

morning" (implying that designs were being imported).

In order for the Plaintiffs to be certified for TAA based on a shift of production, it must be shown that there was:

(1) A significant portion or number of workers at the subject company separated or threatened with separation during the relevant period; and

(2) either—(a) A shift in production of articles like or directly competitive with those produced by the subject worker group to a country that is party to a free trade agreement with the United States, or a country that is named as a beneficiary under the Andean Trade Preference Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, or (b) a shift of production abroad followed by actual or increased imports of articles like or directly competitive with those produced by the subject worker group.

Because it was shown that at least five percent of workers at Tesco Technologies were separated during the relevant period, the worker separation criterion was met.

Because India is not a country that is party to a free trade agreement with the United States, or a country that is named as a beneficiary under the Andean Trade Preference Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, the only issue in the first remand investigation was whether, during the relevant period, there was a shift of production abroad of articles like or directly competitive with those produced by Tesco Technologies followed by actual or threatened increased imports of articles like or directly competitive with those created at Tesco Technologies.

Under the Department's interpretation of "like or directly competitive," (29 CFR 90.2) "like" articles are those articles which are substantially identical in inherent or intrinsic characteristics and "directly competitive" articles are those articles which are substantially equivalent for commercial purposes (essentially interchangeable and adapted to the same uses), even though the articles may not be substantially identical in their inherent or intrinsic characteristics.

During the first remand investigation, the Department determined that because each design created by the workers is "unique," there could not be any articles which are like or directly competitive with any design produced by Tesco Technologies and, consequently, the shift of production criterion could not be met.

The Notice of Negative Determination on Remand applicable to the subject workers was issued on July 25, 2005 and the Notice of determination was published in the **Federal Register** on August 5, 2005 (70 FR 45438).

In its November 9, 2006 opinion, the USCIT remanded the case at hand to the Department for further investigation.

Since the Notice of Negative Determination on Remand applicable to the subject firm was issued, the Department has clarified its policy to acknowledge that, under certain circumstances, there may be articles which are like or directly competitive to a "unique" article.

Reviewing the relevant facts with the foregoing in mind, the Department has determined that, during the relevant period, a significant portion of workers was separated from the subject facility, design production shifted abroad, and the subject firm increased its imports of designs following the shift.

In accordance with Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for 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 the case at hand 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 generated through the second remand investigation, I determine that a shift in production abroad of articles like or directly competitive to that produced at the subject facilities followed by increased imports of such articles contributed to the total or partial separation of a significant number or proportion of workers at the subject facility. In accordance with the provisions of the Act, I make the following certification:

All workers of Tesco Technologies, LLC, Headquarters Office, Auburn Hills, Michigan, who became totally or partially separated from employment on or after August 19, 2003, through two years from the issuance of this revised determination, are eligible to apply for Trade 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, as amended.

Signed at Washington, DC this 26th day of January 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-52,274]

#### **Thomson, Inc., Circleville Glass Operations, Circleville, OH; 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 Trade Adjustment Assistance (TAA) on August 7, 2003, applicable to workers and former workers of Thomson, Inc., Circleville Glass Operations, Circleville, Ohio. The Department's Notice was published in the **Federal Register** on September 2, 2003 (68 FR 52228). The workers were engaged in the production of glass components of picture tubes prior to the subject firm's closure in June 2004.

On March 8, 2005, the Department issued a certification of eligibility for Alternative Trade Adjustment Assistance (ATAA) covering workers of the subject firm separated from employment on or after June 27, 2002 through August 7, 2005. The Department's Notice was published in the **Federal Register** on April 1, 2005 (70 FR 16851).

Even though production activity ceased in June 2004, the State of Ohio required the subject firm to submit within ninety days a cessation of operations plan and to undertake an 18-month process for the identification and remediation of any hazards left over from the manufacturing process. At the time of the shutdown, the subject firm retained fifteen employees ("shutdown workers") solely for purposes of the shutdown process.

The shutdown workers subsequently petitioned for TAA/ATAA benefits (TA-W-59,118), referring to TA-W-52,274 for support. The Department determined in TA-W-59,118 that the shutdown workers were ineligible for benefits because there was no production at the subject facility during the relevant

period. The petitioners appealed the Department's negative determination to the U.S. Court of International Trade (Court No. 06-00266). The Department subsequently obtained a voluntary remand for the purpose of further review and a redetermination of the workers' eligibility to apply for worker adjustment assistance.

