

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade 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.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 20, 2008.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 20, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C-5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 29th day of May 2008.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

**Appendix**

**TAA PETITIONS INSTITUTED BETWEEN 5/19/08 AND 5/23/08**

TA-W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
63401	Unifi, Inc. (Comp)	Staunton, VA	05/19/08	05/19/08
63402	NTN-BCA Corporation (USW)	Lititz, PA	05/19/08	05/18/08
63403	Lear Corporation (UAW)	Tampa, FL	05/19/08	05/16/08
63404	FMC (Spring Hill Facility) (Wkrs)	South Charleston, WV	05/19/08	05/16/08
63405	Esselte Corporation (Comp)	Buena Park, CA	05/20/08	05/19/08
63406	Cocomo Apparel (State)	Vernon, CA	05/20/08	05/19/08
63407	Syngenta Crop Protection, Inc. (Comp)	Bucks, AL	05/20/08	05/19/08
63408	Milwaukee Electric Tool Corp. (Comp)	Blytheville, AR	05/20/08	05/19/08
63409	Twigg Corporation (Wkrs)	Martinsville, IN	05/20/08	05/14/08
63410	Comau, Inc. (Wkrs)	Warren, MI	05/20/08	05/19/08
63411	Pass & Seymour/Legrand (Comp)	Concord, NC	05/20/08	05/19/08
63412	Pfizer, Inc. (Wkrs)	Conshohocken, PA	05/20/08	05/19/08
63413	Dana Corp Holding Co. (Comp)	Marion, IN	05/20/08	05/12/08
63414	Uster Technologies, Inc. (Comp)	Knoxville, TN	05/20/08	05/19/08
63415	Acklin Stamping Co. (Comp)	Toledo, OH	05/20/08	05/19/08
63416	Novelis Aluminum (USWA)	Louisville, KY	05/21/08	05/20/08
63417	Greene Plastics Corporation (Comp)	Hope Valley, RI	05/21/08	05/20/08
63418	Gramercy Jewelry Mfg. Corp. (Wkrs)	New York, NY	05/21/08	04/23/08
63419	Ansonia Copper and Brass (Comp)	Ansonia, CT	05/21/08	05/20/08
63420	Bernhardt Furniture Company (Comp)	Shelby, NC	05/21/08	05/20/08
63421	Kimble Chase LLC (Wkrs)	Vineland, NJ	05/21/08	05/12/08
63422	Springs Direct Division (Wkrs)	Lancaster, SC	05/21/08	05/19/08
63423	American Axle and Manufacturing (Wkrs)	Tonawanda, NY	05/22/08	05/21/08
63424	Ferguson Aluminum (Comp)	Olmsted, IL	05/22/08	05/16/08
63425	Steris Corporation (Comp)	Erie, PA	05/22/08	05/21/08
63426	Pacific Continental Apparel, Inc. (State)	Rancho Dominguez, CA	05/22/08	05/21/08
63427	Lumberg Automation (Comp)	Midlothian, VA	05/22/08	05/13/08
63428	Markay Designs, Inc. (Comp)	Sophia, NC	05/23/08	05/22/08
63429	Borgwarner Transmission Systems (Comp)	Frankfort, IL	05/23/08	05/21/08
63430	Comau Inc. East (Union)	Macomb Twp., MI	05/23/08	05/22/08
63431	Greenville Tool & Die Company (Comp)	Greenville, MI	05/23/08	05/22/08

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-60,808]

#### Invista, S.A.R.L., Nylon Apparel Filament Fibers Group, a Subsidiary of Koch Industries, Inc., Chattanooga, TN; Notice of Negative Determination on Remand

On March 27, 2008, the U.S. Court of International Trade (USCIT) granted the Department of Labor's motion for a second voluntary remand in *Former Employees of Invista, S.A.R.L. v. U.S. Secretary of Labor*, Court No. 07-00160.

On December 15, 2006, an official of Invista, S.A.R.L., Nylon Apparel Filament Fibers Group, A Subsidiary of Koch Industries, Inc., Chattanooga, Tennessee (the subject firm) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers at the subject firm engaged in activity related to the production of nylon fiber. AR 1. The company official stated that the "petition is a continuation of the shift of production to Mexico as described in TA-W-55,055 that expired August 20, 2006. After the shift in production to another country \* \* \* all orders continued to be processed from the United States until now. The Customer Service Representatives (CSRs) losing their jobs are being replaced by CSRs located in South America who will handle orders for companies located in the United States." AR 2.

