

Signed in Washington, DC this 6th day of June, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011-14819 Filed 6-14-11; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-70,124; TA-W-70,124A]

Hutchinson Technology, Inc., Including On-Site Workers Leased From Doherty, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Aramark Business Facilities, LLC, Hutchinson, MN; Hutchinson Technology, Inc., Including On-Site Workers Leased From Doherty, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Aramark Business Facilities, LLC, Plymouth, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 18, 2009, applicable to workers of Hutchinson Technology, Inc., including on-site leased workers from Doherty, Hutchinson, Minnesota and Hutchinson Technology, Inc., including on-site leased workers of Doherty, Plymouth, Minnesota. The notice was published in the **Federal Register** on November 5, 2009 (74 FR 57337).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Workers at the Hutchinson, Minnesota location of the subject firm (TA-W-70,124) produce suspension assemblies for computer disk drives. Workers at the Plymouth, Minnesota location of the subject firm produce stampings of components incorporated into finished suspension assemblies produced by workers at the Hutchinson, Minnesota facility.

Information shows that on-site workers from Aramark Business Facilities, LLC became employees of Hutchinson Technology, Inc., in February 2011. Some workers separated from employment at the Hutchinson and Plymouth, Minnesota locations of the subject firm had their wages reported under a separate unemployment insurance (UI) tax

account under the name Aramark Business Facilities, LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Hutchinson Technologies who were adversely affected by increased imports of suspension assemblies for computer disk drives and the components used in the finished suspension assemblies.

The amended notice applicable to TA-W-70,124 and TA-W-70,124A are hereby issued as follows:

All workers of Hutchinson Technology, Incorporated, including on-site leased workers from Doherty, including workers whose unemployment insurance (UI) wages are paid through Aramark Business Facilities, LLC, Hutchinson, Minnesota (TA-W-70,124), and Hutchinson Technology, Incorporated, including on-site leased workers from Doherty, including workers whose unemployment insurance (UI) wages are paid through Aramark Business Facilities, Plymouth, Minnesota (TA-W-70,124A), who became totally or partially separated from employment on or after May 18, 2008 through September 18, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 6th day of June 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

TA-W-72,673

Weather Shield Manufacturing, Inc. Corporate Office, Medford, WI; Notice of Amended Negative Determination

On May 3, 2011, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to complete the administrative record and to file a determination that provides a detailed explanation of its reliance upon the five types of documents inadvertently omitted from the previously filed administrative record in *Former Employees of Weather Shield Manufacturing, Inc. v. United States Secretary of Labor* (Court No. 10-00299).

On July 16, 2009, the Department of Labor (Department) issued a Negative

Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin (subject facility) covered by TA-W-72,673. Amended Administrative Record (AAR) 64. Workers at the subject facility (subject worker group) supply administrative support services related to the production of doors and windows at various domestic locations of Weather Shield Manufacturing, Inc. AAR 67. The Department's Notice of determination was published in the **Federal Register** on August 2, 2009 (75 FR 45163). AAR 77.

The authority for these issuances is the Trade Act of 1974, as amended by the Trade and Globalization Adjustment Assistance Act of 2009 (Division B, Title I, Subtitle I of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5), hereafter referred to as TGAAA.

As explained in the determination, workers of a firm who filed a petition for TAA under TGAAA may be eligible for worker adjustment assistance, under the statutory criteria in effect at the time this petition was filed, if they satisfy the criteria of subsection (a), (c) or (f) of Section 222 of the Act, 19 U.S.C. 2272(a), (c), (f) (2009).

For the Department to issue a certification for workers under Section 222(a) of the Act, 19 U.S.C. 2272(a) (2009), the following three criteria must be met:

- I. The first criterion (set forth in Section 222(a)(1) of the Act, 19 U.S.C. 2282(a)(1)) requires that a significant number or proportion of the workers in the workers' firm must have become totally or partially separated or be threatened with total or partial separation.
- II. The second criterion (set forth in Section 222(a)(2) of the Act, 19 U.S.C. 2272(a)(2)) may be met in one of two ways:
 - (A) *Increased Imports Path:*
 - (i) Sales or production, or both, at the workers' firm must have decreased absolutely, AND
 - (ii) (I) Imports of articles or services like or directly competitive with articles or services produced or supplied by the workers' firm have increased, OR (II)(aa) Imports of articles like or directly competitive with articles into which the component part produced by the workers' firm was directly incorporated have increased; OR (II)(bb) Imports of articles like or directly competitive with articles which are produced directly using the services supplied by the workers' firm have increased; OR
 - (III) Imports of articles directly incorporating component parts not produced in the U.S. that are like or directly competitive with the article into

which the component part produced by the workers' firm was directly incorporated have increased.