During the ensuing remand process for TA-W-59,118, the Department determined that there was a causal nexus between the subject firm's shutdown of operations and the shutdown workers' separations and that, therefore, the separations of the workers through December 31, 2006 are attributable to the conditions specified in section 222 of the Trade Act. The Department has further determined that, given the particular facts presented, it is appropriate to amend the certification of the immediate petition to include those workers involved in cessation of operations activities who were separated after August 7, 2005.

The Department's decision in this case is limited to the precise circumstances of this specific case and should not be considered as any indication of how the Department would proceed in other cases or in any subsequent rulemaking on this subject. The amended notice applicable to TA-W-52,274 is hereby issued as follows:

"All workers of Thomson, Inc., Circleville Glass Operations, Circleville, Ohio (TA-W-52,274), who became totally or partially separated from employment on or after June 27, 2002 through December 31, 2006, 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."

Signed at Washington, DC, this 25th day of January 2007.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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**BILLING CODE 4510-FN-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-59,118]

### Thomson, Inc., Circleville, OH; Notice of Termination of Investigation

On October 27, 2006, the U.S. Court of International Trade (USCIT) granted

the Department of Labor's consent motion for voluntary remand in *Former Employees of Thomson, Inc. v. United States*, Court No. 06-0266.

On March 24, 2006, three workers filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of Thomson, Inc., Circleville, Ohio. The petition stated that the subject workers' task was "decommission facility," that the facility closed on June 25, 2004, that the subject facility was previously certified (TA-W-52,274; expired), and that the "remaining employees should be considered for benefits."

On May 10, 2006, the Department of Labor (Department) issued a negative determination regarding the subject worker group's eligibility to apply for TAA and ATAA, stating that the workers do not produce an article within the meaning of the Trade Act of 1974. The Department's Notice of determination was published in the **Federal Register** on May 24, 2006 (71 FR 29984).

In a letter dated May 24, 2006, three workers requested administrative reconsideration by the Department. The workers implied that because the petitioning worker group is part of the group certified under TA-W-52,274 and remained working at the subject facility after production ceased and beyond the certification period for TA-W-52,274 (August 7, 2005), they should be considered eligible to apply for TAA and ATAA.

By letter dated June 19, 2006, the Department dismissed the workers' request for reconsideration. The Department's Notice of dismissal was issued in June 20, 2006 and published in the **Federal Register** on July 6, 2006 (71 FR 38425).

In a letter dated August 1, 2006, the workers requested judicial review. In the complaint, the workers stated that the subject firm ceased operations in April 2004, that they were employed past April 2004 to "perform mandated requirements under the Cessation of Regulations Operations," and "our jobs were lost to foreign competition the same as the other employees of Thomson, Inc. in Circleville, Ohio." In response to the complaint, the Department filed an administrative record.

The Department subsequently moved for a voluntary remand, so that the Department could conduct a further review and make a redetermination of

eligibility. On October 27, 2006, the Department's motion was granted.

During the initial investigation for this petition, the Department was informed by a company official that the subject workers were employed in order for the company to satisfy a State-mandated plant closure process. This process required the company to submit a "Cessation of Regulated Operations" (CRO) plan that addressed the removal of all hazardous materials. The State-approved CRO plan required an 18-month implementation schedule. The subject facility ceased production in April 2004 and entered the CRO phase in June 2004.

After careful review during the remand investigation, the Department determines that the workers who continued their employment with the subject firm to execute the CRO plan and complete shutdown functions are part of the worker group covered by TA-W-52,274. The Department's determination is based on the causal nexus between the subject facility's closure and the workers' separations.

On March 8, 2005, the Department issued a certification of eligibility to apply for ATAA under petition TA-W-52,274. The Department's Notice was published in the **Federal Register** on April 1, 2005 (70 FR 16851).

On January 25, 2007, the Department amended the TAA/ATAA certification of TA-W-52,274 to cover workers of the subject firm separated from employment on or after June 27, 2002 through December 31, 2006.

Since the subject workers are covered by TA-W-52-274, further investigation in this case would serve no purpose and the investigation has been terminated.

### Conclusion

After careful review of the findings of the remand investigation, I am terminating the investigation of the petition for worker adjustment assistance filed on behalf of workers and former workers of Thomson, Inc., Circleville, Ohio.

Signed at Washington, DC this 25th day of January 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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