

qualified for certification. *Id.* at n.16. (citing *Abbott*, 570 F. Supp. at 49 (citing *Woodrum*, 564 F. Supp. 826) (“the Court must accord substantial deference to the interpretation of the statute [19 U.S.C. 2272(a)] by the agency [Labor] charged with its administration”); *Bennett*, 20 CIT at 792 (stating in pertinent part that “plaintiff[s] are eligible for certification [as support service workers] when \* \* \* their separation is caused by a reduced demand for their services from a production department whose workers independently meet the statutory criteria for certification” and holding that “Labor permissibly and reasonably interpreted [19 U.S.C. 2272(a)] in formulating the test for certifying support service workers”).

The Department has consistently determined that workers engaged in the design and development of software may be certified if they support an affiliated, domestic firm at which workers are engaged in producing a trade-impacted “article.” *See, e.g., Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance in: Ericsson, Inc., Messaging Group, Woodbury, N.Y.*, 68 FR 8619–8621 (TA-W-50,446) (Feb. 24, 2003); *Computer Sciences Corporation at Dupont Corporation*, 67 FR 10767 (TA-W-39,535) (March 8, 2002); *e-Gain Communications Corporation, Novato California*, 68 FR 50195 (TA-W-51,001) (Aug. 20, 2003).

Workers in these cases were certified based, in part, upon a finding that the subject facilities produced hardware or software embodied in some tangible format. Workers in the case at hand, however, do not directly support certifiable production workers eligible for TAA benefits, and this distinction explains the different results in cases involving workers engaged in similar activity. While the case results may differ, based on the particular facts of each case, the Department’s application of the statute has been consistent.

The Department has carefully investigated the matter on remand and has found no basis to support finding that workers of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey are engaged in the production of an article or support for the production of an article. Consequently, they are not eligible for certification.

#### Conclusion

In the case of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey, it has been clearly established that the workers of

the subject facility did not produce an article or support the production of an article within the meaning of the Trade Act and that they are not eligible for certification.

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of IBM Corporation, Global Services Division, Piscataway and Middletown, New Jersey.

Signed at Washington, DC, this 9th day of December, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-58,043]

#### Intermark Fabric Corp., Plainfield, CT; Notice of Revised Determination on Reconsideration

By application of November 29, 2005 a company official 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) and Alternative Trade Adjustment Assistance (ATAA).

The initial investigation resulted in a negative determination signed on November 2, 2005 was based on the finding that imports of imitation suede and velvets for upholstery, drapery and apparel did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on November 23, 2005 (70 FR 70882).

In the request for reconsideration, the petitioner provided additional information regarding subject firm’s customers and requested to investigate a secondary impact on the subject firm as an upstream supplier in the textile industry. A review of the new facts determined that the workers of the subject firm may qualify eligible for TAA on the basis of a secondary upstream supplier impact.

Having conducted an investigation of subject firm workers on the basis of secondary impact, it was revealed that Intermark Fabric Corp, Plainfield, Connecticut supplied imitation suede

and velvets that were used in the production of upholstery fabrics, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

#### Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Intermark Fabric Corp, Plainfield, Connecticut engaged in production of imitation suede and velvets qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of Intermark Fabric Corp, Plainfield, Connecticut, who became totally or partially separated from employment on or after September 28, 2004, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of December, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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