(B) Shift in Production or Supply Path:

- (i)(I) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm; OR
- (i)(II) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm.

III. The third criterion requires that the increase in imports or shift/acquisition must have contributed importantly to the workers' separation or threat of separation. See Sections 222(a)(2)(A)(iii) and 222(a)(2)(B)(ii) of the Act, 19 U.S.C. 2272(a)(2)(A)(iii), 2272(a)(2)(B)(ii).

29 CFR 90.2 states that "Increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is the twelve months prior to the date of the petition."

Section 222(d) of the Act, 19 U.S.C. 2272(d) (2009), defines the terms "Supplier" and "Downstream Producer." For the Department to issue a secondary worker certification under Section 222(c) of the Act, 19 U.S.C. 2272(c) (2009), to workers of a Supplier or a Downstream Producer, the following criteria must be met:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, 19 U.S.C. 2272(a), and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Workers of a firm may also be considered eligible to apply for TAA under TGAAA if they are publicly identified by name by the International Trade Commission (ITC) as a member of a domestic industry in an investigation resulting in a category of determination

that is listed in Section 222(f) of the Act, 19 U.S.C. 2272(f)(2009).

The group eligibility requirements for workers of a firm under Section 222(f) of the Act, 19 U.S.C. 2272(f)(2009), can be satisfied if the following criteria are met:

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Summary of Investigation of TA-W-72,673

This petition, covering workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin, TA-W-72,673 (hereafter referred to as "WEATHER SHIELD II"), is dated October 23, 2009. AAR 3. Therefore, the period of investigation included the twelve month period prior to October 2009 (hereafter referred to as "the relevant period"), which is October 2008 through September 2009, and the representative base period for the investigation, which is October 2007 through September 2008.

The initial negative determination in Weather Shield II was based on the findings that Weather Shield Manufacturing, Inc. (subject firm) did not, during the period under investigation, shift to/acquire from a foreign country the supply of services like or directly competitive with the administrative support services supplied by the subject worker group; that the subject worker group's separation, or threat of separation, was

not related to any increase in imports of like or directly competitive services; that the subject worker group did not supply a service that was directly used in the production of an article, or the supply of service, by a firm that employed a worker group that is eligible to apply for TAA based on the aforementioned article or service; and that the subject firm was not identified by name in affirmative finding of injury by the ITC. AAR 67-68.

During the investigation of WEATHER SHIELD II, the Department surveyed the subject firm's major declining customers regarding their purchases of doors and/or windows in the relevant period. AAR 29-48. The survey revealed that customer imports of articles like or directly competitive with those produced by the subject firm declined in the relevant period, both in absolute terms and relative to the purchases made from the subject firm. AAR 29-48, 53-56.

By application dated August 23, 2009, a petitioner requested administrative reconsideration on the Department's determination, stating that "Case number TA-W-72,673 is the same company and division as petition TA-64,725—Weather Shield Employees ["WEATHER SHIELD I"]." AAR 78, 86, 93, 101, 108.

Because the petitioner did not supply facts not previously considered or provide additional documentation indicating that there was either: (1) A mistake in the determination of facts not previously considered, or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration for the subject worker group on September 10, 2009. AAR 115.

The negative determination on reconsideration stated, in part, that "The petition date of TA-W-64,725 is December 17, 2008. The petition date of TA-W-72,673 is October 23, 2009. Because the investigation periods in the two cases are different, the findings in TA-W-64,725 cannot be used as the basis for a certification of TA-W-72,673." AAR 117. The Department's Notice of Negative Determination Regarding Application for Reconsideration in WEATHER SHIELD II was published in the **Federal Register** on September 21, 2009 (75 FR 57519). AAR 120.

In response to the Plaintiff's complaint filed with the USCIT, dated October 8, 2009, regarding WEATHER SHIELD II, the Department filed an administrative record that consisted of the materials upon which the

Department relied in making its determination with regards to the subject worker group's eligibility to apply for TAA. However, this record did not include documents that were considered in WEATHER SHIELD I, and which were also considered during the investigation of WEATHER SHIELD II as the basis for this determination.

