

Ajilon Staffing, Kannapolis, North Carolina producing sheets at Fieldcrest Cannon, Inc., a subsidiary of Pillowtex Corporation, Bed and Bath Division, Kannapolis, North Carolina (TA-W-52,559) and Pillowtex Corporation, New York Design and Sales Office, New York, New York (TA-W-52,559A) who became totally or partially separated from employment on or after August 15, 2003, through September 5, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 23rd 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-53,755]

#### **Pillowtex Corporation, New York Design and Sales Office, New York, NY; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 10, 2003, in response to a worker petition which was filed on behalf of workers at Pillowtex Corporation, New York Design and Sales Office, New York, New York.

An active certification covering the petitioning group of workers is already in effect (TA-W-52,559A, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd 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-52,651]

#### **R.R. Donnelley & Sons Co., Lancaster Financial Printing Division, Lancaster, PA; Notice of Negative Determination Regarding Application for Reconsideration**

By application postmarked on October 15, 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 R.R. Donnelley & Sons Company, Lancaster Financial Printing Division, Lancaster, Pennsylvania, was signed on September 4, 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 misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at R.R. Donnelley & Sons Company, Lancaster Financial Printing Division, Lancaster, Pennsylvania. Subject firm workers perform composition, programming, and proof reading of HTML web pages for financial reports. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and refers to "the production of Edgar and HTML pages as a final product".

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official clarified that workers of Lancaster Financial Printing Division are engaged in composition and data entry, and that some portion of data entry and composition process was indeed outsourced to India. In its turn this data is sent back to R.R. Donnelley & Sons Company in the United States via electronic documents, which are either electronically delivered to customers or printed domestically for further distribution. The official concluded that layoffs at the subject firm are mainly attributable to a decline in volume of work over the past years.

The sophistication of the work involved is not an issue in ascertaining whether the petitioning workers are eligible for trade adjustment assistance, but rather only whether they produced an article within the meaning of section 222(3) of the Trade Act of 1974.

The petitioner appears to allege that, because petitioning workers create electronic documents in different formats, their work should be considered production.

Data entry and composition are not considered production of an article within the meaning of section 222(3) of the Trade Act. Petitioning workers do not produce an "article" within the meaning of the Trade Act of 1974. Formatted electronic documents and databases are not tangible commodities, that is, marketable products, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all articles imported to or exported from the United States. Furthermore, when a Nomenclature Analyst of the USITC was contacted in regards to whether virtual networks and databases provided by subject firm workers fit into any existing HTS basket categories, the Department was informed that no such categories exist.

In addition, the Trade Adjustment Assistance (TAA) program was established to help workers who produce articles and who lose their jobs as a result of trade agreements. Throughout the Trade Act an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule an article will have a value that makes it marketable, fungible and interchangeable for commercial purposes. But, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational products that could historically be sent in letter form and that can currently be electronically transmitted, are not listed in the HTS. Such products are not the type of employment work products that customs officials inspect and that the TAA program was generally designed to address.

The petitioner also alleges that imports impacted layoffs, asserting that because workers lost their jobs due to a transfer of job functions to India, petitioning workers should be considered import impacted.

The petitioning worker group is not considered to have engaged in production, thus any foreign transfer of their job duties is irrelevant within the context of eligibility for trade adjustment assistance.

#### **Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or