

DEPARTMENT OF LABOR**Employment and Training Administration****[TA-W-40,196 and NAFTA-05250]****Motorola, Atlanta Order Fulfillment Center & Consumer Products Division, Suwanee, Georgia; Notice of Negative Determination Regarding Application for Reconsideration**

By application of November 15, 2001, the 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) under petition TA-W-40,196 and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA-TAA) under petition NAFTA-05250. The denial notices applicable to workers of Motorola, Atlanta Order Fulfillment Center, and Consumer Products Division, Suwanee, Georgia, were signed on October 30, 2001 (TA-W-40,196), and November 5, 2001 (NAFTA-5250) and published in the **Federal Register** on November 9, 2001 (66 FR 56711) and November 20, 2001 (66 FR 58171), respectively.

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 on October 30, 2001, was based on the finding that imports of products similar to what the subject plant produced (primarily packaged cell phones and distribution) did not contribute importantly to the worker group eligibility requirements under section 222 of the Trade Act of 1974, as amended.

The negative NAFTA-TAA determination issued by the Department on November 5, 2001, was based on the finding that imports (primarily packaged cell phones and distribution) from Canada or Mexico did not contribute importantly to separations at the subject plant, nor were there any shifts in production to Canada or Mexico under paragraph (a)(1) of section

250 of the Trade Act of 1974, as amended.

The application of November 15, 2001 requesting administrative reconsideration indicates that Motorola, Atlanta Order Fulfillment Center, Suwanee, Georgia shifted operations to Elgin, Illinois and Harvard, Illinois for the purpose of supporting cost reduction strategies throughout the corporation. The request further appears to indicate that the Harvard, Illinois facility was certified eligible for TAA benefits due to the fact that manufacturing operations were eliminated. The request further appears to indicate that the evidence used to support certification at the Harvard facility should be sued as grounds for certification of the subject workers.

A review of company data supplied during the initial investigation shows that the preponderance in the declines in employment at the subject plant is related to the transfer of the operations to two affiliated domestic facilities located in Illinois. The domestic transfer and minimal fluctuations in subject plant sales and production and stable customer base do not depict factors of imports impacting the workers of the subject firm.

The production (cellular phones) done at Harvard, Illinois was moved overseas prior to the subject plant's operations being shifted to the Harvard location. The work performed by the workers certified at the Harvard location was different from the work performed by the subject plant. The Atlanta Order Fulfillment Center workers were primarily engaged in the packaging and distribution of products they received from outside affiliated sources. The Consumer Products Division performed administrative support, materials tracking, ordering, engineering and sale/marketing and refurbishing.

The functions as described above are different from those of the workers certified at the Harvard facility. Although the workers at Motorola Personal Communications Sector, Harvard, Illinois (producing cell phones) were certified under TA-W-38,928 and NAFTA-4646 and Motorola, Inc., Energy System Groups, Harvard, Illinois (producing cell phone batteries) were certified under TA-W-37,850, the workers of the subject plant can not be tied to those certifications.

Motorola made a business decision to transfer work previously done at Suwanee to Harvard, Illinois as excess capacity occurred. The impact of imports did not eliminate the Suwanee functions, it allowed the company to move those functions elsewhere. The worker separations were caused by the

domestic transfer of functions and thus the workers can not be considered for eligibility as those workers at the Harvard, Illinois facility.

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 decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 12th day of March, 2002.

Edward A. Tomchick,
Director, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR**Employment and Training Administration****[TA-W-39,628]****Henderson Sewing Machine Company, Inc. Andalusia, Georgia; Notice of Negative Determination on Remand**

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Henderson Sewing Machine Company, Inc. v. United States Secretary of Labor*, No 01-00883.

The Department's initial negative determination of eligibility to apply for trade adjustment assistance (TAA) for the workers and former workers of Henderson Sewing Machine Company located in Andalusia, Georgia was issued on August 29, 2001 and published in the **Federal Register** on September 11, 2001 (66 FR 47241). The denial was based on the fact that workers of the subject firm did not produce an article within the meaning of Section 223(3) of the Trade Act of 1974.

On voluntary remand, the Department conducted further investigation concerning the eligibility of former workers at Henderson Sewing Company, Inc., Andalusia, Georgia to apply for trade adjustment assistance (TAA).

The results of the investigation on remand revealed that during the relevant period, the company laid off a total of two administrative workers. Another five workers left on their own accord, due to various personal reasons. None of these workers were engaged in the manufacture of any product while employed at the subject facility.