In Plaintiffs' Motion to Supplement the Administrative Record, dated March 30, 2011, Plaintiffs indicated that the record did not include documentation in support of the negative determination ("the administrative record does not include any supporting questionnaire responses or source documents for Weather Shield's 2008 sales, nor does it provide any explanation for the 2009 data. The administrative record also does not include any customer list or any list of the customers to whom Labor issued questionnaires.") The materials to which Plaintiffs refer were part of the investigation of WEATHER SHIELD I (the case also referenced in the request for reconsideration).

The Department's Motion for Voluntary Remand stated that the Department sought to complete the administrative record by adding material received during the investigation of WEATHER SHIELD I that was considered during the investigation of WEATHER SHIELD II and, therefore, should have been included in the administrative record: the customer surveys received during the remand investigation of WEATHER SHIELD I; the complete customer list obtained during the remand investigation of WEATHER SHIELD I; the Non-Production Questionnaire and Confidential Data Request forms received during the initial investigation of WEATHER SHIELD I; documents providing the sales figures obtained during the remand investigation of WEATHER SHIELD; and the investigative report from the initial investigation of WEATHER SHIELD. The Department also explained in the motion that a remand was necessary for the Department to prepare a thorough explanation of how it relied on the afore-mentioned documents from the investigation of WEATHER SHIELD I and a more detailed factual and/or legal analysis in support of the remand determination in WEATHER SHIELD II.

Consistent with the USCIT's Order, the Department is filing an amended administrative record, which includes the following documents:

1. Forms completed during Weather Shield I: three Confidential Data Request (CDR) forms (OMB No. 1205-0342) (AAR 127, 132, 137), and one

Non-Production Questionnaire (OMB No. 1205-0447) (AAR 122);

2. E-mail correspondence (dated May 4, 2009) between the Department and a Weather Shield company official (AAR 143);

3. Investigative Report (IR) for Weather Shield I (AAR 145);

4. Customer list obtained during Weather Shield I* (AAR 209; and

5. Customer Surveys conducted during Weather Shield I (AAR 149, 152, 155, 158, 161, 164, 167, 170, 173, 176, 179, 182, 185, 188, 191, 194, 197, 199, 202).

*The list is very large, consisting of numerous customers who constitute less than one percent of subject firm sales, and has been submitted as part of the administrative record via compact disk.

Understanding the remand investigation of WEATHER SHIELD I places the investigation of WEATHER SHIELD II into perspective.

Furthermore, a comparison of the conditions that existed during the relevant time periods of each case and the appropriate regulations sheds light on the misconception that the certification issued by the Department in WEATHER SHIELD I could be a basis for the Department to issue a certification in WEATHER SHIELD II.

While the subject worker group covered by WEATHER SHIELD I is the same as the subject worker group covered by WEATHER SHIELD II, the investigations of the subject worker group cover different time periods in WEATHER SHIELD I and WEATHER SHIELD II:

WEATHER SHIELD I—

- Petition date is December 18, 2008.
- The relevant period is calendar year 2008.
- The representative base period is calendar year 2007.

WEATHER SHIELD II—

- Petition date is October 23, 2009.
- The relevant period is October 2008 through September 2009.
- The representative base period is October 2007 through September 2008.

Significantly, the relevant period of WEATHER SHIELD I overlaps the representative base period in WEATHER SHIELD II by only a few months.

Summary of Remand Investigation of TA-W-64,725 (WEATHER SHIELD I)

On December 17, 2008, the WEATHER SHIELD I petition for TAA and Alternative Trade Adjustment Assistance (ATAA) was filed on behalf of workers and former workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin. AAR 79.

The Department determined in the initial and reconsideration

investigations in WEATHER SHIELD I that imports of articles like or directly competitive with those produced by the subject firm did not contribute importantly to worker separations at the subject facility and that the subject firm did not shift production to a foreign country. AAR 79-81. A sample survey of the subject firm's major declining domestic customers revealed negligible imports of products like or directly competitive with those produced by workers at the subject firm. AAR 80-81.

During the remand investigation of WEATHER SHIELD I, the Department obtained an extensive customer list from the subject firm and conducted a larger sample customer survey to determine whether or not there were increased customer imports during the relevant period (calendar year 2008) of articles like or directly competitive with doors and/or windows, when compared to the representative base period (calendar year 2007). AAR 82-83. The expanded survey constituted 16% of the subject firm's declining customers. The expanded customer survey revealed increased imports during calendar year 2008 when compared to 2007 import levels. AAR 83.

