

statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transaction which is the subject of this exemption. In the case of continuing transactions, if any of the material facts or representations described in the application change, the exemption will cease to apply as of the date of such change. In the event of any such change, an application for a new exemption must be made to the Department; and

(4) Under section 408(a) of ERISA, the Department finds that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of such plan.

#### Exemption

Accordingly, PTE 99-29 is amended under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 32836, August 10, 1990), as set forth below:

Section I is amended to read as follows: "Bankers Trust Company (now known as DBTCA) shall not be precluded from functioning as 'qualified professional asset manager' pursuant to Prohibited Transaction Exemption 84-14 (49 FR 9494, March 13, 1994) (PTE 94-14) for the period beginning on the date of sentencing with respect to the charges to which Bankers Trust Company pled guilty on March 11, 1999 and ending July 27, 2009, solely because of a failure to satisfy section I(g) of PTE 84-14 as a result of the conviction of Bankers Trust Company for felonies described in the March 11, 1999 felony information (the Information) entered in the U.S. District Court for the Southern District of New York, provided that:"

Section I(c) is amended to read as follows: "The custody operations that were part of Bankers Trust Company at the time of the March 11, 1999 information, and which have subsequently been reorganized as part of Global Institutional Services (GIS), are subject to an annual examination of its abandoned property and escheatment policies, procedures and practices by an independent public accounting firm. The examination required by this condition shall determine whether the written procedures adopted by Bankers Trust Company are properly designed to

assure compliance with the requirements of ERISA. The annual examination shall specifically require a determination by the auditor as to whether the Bank has developed and adopted internal policies and procedures that achieve appropriate control objectives and shall include a test of a representative sample of transactions, fifty percent of which must involve ERISA covered plans, to determine operational compliance with such policies and procedures. The auditor shall issue a written report describing the steps performed by the auditor during the course of its examination. The report shall include the auditor's specific findings and recommendations. This requirement shall continue to be applicable to the custody operations that were part of Bankers Trust Company as of March 11, 1999, notwithstanding any subsequent reorganization of the custody operation function during the term of the exemption. *Such audit requirements shall be applicable for any year or part thereof in which DBTCA held ERISA covered plan assets in custody.*"

Section III(a) is amended to read as follows: "For purposes of this exemption, the term 'Bankers Trust Company' includes Bankers Trust Company, and any entity that was affiliated with Bankers Trust Company prior to the date of the acquisition of Bankers Trust Corporation by Deutsche Bank AG, other than BT Alex. Brown Incorporated and its subsidiaries. *This term also refers to Deutsche Bank Trust Company Americas (DBTCA).*"

For a more complete statement of facts and representations supporting the Department's decision to grant PTE 99-29, refer to the proposed exemption (64 FR 30360, July 7, 1999), and the grant notice (64 FR 30360, June 7, 1999), and the grant notice (64 FR 40623, July 27, 1999). For a more complete statement of fact and representations supporting the Department's decision to amend PTE 99-29, refer to the notice of proposed amendment to PTE 99-29 (70 FR 5699, February 3, 2005).

Signed at Washington, DC, this 31st day of October, 2005.

**Ivan L. Strasfeld,**

*Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-57,143]

#### ACCPAC International, Inc., Customer Support, Santa Rosa, CA; Notice of Negative Determination on Reconsideration

By letter of August 19, 2005, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of ACCPAC International, Inc., Customer Support, Santa Rosa, California. The denial notice was signed on June 24, 2005, and published in the **Federal Register** on July 20, 2005 (70 FR 41793).

The investigation revealed that the petitioning workers of this firm or subdivision do 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 the workers of the subject firm supported the production of the software during the pre-production phases. The petitioner further conveys that the software was recorded on CD media or floppy diskettes for further distribution to customers.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated the workers of the subject firm provided development, marketing, sales, professional services, administrative, training and technical support of the ACCPAC software. The technical support representatives of the subject firm provided post-sale technical assistance, troubleshooting and training via telephone to ACCPAC customers and business partners. In addition, the workers of the subject firm provided some support to software development prior to its release on gold CDs. However, the physical gold CDs are not sold to customers, but rather represent a master copy of the software, which in its turn is sent for mass-production to an independent non-affiliated party vendor for further duplication on CD-ROMs, floppy diskettes or paper. The official supported the information previously provided by the subject firm that software created at the subject facility is not mass-produced on any media device by the subject firm for further duplication and distribution to

customers and that there are no products manufactured within 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.

Technical writing, design, programming, testing and technical assistance of the software is 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, technical documentation and codes, 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. Furthermore, workers of the subject firm did not support production of an article at any affiliated facility.

The petitioner further alleges that because workers lost their jobs due to a transfer of job functions to Canada, petitioning workers should be considered import impacted.

The company official stated that the positions of six technical support representatives were moved to a Canadian office as a result of the closure of the subject firm.

Technical support of informational documentation that is electronically transmitted is not considered production within the context of TAA eligibility requirements. Further, as software and technical documentation do not become products until they are recorded on media device, there was no

shift in production of an "article" abroad within the meaning of the Trade Act of 1974.

Service workers can be certified only if worker separations are caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article domestically who meet the eligibility requirements, or if the group of workers are leased workers who perform their duties on-site at a facility that meet the eligibility requirements.

#### 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 ACCPAC International, Inc., Customer Support, Santa Rosa, California.

Signed at Washington, DC this 21st day of October, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 05-22323 Filed 11-8-05; 8:45 am]

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-58,081]

##### Accufab Industries New Freedom, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 6, 2005 in response to a petition filed by a company official on behalf of workers at Accufab Industries, New Freedom, Pennsylvania.

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

Signed at Washington, DC this 31st day of October, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 05-22327 Filed 11-8-05; 8:45 am]

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-58,097]

##### Agilent Technologies, Inc. Wireless Business Unit a Division of the Electronic Measurements Group Loveland, CO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 7, 2005, in response to a petition filed by a State agency representative on behalf of workers of Agilent Technologies, Inc., Wireless Business Unit, a division of the Electronics Measurements Group, Loveland, Colorado.

The petitioning group of workers is covered by a current certification (TA-W-57,742J) issued on September 30, 2005, applicable to all workers of Agilent Technologies, Inc., Electronics Measurement Group, Loveland, Colorado. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of October, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

##### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.