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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-64,693]

#### Avid Industries, Inc. Argyle, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 23, 2009, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 6, 2009 and published in the **Federal Register** on February 2, 2009 (74 FR 5871).

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 negative TAA determination issued by the Department for workers of Avid Industries, Inc., Argyle, Michigan was based on the finding that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner stated that the subject firm contracted a worker in December 2006 and December 2007 to perform unidentified tasks for the company. The petitioner seems to allege that because this "Contract Worker" performed some tasks for the subject firm, he should be considered as employees of the subject firm and, therefore, eligible for Trade Adjustment Assistance.

To determine whether the contracting worker was an employee of the subject firm, on-site leased worker, or a worker under the control of the subject firm and whether there was a significant proportion of workers separated or threatened with separations at the subject company during the relevant period, the Department contacted the subject firm's company official and

requested employment figures for the relevant employment data (for one year prior to the date of the petition and any imminent layoffs).

The company official stated that this independent contractor was not an employee of Avid Industries, Inc., Argyle, Michigan, he was not a leased worker employed on-site of the subject firm, and there was no written contract between this worker and the subject firm.

#### 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 in Washington, DC, this 4th day of February 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-64,272]

#### The Nielsen Company (US), LLC, Fond Du Lac, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 3, 2009, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to workers and former workers of the subject firm. The denial notice was signed on November 21, 2008 and published in the **Federal Register** on December 10, 2008 (73 FR 75136).

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 negative TAA determination issued by the Department for workers of the Nielsen Company (US), LLC, Fond Du Lac, Wisconsin was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974. The investigation revealed that workers of the subject firm compile databases derived from marketing surveys. The investigation further revealed that no production of article(s) occurred within the firm or appropriate subdivision during the relevant period.

The petitioner in the request for reconsideration contends that the Department erred in its interpretation of the work performed by the workers of the subject firm. The petitioner states that the workers of the subject firm "produce databases that are bought and paid for on a weekly basis". The petitioner also indicates that even though they performed "computer jobs", these "technical jobs" should be considered as production jobs.

The investigation revealed that the Nielsen Company is the marketing research organization that provides marketing research services to various manufacturers of consumer products or large retailers. No articles are produced within Nielsen Company. The workers of the Nielsen Company (US), LLC, Fond Du Lac, Wisconsin receive raw scanner data from the retailers, analyze the data and compile the information into the databases, which are used by clients on a syndicated basis so they can monitor how their products are being purchased in comparison to competing products in the marketplace. The workers of the subject firm support marketing research service functions of the Nielsen Company.

These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act. While the provision of services may result in printed material or can be stored electronically, it is incidental to the provision of these services. Databases created by workers of the subject firm are used by the Nielsen Company as incidental to marketing research services provided by the subject firm. No production took place at the subject facility nor did the workers support production of an article at any domestic affiliated location during the relevant period.

The petitioner also alleges that job functions have been shifted from the subject firm overseas.

The company official confirmed that Product Reference coding functions