

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 the workers of International Business Machines Corporation, IBM Integrated Supply Chain Operations, Hopewell Junction, New York was based on the findings that the worker group did 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 provided internal maintenance and development services for various Web based applications. 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 from 1996 to 2007 the workers of the subject firm developed applications that "were being deployed in China for education and financial purposes". The petitioner also indicates that the workers maintained and created applications for customers.

When assessing eligibility for TAA, the Department exclusively considers production and import impact during the relevant time period (one year prior to the date of the petition). Events occurring between 1996 and October 2007 are outside of the relevant time period as established by the petition date of November 4, 2008, and thus cannot be considered in this investigation.

The investigation revealed that during the relevant period, the workers of International Business Machines Corporation, IBM Integrated Supply Chain Operations, Hopewell Junction, New York managed existing applications in the IBM Procurement portfolio that were used internally for purposes such as invoice support, Web orders, and procurement.

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. No production took place at the subject

facility, nor did the workers support production of an article at any domestic location during the relevant period.

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

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. However, the investigation determined that workers of International Business Machines Corporation, IBM Integrated Supply Chain Operations, Hopewell Junction, New York do not produce an article within the meaning of Section 222 of the Trade Act of 1974.

### 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 24th day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-64,401]

#### **Qimonda 200 MM Facility, Including On-Site Leased Workers From Tokyo Electron America, Nikon Precision, Inc. and Air Products and Chemicals, Inc., and Qimonda North America Corporation, Qimonda Richmond, a Subsidiary of Qimonda AG, Sandston, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 11, 2008, applicable to workers of Qimonda 200 MM Facility, Sandston, Virginia. The notice was published in the **Federal Register** on December 30, 2008 (73 FR 79914). The certification was amended on February 10, 2009 and March 3, 2009

to include on-site leased workers of Tokyo Electron America, Nikon Precision and Ebara Technologies. These notices were published in the **Federal Register** on February 23, 2009 (74 FR 8111) and March 11, 2009 (74 FR 10619) respectfully.

At the request of the subject firm, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of DRAM semiconductor wafers.

The company reports that worker separations occurred at Qimonda North America Corporation, Qimonda Richmond, a subsidiary of Qimonda AG, and are on-site with the Qimonda 200 MM Facility. Workers of the Qimonda 200 MM Facility and workers of Qimonda North America Corporation are not separately identifiable by product line (DRAM semiconductor wafers).

New Information also shows that workers leased from Air Products and Chemicals, Inc. were employed on-site at the Sandston, Virginia location of Qimonda 200 MM Facility. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include all on-site workers of Qimonda North America Corporation, Qimonda Richmond, a subsidiary of Qimonda AG and to include leased workers from Air Products and Chemicals, Inc. working on-site at the Sandston, Virginia location of the subject firm.

The amended notice applicable to TA-W-64,401 is hereby issued as follows:

All workers of Qimonda 200 MM Facility, including on-site leased workers from Tokyo Electron America, Nikon Precision, Inc., and Air Products and Chemicals, Inc., Sandston, Virginia, and including on-site workers of Qimonda North America Corporation, Qimonda Richmond, a subsidiary of Qimonda AG, Sandston, Virginia who became totally or partially separated from employment on or after November 11, 2007 through December 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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