On August 9, 2009, the Department issued a certification in WEATHER SHIELD I applicable to workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin, who became totally or partially separated from employment on or after December 17, 2007, through August 9, 2012. AAR 79.

Following the Department's practice, the WEATHER SHIELD I certification covered workers separated in the year preceding the date of the petition and continued for two years after the date of certification. AAR 84. Under the Department's practice, which is consistent with the remedial purposes of the TAA Program, certifications usually cover workers separated during at least a three-year period (beginning with the impact date, as defined in 29 CFR 90.2, and ending at the expiration of the two-year period following the determination) so that the broadest group of workers at a firm are eligible to apply for trade readjustment assistance under Section 233(a)(2) of the Trade Act, as amended.

In WEATHER SHIELD I, however, the certification covers a much longer period (more than four and a half years) because the certification was not issued on remand until August 9, 2009. Had the Department issued the certification on April 29, 2009, the certification period would have covered December 17, 2007 through April 29, 2011 (a period of three years and four months).

**Investigation of TA-W-72,673
(WEATHER SHIELD II)**

The petitioners in WEATHER SHIELD II stated no reason for the workers' separations other than "the economy" (AAR 3, 7) and stated in an attachment that the subject firm operated several domestic facilities. AAR 4, 8. According to the subject firm, the separations were due to the collapse of the domestic housing market and the corresponding decreased demand for windows and doors used in residential units. AAR 59. A pre-institution screening for duplicative petitions revealed that there was a related case: TA-W-64,725. AAR 9.

The record of the findings of an investigation is summarized in an Investigative Report (IR) that is unique to each case. While the WEATHER SHIELD I IR (AAR 145-148) did not play a meaningful role in the determination of WEATHER SHIELD II, the Department reviewed it in consideration of WEATHER SHIELD II because it is a related document. Specifically, the WEATHER SHIELD I IR discussed the operations of the subject facility in the context of the operations of the subject firm. AAR 145. It explained the services that the subject worker group supplied during the investigation period for WEATHER SHIELD I which were the same as for WEATHER SHIELD II (the investigation period of WEATHER SHIELD I and WEATHER SHIELD II overlapped by a few months). AAR 145. The WEATHER SHIELD I IR summarized the relationships between the subject facility and the three Weather Shield production facilities that were supported by the subject facility during the investigation period. AAR 146-147. The WEATHER SHIELD I IR also clarified the different articles produced at the three production facilities. AAR 146-147. The WEATHER SHIELD I IR also described the difference between the two Medford, Wisconsin facilities and the services supplied by the subject worker group at the subject facility. AAR 146-147.

The remand investigation of WEATHER SHIELD I and the initial investigation of WEATHER SHIELD II were conducted concurrently because the Complaint in WEATHER SHIELD I was filed with the USCIT on January 19, 2010 (two and half months after the petitioners filed WEATHER SHIELD II on October 26, 2009). Therefore, the Department reviewed material obtained during the investigations of WEATHER SHIELD I as well as material obtained during the investigation of WEATHER SHIELD II in determining whether the

subject worker group in WEATHER SHIELD II met the eligibility criteria set forth in TGAAA.

The Department reviewed material obtained during the investigations of WEATHER SHIELD I during the investigation of WEATHER SHIELD II. Specifically, the Department reviewed the Non-Production Questionnaire (AAR 22, 122) and three Confidential Data Request (CDR) forms submitted during the initial investigation of WEATHER SHIELD I (AAR 127-142), an e-mail exchange (dated May 4, 2009) between the Department and a Weather Shield official (AAR 143-144); the investigative report for the initial investigation (AAR 145-148); the customer list obtained during the remand investigation of WEATHER SHIELD I (AAR 209); and the results of the expanded customer survey conducted during the remand investigation of WEATHER SHIELD I. AAR 149-208.

During the investigation of the WEATHER SHIELD II petition, the subject firm confirmed that a significant number or proportion of the workers at the subject facility had been totally or partially separated from employment, or threatened with such separation. AAR 59. As such, the Department determined that Section 222(a)(1) has been satisfied and continued its investigation to determine whether either Section 222(a)(2)(A) or Section 222(a)(2)(B) have been met.

The Department determined, based on information provided by the subject firm during WEATHER SHIELD II, that there was not shift to a foreign country or acquisition from a foreign country by the subject firm in the supply of services like or directly competitive with those supplied by the subject worker group. AAR 51, 59. Therefore, the Department determined that Section 222(a)(2)(B) has not been satisfied and continued its investigation to determine whether Section 222(a)(2)(A) was met.