The TAA/ATAA certification applicable TA-W-55,055 (issued August 20, 2004) was based on the Department's findings that the subject firm shifted production of three types of nylon filament to Mexico. AR 5-6.

The Department of Labor (Department) issued a negative determination regarding workers' eligibility to apply for TAA/ATAA on February 7, 2007. The determination was based on the Department's findings that, during the relevant period, the subject workers did not produce an article or support an appropriate subdivision that produced an article domestically, and, as such, cannot be adversely impacted or affected by a shift in production. AR 30-32. The Department's Notice of determination was published in the **Federal Register**

on February 21, 2007 (72 FR 7909). AR 43.

In the request for administrative reconsideration, dated February 18, 2007, a worker at the subject firm stated that after TA-W-55,055 was filed, the subject firm ceased to produce apparel textile and began producing Performance Materials. The worker also stated that "after the petition (TA-W-55,055) expired, (the subject firm) let go the last of the apparel fibers personnel. Since I sold 100% apparel fiber, there was no reason to keep me." AR 35. The worker further stated that "I was downsized, yet there were people in Brazil hired to do my work." AR 36.

In a subsequent letter, the worker who filed the request for reconsideration stated that "I was informed by management on 11/14/06, that my job was being split up; part of it going to Brazil and part going to Wilmington, Delaware." AR 37. The worker also stated that "All the apparel people were let go. This is a direct result of the textile industry going to developing countries and the loss of textile manufacturing in the U.S." AR 38.

In a letter dated March 15, 2007, the Department stated that the request for reconsideration was being dismissed because insufficient evidence was furnished to warrant reconsideration pursuant to 29 CFR 90.18(c) and reiterated that, because the subject workers did not produce an article or support domestic production of an article during the one year period prior to the petition, the subject workers are not eligible to apply for worker adjustment assistance under the Trade Act of 1974, as amended. AR 45. The Dismissal of Application for Reconsideration was issued on March 21, 2007. AR 47. The Department's Notice of dismissal was published in the **Federal Register** on March 30, 2007 (72 FR 15169). AR 48.

By application dated May 11, 2007, Plaintiffs sought review by the USCIT. The complaint stated that the certification of TA-W-55,055 was based on a shift of textile machines to Mexico and that the negative determination of TA-W-60,808 was "due to the machines having been shipped to Mexico more than a year earlier. Yet my job did not officially terminate till the reorganization to rid the Chattanooga plant of ALL textile employees."

Under the Trade Act of 1974, as amended, certification of group eligibility to apply for TAA will be issued provided that (1) a significant number or proportion of the workers of such workers' firm, or an appropriate subdivision, have been totally or partially separated or are threatened to

become totally or partially separated; and (2) there has been a shift in production from the workers' firm or subdivision to an eligible foreign country of articles like or directly competitive with those produced by the subject firm or subdivision under section 222(a)(2)(B)(i); and, either the foreign country is a party to a free trade agreement with the United States under section 222(a)(2)(B)(ii)(I), is a beneficiary country under section 222(a)(2)(B)(ii)(II), or there has been or is likely to be an increase in imports of like or directly competitive articles. The Department interprets this standard for certification as requiring that the shift of production of an article to a foreign country must be a cause of the separations of workers of the firm that were engaged in or supported the production of that article.

After the shift of nylon filament production to Mexico in 2004, the subject firm continued to employ the subject workers to market nylon apparel filament produced in Mexico and to process orders of nylon apparel filament produced in Mexico. AR 2, 26-27, 29, 35-38, SAR 8.

Information provided by the subject firm during the remand investigation revealed that the workers' separations are not related to the shift of production of apparel nylon filament to Mexico in 2004. During the relevant period, customer service functions were performed at Invista facilities in Canada, South America, Chattanooga, Tennessee, and Wilmington Delaware. The customer service functions were consolidated to Paulinia, Brazil, and Wilmington, Delaware due to a business decision to improve the efficiency of the customer service organization. At the time of plaintiff separations the subject firm terminated other workers whose functions were unrelated to the production of apparel nylon filaments. SAR 11, 18. The separated workers were "two (2) Apparel Nylon Customer Service Representatives located at Chattanooga, one (1) Performance Materials Customer Service Representative located at Chattanooga, and one (1) Performance Materials Product Coordinator located at Chattanooga." SAR 8. The fact that two of the four separated workers worked on a product line (Performance Materials) whose production was not shifted to Mexico confirms the company's statements that the layoffs were part of a business decision to increase efficiency in the customer service operation. This bolsters the conclusion that the plaintiff separations were not caused by the shift of production of