

medium, are considered to be "like or directly competitive" with other custom services, then almost any work can be covered by the Trade Act, and the like or directly competitive requirement is effectively read out of the Act.

(3) and (4) Identify what type of documentation was produced by EDS (brochures, manuals, etc.), and determine what was the production volume of such documentation and whether it was considered part of the product purchased by EDS's customers:

As stated above, the software and documentation designed and/or supported by the workers of the subject facility was rarely delivered to the client on a physical carrier medium, but was normally installed onto a mainframe data center from which the client could access it remotely and print it. Documentation was rarely embodied in hardcopy, because the client could print such documentation on their own. On the rare occasion that the client requested hardcopies of documentation, bulk printing was carried out by a third-party copy facility (SAR at 11). In effect, EDS provided no brochures, manuals, or other physical product documentation to its client in the course of serving the client's needs. Accordingly, there is no volume to measure or value to assess for the documentation the subject facility provided to its customer.

Conclusion

The Department thoroughly investigated the petition for EDS, I Solutions Center, Fairborn, Ohio on remand and could not find any evidence that workers of the subject facility produced or supported production of any article. To the contrary, the evidence presented in the SAR supports the conclusion that the EDS workers did not produce an article. Indeed, the products designed and/or developed at the Fairborn facility were not mass-replicated to any physical carrier medium. In any event, as custom designs, the software solutions and documentation were inherently unique and, therefore, not "like or directly competitive" with any other products.

In the case of EDS, I Solutions Center, Fairborn, Ohio, the evidence clearly establishes that the workers of the subject facility did not produce an article, nor did they support, either directly or through an appropriate subdivision of EDS, the production of an article within the meaning of the Trade Act. Because the petitioners are employees of a firm or subdivision that does not produce or support production of an article within the meaning of the Trade Act, 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 Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio.

Signed in Washington, DC this 31st day of January 2005.

Elliott S. Kushner,
Certifying Officer, Division of Trade
Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment And Training Administration

[TA-W-54,434]

Gale Group, Inc., Belmont, CA; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Gale Group, Inc. v. U.S. Secretary of Labor*, Court No. 04-00374. The Court Order was issued on October 25, 2004.

On May 20, 2004, the Department of Labor (Department) issued a negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) for the workers of Gale Group, A Division of the Thompson Corporation, Belmont, California (Gale Group). The determination was based on the investigation's finding that the workers at the subject facility performed electronic indexing services, including converting paper periodicals into an electronic format, assigning relevant index terms and occasionally writing abstracts of articles, and thus did not produce an article in accordance with section 222 of the Trade Act of 1974. The Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for the subject firm was published in the **Federal Register** on June 17, 2004 (69 FR 33940).

In a letter dated June 16, 2004, the petitioner requested administrative reconsideration of the Department's negative determination. The Department affirmed its finding that the workers of the subject firm should not be certified as eligible to apply for TAA on the basis that the firm did not produce an article within the meaning of section 222 of the Trade Act because the application contained no new substantial information. Accordingly, the

Department issued a letter (dated July 13, 2004) dismissing the petitioner's application for reconsideration. A Dismissal of Application for Reconsideration was issued on July 16, 2004 and the Notice of Dismissal of Application for Reconsideration was published in the **Federal Register** on July 23, 2004 (69 FR 44064).

By letter dated August 1, 2004, the petitioner requested judicial review by the USCIT. The petitioner asserted that because "informational products are real commodities that are manufactured and produced for sale," the workers produce an article and are entitled to a new investigation to determine whether they should be certified as eligible for TAA.

In the motion for voluntary remand, the Department indicated the need to determine whether the workers were engaged in the production of an article and to resolve certain ambiguities in the record.

On October 25, 2004, the USCIT granted the Department's consent motion for voluntary remand and ordered the Department to conduct a further investigation and to make a redetermination as to whether petitioners should be certified as eligible for TAA.

In its remand investigation, the Department carefully reviewed previously submitted information, contacted the company official to obtain new and additional information regarding the work done by the subject worker group, the products and services offered by the company, and also solicited information from the petitioners. The main purpose of this extensive investigation was to ascertain whether the work performed by the petitioning worker group can be construed as production or in support of production of an article by the firm, Gale Group.

Petitioners allege that they are engaged in the production of CD-ROMS and databases which are articles under the Act. The Department has investigated each claim and has determined that the workers are not engaged in the production of any articles because no production took place at the subject firm during the relevant period and that a mere shift of service functions abroad cannot support TAA certification.