Section 222(a)(2)(A) has two criteria: (i) That sales or production, or both, at the workers' firm must have decreased absolutely and (ii) that there have been increased imports.

The Department determined that sales and production at the subject firm declined during the relevant period of the WEATHER SHIELD II investigation based in its review of material from the WEATHER SHIELD I investigation, as follows.

The Department reviewed the Non-Production Questionnaire (NPQ) supplied in the initial investigation of WEATHER SHIELD I. AAR 22, 122. The NPQ confirmed information supplied during the investigation of WEATHER

SHIELD II that workers at the subject facility supplied services related to administration, human resources, accounting, sales, and marketing to three Weather Shield production facilities and that workers at the subject facility did not produce an article. AAR 22, 122.

Having ascertained that the subject worker group did not produce an article, but supplied services in support of production at other subject firm facilities and there was no shift to a foreign country by the subject firm in the supply of like or directly competitive services, the Department investigated whether there had been decreased sales and/or production declines and, if so, whether there were increased imports (per 29 CFR 90.2) of windows and/or doors (or like or directly competitive articles) by reviewing the CDRs submitted by the subject firm during the WEATHER SHIELD I investigation. AAR 127-142. The relevant period for the WEATHER SHIELD II investigation is October 2008 through September 2009, and the representative base period is October 2007 through September 2008.

According to the NPQ submitted during WEATHER SHIELD I (AAR 22, 122), the subject facility supported three production facilities of the subject firm. AAR 24, 123. Therefore, the Department reviewed the three CDRs for those facilities (400 Legacy Lane, Park Falls, Wisconsin; 642 Whelan Avenue, Medford, Wisconsin; and 320 E. Worden Avenue, Ladysmith, Wisconsin) which were also submitted during WEATHER SHIELD I (AAR 127-142) to determine whether or not there were sales and/or production declines.

The afore-mentioned CDRs revealed that the Park Falls, Wisconsin facility produced doors (AAR 137), while both the Ladysmith, Wisconsin facility (AAR 127) and the Medford, Wisconsin facility (AAR 132) produced windows. The CDRs also revealed that all three facilities shut down in January 2009. AAR 127, 132, 137. As such, the Department determined that subject firm production had declined absolutely.

Information obtained from the subject firm during Weather Shield II consisted of only sales data for calendar 2009 (AAR 51, 52) (as noted above, production at the three subject firm facilities supported by the subject worker group had ceased in January 2009). AAR 127, 132, 137. In order to determine whether subject firm sales had declined, the Department reviewed existing material in WEATHER SHIELD I for sales figures for the representative base period for WEATHER SHIELD II: A

May 4, 2009 e-mail obtained during the investigation of WEATHER SHIELD I that contained subject firm sales figures for calendar year 2008. AAR 143. By comparing the sales data from WEATHER SHIELD I with the sales data from WEATHER SHIELD II, the Department was able to ascertain that subject firm sales declined during 2009 from 2008 levels.

Based on information obtained from the afore-mentioned WEATHER SHIELD I material (IR [AAR 145], NPQ [AAR 22, 122], CDRs [AAR 127–142], and the May 4, 2009 e-mail [AAR 143]), the Department determined that Section 222(a)(2)(A)(i) had been met and continued its investigation to determine whether Section 222(a)(2)(A)(ii) was met.

The Department determined that, for the relevant period of WEATHER SHIELD II, unlike the earlier relevant period for the WEATHER SHIELD I investigation, the requirements of Section 222(a)(2)(A)(ii) were not met, based on its review of material from the WEATHER SHIELD I investigation, as follows.

The Department considered the complete customer list obtained during WEATHER SHIELD I (AAR 209) and the results of the customer surveys conducted during the remand investigation of WEATHER SHIELD I. AAR 149–208.

The Department used the customer list provided during the WEATHER SHIELD I remand investigation (AAR 209) to conduct the customer survey in WEATHER SHIELD II. AAR 29–48. The Department surveyed only those customers with sales data for the year 2009, the relevant time period for the WEATHER SHIELD II investigation. AAR 29–48, 62–63. The WEATHER SHIELD II customers surveyed consisted of 16% of subject firm sales in 2008 and 13% of subject firm sales in 2009. AAR 53–56, 62–63.

