

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.*

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DEPARTMENT OF LABOR**Employment and Training
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[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.*

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DEPARTMENT OF LABOR**Employment and Training
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[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