agenda* (Paris: OECD, 1999).
- Ohmae, K. *The End of the Nation State: The Rise of Regional Economies*. London: HarperCollins, 1995.
- Onuf, N. *A World of Our Making: Rules and Rule in Social Theory and International Relations*. Columbia: Columbia University Press, 1989.
- Orwell, George. *Nineteen Eighty-Four*. New York: Penguin Books, 1949.
- Putnam, Robert. "Diplomacy and Domestic Politics: The Logic of Two Level Games," *International Organization*, Volume 42 (1988).
- Rabinovitch, Victor. "The Social and Economic Rationales for Domestic Cultural Policies, *The Culture/Trade Quandary: Canada's Policy Options*, Dennis Browne ed.
- Rosenau, J. *Domestic Sources of Foreign Policy*. New York: Free press, 1967.
- Rosenau, J. *Turbulence in World Politics*. Princeton: Princeton University Press, 1990.
- Rosenau, J. *Along the Domestic-Foreign Frontier: Exploring Governance in a Turbulent World*. Cambridge: Cambridge University Press, 1997.
- Rosenau, J. and E. Czempiel (eds.). *Governance Without Government: Order and Change in World Politics*. Cambridge: Cambridge University Press, 1992.
- Ruggie, John. "What Makes the World Hang Together? Neo-Utilitarianism and the Social Constructivist Challenge," *International Organization*, Volume 52, Number 4 (Autumn 1998).

- Sakamoto, Y. (ed.). ***Global transformation: Challenges to the State System.*** Tokyo: United Nations Press, 1994.
- Sauvé, Pierre and Daniel Schwanen, (eds.). ***Investment Rules for the Global Economy.*** Toronto: C.D. Howe Institute, 1996.
- Scholte, J.A. ***Globalization: A Critical Introduction.*** London: Macmillan, 1997.
- Stopford, J. and Susan Strange. ***Rival States, Rival Firms: Competition for World Market Shares.*** Cambridge: Cambridge University Press, 1991.
- Strange, Susan. ***The Retreat of the State: The Diffusion of Power in the World Economy.*** Cambridge: Cambridge University Press, 1996.
- Subramaniam, V. and Jon Alexander (eds.). ***Comparative Public Policy Reader.*** Jawahar: Ajanta Books International, 1999.
- Sykes, Alan O. ***Product Standards for Internationally Integrated Goods Markets.*** Washington: Brookings Institution, 1996.
- Walker, R. ***Inside/Outside: International Relations as Political Theory.*** Cambridge: Cambridge University Press, 1993.
- Waltz, Kenneth. ***Man, the State and War.*** New York: Columbia University Press, 1959.
- Waltz, Kenneth. ***Theory of International Politics.*** New York: McGraw-Hill, 1979.
- Wendt, Alexander. "Anarchy is what states make of it," ***International Organization***, Volume 46, Number 2, 1992.
- WTO. ***Declaration on Global Electronic Commerce.*** Adopted May 20, 1998. <http://www.wto.org/anniv/ccom.htm>.
- World Trade Organization, ***Development Implications of Electronic Commerce: Note by the Secretariat*** (WTO document WT/COMTD/W/51 of 19 November 1998).
- World Trade Organization. ***Electronic Commerce and the WTO.*** Geneva: WTO, 1998.
- World Trade Organization. ***Interim Report to the General Council, Work Programme on Electronic Commerce.*** WTO document S/C/8 of 31 March 1999.
- World Trade Organization. ***Telecommunications Services: Background Note by the Secretariat.*** WTO document S/C/W/74 of 8 December 1998.
- World Trade Organization. ***The Work Programme on Electronic Commerce: Note by the Secretariat.*** WTO document S/C/W/68 of 16 November 1998.

World Trade Organization. *Work Programme on Electronic Commerce: Background Note by the Secretariat.* WTO document G/C/W/128 of 5 November 1998.