

**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-54,708]

**Novellus System, Inc., San Jose, CA; Notice of Negative Determination on Reconsideration**

On July 19, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on August 4, 2004 (69 FR 47183).

The petition for the workers of Novellus System, Inc., San Jose, California engaged in writing and testing software 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 further conveys that software should be considered a product and workers performing software quality assurance should be considered workers engaged in production.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that petitioning group of workers at the subject firm is engaged in designing and testing of the operational software. The official further clarified that the software is not recorded on any media device for further duplication and distribution to customers, but is rather used in semiconductor equipment manufactured by the subject firm.

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 of the Trade Act of 1974.

Writing, editing and testing software are not considered production of an article within the meaning of section 222 of the Trade Act. Petitioning workers do not produce an "article" within the meaning of the Trade Act of 1974. Information electronic databases, software and codes, which are not printed or recorded on media devices (such as CD-ROMs) for further mass production and distribution, are not tangible commodities, and they are not listed on the Harmonized Tariff Schedule of the United States (HTS), as classified by the United States International Trade Commission

(USITC), Office of Tariff Affairs and Trade Agreements, which describes articles imported to the United States.

To be listed in the HTS, an article would be subject to a duty on the tariff schedule and have a value that makes it marketable, fungible and interchangeable for commercial purposes. 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 products that customs officials inspect and that the TAA program was generally designed to address.

The investigation on reconsideration supported the findings of the primary investigation that the petitioning group of workers does not produce an article. However, it was revealed that production of the semiconductor equipment occurs at the subject facility and that the software designed and tested by the workers is further integrated into this equipment. Thus, it was determined that the petitioning group of service workers support production of the semiconductor equipment at the subject facility.

The Department conducted an additional investigation to determine whether workers can be considered eligible for TAA as workers in support of production of the semiconductor equipment. The investigation in connection with the semiconductor equipment revealed that criteria (I.B) and (II.B) were not met. According to the information provided by the company official, sales and production of the semiconductor equipment increased at the subject firm during the relevant time period. Moreover, the subject firm did not shift production abroad, nor did it increase company imports, during the relevant period.

The petitioner further alleges that because workers lost their jobs due to a transfer of job functions, such as software quality assurance engineering to India, petitioning workers should be considered import impacted.

The company official stated that some software is electronically sent for testing in India, after which all the documents and codes are returned to Novellus System, Inc. in San Jose, California facility via electronic copies using e-mail.

Informational material that is electronically transmitted is not considered production within the context of TAA eligibility requirements, so there are no imports of products in this instance. Further, as the edited

material does not become a product until it is recorded on media device, there was no shift in production of an "article" within the meaning of the Trade Act of 1974.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Novellus System, Inc., San Jose, California.

Signed in Washington, DC, this 10th day of August, 2004.

**Linda G. Poole,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-19098 Filed 8-19-04; 8:45 am]

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**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-55,302]

**Olsonite Corporation, Newnan, GA; Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 22, 2004 in response to a worker petition which was filed by the UNITE! Southern Regional Joint Board of Georgia on behalf of workers at Olsonite Corporation, Newnan, Georgia.

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

Signed in Washington, DC this 9th day of August, 2004.

**Richard Church,***Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-19092 Filed 8-19-04; 8:45 am]

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**DEPARTMENT OF LABOR****Employment and Training Administration**

[TA-W-54,128]

**Precision Disc Corporation, Knoxville, TN; Notice of Revised Determination on Reconsideration**

On June 3, 2004, the Department of Labor issued a Notice of Affirmative Determination Regarding Application for Reconsideration for workers of the subject firm. The notice was published in the **Federal Register** on June 15, 2004 (69 FR 33423).

To support the request for reconsideration, the petitioner supplied

additional major declining customers to supplement those that were surveyed during the initial investigation. The survey revealed increased customer imports of saw core products during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production.

In accordance with section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have not been met.

The investigation revealed that the petitioning worker group possess skills that are easily transferable.

#### Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at the subject firm contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Precision Disc Corporation, Knoxville, Tennessee, who became totally or partially separated from employment on or after January 27, 2003, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 12th day of August, 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04-19100 Filed 8-19-04; 8:45 am]

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-55,061]

#### **Prestolite Wire Corporation Including On-Site Leased Workers of Technical Associates, Tifton, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 29, 2004, applicable to workers of Prestolite Wire Corporation, Tifton, Georgia. The notice was published in the **Federal Register** on August 3, 2004 (69 FR 46576).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Technical Associates were employed on-site at the Tifton, Georgia location of Prestolite Wire Corporation.

Based on these findings, the Department is amending this certification to include on-site leased workers of Technical Associates working at Prestolite Wire Corporation, Tifton, Georgia.

The intent of the Department's certification is to include all workers employed at Prestolite Wire Corporation, who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA-W-55,061 is hereby issued as follows:

All workers of Prestolite Wire Corporation, including on-site leased workers of Technical Associates, Tifton, Georgia, who became totally or partially separated from employment on or after June 1, 2003, through June 29, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 12th day of August 2004.

**Richard Church,**

*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 July and August 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,