

be subject to a duty. To be subject to a duty on a tariff schedule an article will have a value that makes it marketable, fungible and interchangeable for commercial purposes. But, 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 employment work products that customs officials inspect and that the TAA program was generally designed to address.

The petitioner also argues that the petitioning worker group did not simply "provide services", asserting that, because the data entry took the form of databases recorded on CD-ROMs, they "handed over goods."

Electronically generated information is not considered production in the context of assessing worker group eligibility for trade adjustment assistance. The fact that the device used to record electronically generated information processed by the petitioning workers has a physical form does not qualify the petitioning worker group as having produced an article.

The petitioner also alleges that imports impacted layoffs, asserting that because workers lost their jobs due to a transfer of job functions to India, petitioning workers should be considered import impacted.

The petitioning worker group is not considered to have engaged in production, thus any foreign transfer of their job duties is irrelevant within the context of eligibility for trade adjustment assistance.

The petitioner appears to assert that the Division of Trade Adjustment Assistance is "supposed to look at each case individually" in assessing the eligibility of worker groups for TAA. The petitioner also appears to suggest that, because the workers performed services that involved "newer technology", the meaning of "article" as defined in the Trade Act is outdated, and therefore irrelevant.

In fact, the eligibility of petitioning worker groups is considered exclusively within the context of section 222 of the Trade Act.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 222(3) 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 at Washington, DC, this 17th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-50,170]

Erasteel, Inc., McKeesport, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 6, 2003, petitioners 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 January 24, 2003, and published in the **Federal Register** on February 24, 2003 (67 FR 8622).

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 mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Erasteel, Inc., McKeesport, Pennsylvania 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 cold drawn steel.

The petitioners state that their major customer imports high speed drill bits and blanks, and that these items are "like or directly competitive with articles produced by" subject firm workers. In a clarifying conversation with one of the petitioners, he stated that the steel produced at the subject

firm was processed in such a way that its only possible end use was to form it into the drill bits and blanks produced by the customer.

The term "like or directly competitive" is drawn from a paragraph in section 222 of the Trade Act. In this paragraph, a "like" competitive product is described as an article which is "substantially identical in inherent or intrinsic characteristics." A "competitive product" is described as an article which "is substantially equivalent for commercial purposes." As the subject firm produces drawn steel and not drills bits or blanks, the subject firm products are not "like" or "identical" to potential customer imports of drill bits and blanks. Further, the drawn steel cannot be used for the same commercial purposes as the finished drill bits and blanks. Thus subject firm products are not "like or directly" competitive with alleged customer imports as stated in section 222(3) of the Trade Act.

The petitioners also allege that the subject firm imported competitive products in the relevant period. In an attempt to clarify this allegation, a petitioner was contacted. In response to a request for clarification, the petitioner stated that the subject firm briefly imported semi-finished steel coils for further processing at the subject firm; specifically, coils were imported that were sized to thinner dimensions at the subject firm. However, the subject firm stopped importing this semi-finished product prior to petitioner layoffs, according to the petitioner.

As described by the petitioner, the steel imported is not "like or directly" competitive with the steel produced by the subject firm. Further, a company official was contacted in regard to this allegation. The official clearly stated that the company did not import competitive drawn and ground bars. In response to the issue of imported coils, the official stated that the company only imported for a very brief period and that these imports did not prompt layoffs.

Finally, the petitioners acknowledge that a domestic shift in production caused the closure of the McKeesport facility.

However, they also assert that the need for Erasteel to consolidate their production was a direct result of business lost from their major customer, and that this customer was importing competitive products.

As has already been established, the major declining customer did not import "like or directly" competitive products.