DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,737; TA–W–50,737A and TA–W–50,737B]

Austin Powder Co., Bend, Oregon, Austin Powder Co., Roseburg, Oregon, and Austin Powder Co., Cleveland, Ohio; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 18, 2003, a state agency representative 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). The denial notice applicable to workers of General Electric Industrial Systems, Drives and Controls, Inc., Salem, Virginia was signed on March 11, 2003, and published in the **Federal Register** on March 26, 2003 (68 FR 14706).

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 TAA petition was filed on behalf of workers at Austin Powder Company, Bend, Oregon engaged in storage and distribution services. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

In the initial decision, the Department did not acknowledge the state representative's petition filing on behalf of workers at two additional company facilities other than that of Austin Powder, Bend, Oregon. These two additional facilities are Austin Powder, Roseburg, Oregon, and Austin Powder, Cleveland, Ohio.

Upon further review and contact with a company official, it was revealed that workers at the Roseburg facility perform distribution services and the Cleveland, Ohio facility serves as the corporate headquarters. No production occurs at either facility.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

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 at Washington, DC, this 13th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,489]

Corning, Inc., Photonic Technologies Division, Painted Post, New York; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 13, 2003, a petitioner 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 February 25, 2003, and published in the **Federal Register** on March 10, 2003 (68 FR 11408).

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 petition for the workers of Corning, Inc., Photonic Technologies Division, Painted Post, New York was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported amplifiers, dispersion compensation modules, and fiber-based components. The investigation revealed that the subject firm did not import products like or directly competitive with amplifiers, dispersion compensation modules, and fiber-based components during the relevant period of 2001 to 2002, nor did it transfer production abroad.

The petitioner states layoffs are attributable to imports by the company and its customers of VOAs (variable optical attenuators), a type of fiber-based component, and couplers, both of which are components of optical amplifiers. In regard to the company specifically, the petitioner alleges that specific VOA and coupler imports came from Canada.

A company official was contacted regarding company import allegations. The official stated that in fact the company did import VOAs from Canada, but while the subject firm produced VOAs using mechanical technology, the imported VOAs incorporated MEMS technology, or Micro-Electro-Mechanical Systems, which is the integration of mechanical elements, sensors, actuators and electronics on a common substrate. As a result of this distinction, the MEMS VOAs are smaller and much more efficient; further, the imported VOAs are not interchangeable with the VOAs produced at Painted Post in that they cannot be inserted in the same optical amplifiers. In regard to imports of couplers, the company official confirmed that competitive imports did occur in the relevant period; however, couplers comprised of a very small portion of subject plant production.

The petitioner also alleges that customers of the subject firm imported competitive products in the relevant period.

A review of the initial investigation revealed that customers of the subject firm all reported competitive imports in the relevant period, however their trends of import purchases declined more sharply than their purchases from the Painted Post facility, thus they did not increase reliance on imports.

The petitioners also attached a copy of a ''Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance'' for the workers at Corning, Inc., Photonics Technologies/Monroe Photonic, West Henrietta, New York (NAFTA–6130).