The WEATHER SHIELD II investigation customer survey responses were combined with the responses of the same customers received during the WEATHER SHIELD I remand investigation for year 2008 to conduct a comparative analysis. AAR 53–56, 61–63. As noted above, the Department had conducted an expansive sample customer survey in WEATHER SHIELD I approximately three months before administering the customer survey for WEATHER SHIELD II. The analysis of overall subject firm sales, purchases made by the surveyed customers, and direct and indirect imports, did not reveal increased imports, per 29 CFR 90.2, by the surveyed customers. AAR 53–56, 61–63.

Further, as noted in the initial WEATHER SHIELD II determination, U.S. aggregate imports of metal/wood doors and windows (and like or directly competitive articles) declined from 2008 to 2009. AAR 57–58. As noted above, most of the customers on the customer list that was submitted in WEATHER SHIELD I (AAR 209) constituted a very small portion of the subject firm's sales; therefore, the results of an analysis of aggregate data of like or directly competitive articles is relevant because it is representative of the import activity of the subject firm's customer base during the relevant period of WEATHER SHIELD II.

The Department's determination is not inconsistent with the four affirmative TAA decisions attached to Plaintiffs' Motion to Supplement the Administrative Record before the USCIT in Court No. 10–00299. Workers of Springs Window Fashions, LLC (TA–W–73,575) and Simpson Door Company (TA–W–65,585) were certified as eligible to apply for TAA based in part on the investigative findings that Criterion 2 was met because their respective companies shifted production of window coverings and components, and solid wood stile and rail doors to Mexico and Canada, respectively, during the relevant periods of those investigations. Workers of Jeld-Wen Premium Doors (TA–W–71,644) and Woodgrain Millworks, Inc. (TA–W–65,461), were certified as eligible to apply for TAA based in part on the investigative findings that Criterion 2 was met because of increased imports or increased reliance on imported articles like or directly competitive with the articles produced by those companies. Those certifications involved different relevant periods.

Because increased imports is defined by 29 CFR 90.2, and the date of the petition determines the relevant period and the representative base period, facts that were the basis for certifications involving earlier-filed petitions cannot be the basis for a certification in WEATHER SHIELD II, just as the certification in WEATHER SHIELD I cannot be the basis for a certification in WEATHER SHIELD II.

Additionally, with respect to Section 222(c) of the Act, 19 U.S.C. 2272(c), the investigation revealed that the workers could not be certified as adversely affected secondary workers because the subject firm did not produce an article or supply a service that was used by a firm with TAA-certified workers in the production of an article or supply of a service that was the basis for TAA certification.

Finally, the group eligibility requirements under Section 222(f) of the Act, 19 U.S.C. 2272(f), have not been met because the subject firm has not been identified by name in an affirmative finding of injury by the International Trade Commission.

Based on the afore-mentioned findings, the Department determined that the subject worker group was not eligible to apply for TAA.

Conclusion

After careful review of material consisting of the complete administrative record, I determine that workers of Weather Shield Manufacturing, Inc., Corporate Office, Medford, Wisconsin, who supply corporate office support services for metal/wood windows and doors, are denied eligibility to apply for adjustment assistance under Section 223 of the Act, 19 U.S.C. 2273.

Signed in Washington, DC on this 3rd day of June, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,572; TA–W–71,572A; TA–W–71,572B; TA–W–71,572C]

Amended Revised Determination on Reconsideration

TA–W–71,572

SEVERSTAL WHEELING, INC., A SUBSIDIARY OF SEVERSTAL NORTH AMERICA, INC., CURRENTLY KNOWN AS RG STEEL WHEELING, LLC, MARTINS FERRY, OHIO

TA–W–71,572A

SEVERSTAL WHEELING, INC., A SUBSIDIARY OF SEVERSTAL NORTH AMERICA, INC., CURRENTLY KNOWN AS RG STEEL WHEELING, LLC, YORKVILLE, OHIO

TA–W–71,572B

SEVERSTAL WHEELING, INC., A SUBSIDIARY OF SEVERSTAL NORTH AMERICA, INC., CURRENTLY KNOWN AS RG STEEL WHEELING, LLC, MINGO JUNCTION, OHIO

TA–W–71,572C

SEVERSTAL WHEELING, INC., A SUBSIDIARY OF SEVERSTAL NORTH AMERICA, INC., CURRENTLY KNOWN AS RG STEEL WHEELING, LLC, STEUBENVILLE, OHIO

In accordance with Section 223 of the Trade Act of 1974, as amended (“Act”), 19 U.S.C. 2273, the Department of Labor issued a Notice of Revised