petition filed by a company official on behalf of workers at AlphaTech, Inc., Fletcher, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 3rd day of December, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–53,918]

BMC Software, Inc., Houston, TX; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation in *Former Employees of BMC Software, Inc.* v. *U.S. Secretary of Labor* (Court No. 04–00229).

The Department's denial of the initial petition (filed on December 23, 2003) was issued on January 20, 2004. The Notice of determination was published in the **Federal Register** (69 FR 11888) on March 12, 2004. The negative determination was based on the finding that, while the subject company experienced significant employment declines, the worker group did not produce an article within the meaning of section 222 of the Trade Act of 1974 (TAA), as amended. Workers at the subject facility develop software solutions.

By letter dated February 9, 2004, the petitioner requested administrative reconsideration, contending that the subject company did, in fact, produce articles. During review of the request for reconsideration, the Department asked the company to characterize the work performed at the subject facility. The company responded that workers of BMC Software, Inc., Houston, Texas, are software developers. The official further stated that software developed at the subject firm is not mass-produced on media devices and is not sold in an ''off-the-shelf'' manner. The company official also stated that due to significant restructuring actions to reduce ongoing operational expenses, BMC Software, Inc., had implemented a large reduction of its worldwide workforce, which included the Houston, Texas location of the firm. Based on the information provided by the company official, the Department confirmed its initial finding and issued a Notice of Negative Determination Regarding Application for Reconsideration on March 31, 2004 and published the Notice in the **Federal Register** on April 16, 2004 (69 FR 20642).

By letter dated June 1, 2004, the petitioner filed an appeal with the USCIT, alleging that the Department had erred in its determination that the subject facility did not produce an article. The appeal included photocopied pictures of packaged software produced at the subject facility, which the Department had not seen before. Having identified the need to resolve the apparent conflict between information provided by the petitioners and that provided by the employer, the Department filed a motion for voluntary remand, on July 6, 2004. In an Order issued on August 11, 2004, the USCIT granted the Department's uncontested motion for voluntary remand and further investigation.

The Department conducted a remand investigation in order to determine whether the subject worker group met the criteria set forth in the Trade Act of 1974 for TAA certification as primarily-affected workers. Section 222(a) of the Trade Act (19 U.S.C. 2272(a)) provides:

> A group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) shall be certified by the Secretary as eligible to apply for adjustment assistance under this part pursuant to a petition filed under section 2271 of this title if the Secretary determines that—
>
> (1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and
>
> (2)(A)(i) The sales or production, or both, of such firm or subdivision have decreased absolutely; (ii) imports of articles like or directly competitive with articles produced by such firm or subdivision have increased; and (iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm or subdivision; or
>
> (B)(i) There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and (ii)(I) the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; (II) the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or (III) there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

During the remand investigation, the Department raised additional questions and obtained detailed supplemental responses from the company. In particular, the new information showed that, in addition to software design and development, the firm does, in fact, mass-replicate software at the subject facility. Further, software produced by the firm at the subject facility includes not only custom applications, but packaged ''off-the-shelf'' applications which are mass-replicated on various media (CDs and tapes) at the subject facility. Workers at the subject facility are not separately identifiable by product line. Therefore, the subject worker group did engage in activity related to the production of an article.

The Department has consistently maintained that the design and development of software is a service. In order to be treated as an article, for TAA purposes, a software product must be tangible, fungible, and widely marketed. The Department considers software that is mass-replicated on physical media (such as CDs, tapes, or diskettes) and widely marketed and commercially available (*e.g.*, packaged ''off-the-shelf'' programs) and dutiable under the Harmonized Tariff Schedule of the United States to be an article. The workers designing and developing such products would be considered to be engaged in services supporting the production of an article.

On remand, the Department also investigated the petitioner's allegations that the firm shifted production. Based on the information generated through that investigation, the Department determined that there was no shift in production, for TAA purposes, to a foreign country of articles like or directly competitive with the packaged, mass-replicated software produced by BMC during the relevant period.

The investigation also revealed that employment and production of packaged, mass-replicated software at the subject facility had declined significantly from 2002 to 2003, while company imports of mass-replicated software increased during the same period. The Department has found that the increase in company imports represented a significant percentage of the decline in production at the subject facility during the relevant period.

Conclusion

After careful review of the facts generated through the remand investigation, I determine that increases of imports of articles like or directly

competitive with those produced at BMC Software, Inc., Houston, Texas, contributed importantly to the total or partial separation of a significant number of workers and to the decline in sales or production at that firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of BMC Software, Inc., Houston, Texas, who became totally or partially separated from employment on or after December 23, 2002, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of December 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment And Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of November and December 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–56,046; Burrows Paper Corp., Pulp Div., Little Falls, NY

TA–W–55,838; Carolina Steel, Lynchburg, VA

TA–W–55,708; Alcatel USA Resources, EF&I Group, Plano, TX

TA–W–55,820; Thermal and Interior, Vandalia Operations of Delphi Corp., Vandalia, OH

TA–W–55,831; Cardinal Health PTS LLC, Vegicaps Oral Technologies Div., Springville, UT

TA–W–56,065; River Valley Contract Manufacturing, Inc., Menifee, AR

TA–W–55,918; Alpha Spectra, Inc., Grand Junction, CO

TA–W–55,806; Value Line Supply Co., Arkadelphia, AR

TA–W–55,842; Upholstery Felt Co., Portland, OR

TA–W–55,965; Accidental Anomalies, Inc., Turner, ME

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–56,029; Underwriters Laboratories, Inc., Research Triangle Park, NC

TA–W–56,051; Cambria Somerset Authority, Wilmore and Hinkston Reservoirs, Johnstown, PA

TA–W–55,890; Gwinnett Medical Center, Lawrenceville, GA

TA–W–55,957; Stellar Engineering, Inc., Warren, MI

TA–W–55,884; Jordan Fashions Corp., Westbury, NY

TA–W–55,961; Thomas & Betts Corp., Heater Div., Jonesboro, AR

TA–W–55,995; Conocophilips, Downstream Technology Div., Ponca City, OK

TA–W–56,044; Ametek—Prestolite Power & Switch, Switch Business Unit, Troy, OH

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–55,864; The Glass Group, Inc., Flat River Glass Operations, Park Hills, MO

TA–W–55,817; Celanese, Ticona Div., Bishop, TX

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or