

misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of December, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,451]

#### **Saurer Inc., a/k/a Schlafhorst Inc., Charlotte, NC; Notice of Negative Determination Regarding Application for Reconsideration**

By application of September 30, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Saurer Inc., a/k/a Schlafhorst Inc., Charlotte, North Carolina was signed on September 5, 2003, and published in the **Federal Register** on October 10, 2003 (68 FR 58719).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Saurer Inc., a/k/a Schlafhorst Inc., Charlotte, North Carolina engaged in buying and selling of textile machinery and parts. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner alleged that, in fact, the petitioning worker group was engaged in production of a variety of articles in connection with servicing textile machinery, including training manuals, flash cards containing software upgrades, and a variety of spare parts

used to service existing customer machinery. The petitioner further directed the Department to contact a specific company official who would be particularly knowledgeable about production activity at the facility.

The Department contacted the company official specified in regard to these allegations. As a result, it was revealed that the petitioning worker group worked in the Service Department, and were separately identifiable from two other departments at the subject facility, engaged in buying and selling of textile machinery and performing repair work, respectively. Ensuing conversations with this official revealed that all of the items specified by the petitioner were produced at the subject facility, collectively constituting a small but significant portion of work performed by the petitioning worker group. These products include manuals, flashcards encoded with customized software and spare parts. However, none of the products are being imported, rather they continue to be produced at the subject firm, albeit in dramatically diminished volumes due to a downturn in the market for textile machinery.

The official further concluded that the manuals and customized software were designed specifically for machinery purchased by the customer from the subject firm, so there was little likelihood of outside competition in regard to these products. Regarding spare parts made on demand, this production accounted for a negligible amount of work performed by the petitioning worker group when considered in isolation in the relevant period.

#### **Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 25th day of November, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,576]

#### **Smith Meter, Inc., (Also Known as FMC Measurement Solutions), a Subsidiary of FMC Technologies, Inc., Erie, PA; Notice of Negative Determination Regarding Application for Reconsideration**

By application of October 1, 2003, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on September 10, 2003 and published in the **Federal Register** on October 10, 2003 (68 FR 58719).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Smith Meter, Inc. (a.k.a. FMC Measurement Solutions), a subsidiary of FMC Technologies, Inc., Erie, Pennsylvania, engaged in the production of liquid measurement equipment, was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of liquid measurement equipment. The survey revealed that none of the customers increased their import purchases of liquid measurement equipment, while reducing their purchases from the subject firm during the relevant period. The subject firm imported negligible percentage of liquid measurement equipment during the relevant period.

The petitioner attached two documents in support of his allegations, that Smith Meter, Inc. (a.k.a. FMC Measurement Solutions) does import