The petitioners state that members of the worker group worked on databases which were "marketed for access by purchasers and by their licensees initially on CD-ROMS and in electronic format, and later only on electronic format—i.e., through a real-time internet connection." Supp. A.R. 77. The

petitioners also identify products which they allege are articles: Infotrac, Gale E-Commerce Sourcebook, World Retail Directory and Sourcebook, and Ward's Business Directory. Supp. A.R. 81, 82, 88, 89.

Information supplied by the subject company indicates that the workers primarily convert paper periodicals into an electronic format, process the electronic data so they can be indexed, and provide access to the databases for on-line subscribers. Supp. A.R. 8–42. This information is not contradicted by petitioners' submissions, which indicate that the petitioners' tasks included reading and indexing paper articles, as well as researching, entering and editing information into the databases. Supp. A.R. 86–90.

The newly obtained information also shows that the databases are accessed via the Internet, are neither recorded nor stored on a physical carrier medium, such as CD–Rom, and are not mass-replicated by Gale Group. Supp. A.R. 9–11, 94. The information further reveals that no tangible articles are manufactured within either the subject facility or the larger corporate entity. *Id.* On the rare occasion that a customer requests paper copies of the databases, the printing is carried out by an unaffiliated, off-site, third party copy facility. Supp. A.R. 91. Moreover, as to these databases, Gale Group derived revenue not from the sale of copies of the databases on a physical carrier medium, but from customers purchasing a subscription to access information which is stored in a server off-site, at an affiliated location in Michigan. Supp. A.R. 9, 12.

The petitioners do not produce an article within the meaning of the Trade Act of 1974. The Department has consistently held that the processing of information, especially information which is created, manipulated and stored in electronic format, is not the production of an article for TAA purposes. Throughout the Trade Act, an article is referenced as something that can be subject to a duty. Telecommunications transmissions (such as electronically transmitted text and information) are specifically exempted from duty as they “are not goods subject to the provisions of the tariff schedule” (Harmonized Tariff Schedule of the U.S., 2004, General Notes, 3e). As telecommunications transmissions, the on-line services provided by Gale Group are not articles. Further, the Infotrac data base is available only in the electronic format. Supp. A.R. 92.

While there is evidence in the record that seems to indicate that these workers

did work on some products that were converted into CDs, this did not constitute the production of an article under the Act since the CDs were produced at an unaffiliated off-site location owned by a third party. Supp. A.R. 95. It is the production of the CDs, not the creation of information in electronic format that constitutes production of an article under the Act. In any case, the petitioning workers have not contributed to any products recorded on CDs in the last three years. Supp. A.R. 95.

It is clear that certain product lines of electronic indexing services sold by Gale Group could be considered “articles” for TAA certification purposes if they were put on a physical carrier medium such as paper or CD–Rom. These product lines would be dutiable under the Harmonized Tariff Schedule as recorded media. However, because Gale Group did not replicate its electronic indexing services on recorded media on site or at an affiliated facility, it did not produce the article for TAA purposes of the Act and the petitioning workers at the subject facility are not workers of the “firm” producing an article. Instead, an unaffiliated facility with which Gale Group contracted replicated certain but not all of the electronic indexing services developed and sold by Gale Group. The unaffiliated facility produced the article—electronic indexing services on the recorded media—that Gale Group sold. That facility was not part of the petitioning workers “firm” under the longstanding regulatory definition of firm at 29 CFR 90.2 because the facility was not affiliated with Gale Group. Because Gale Group was not part of the “firm” that produced the article (the third party replicating vendor), Gale Group did not produce an “article” for TAA purposes.

To be eligible for TAA, workers must be engaged in activity in support of an affiliated production facility which is eligible for TAA certification on its own merits if their facility does not produce an article. Because neither Gale Group nor its affiliates replicates any product, Supp. A.R. 91 and 94, there is no qualifying production facility of which the workers can be in support. As such, the worker group cannot be eligible for TAA as service workers in support of a certifiable production facility.

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

Although the company official stated that some positions were shifted to India and Philippines, the petitioning

workers cannot be eligible for TAA because only the shift of production, not services, abroad is a basis for certification. Further, because informational material that is electronically transmitted is not considered production for purposes of TAA eligibility requirements, there cannot be any imports following a shift of services abroad.

The Department has thoroughly investigated the matter and could not find a basis to determine that workers of Gale Group are engaged in the production of an article. Consequently, they are not eligible for certification.

Conclusion

In the case of Gale Group, A Division of the Thompson Corporation, Belmont, California, it is clearly established that the workers of the subject facility did not produce an article, nor did they support, either directly or through an appropriate subdivision, the production of an article within the meaning of the Trade Act. Because the petitioners are employees of a firm or subdivision that does not produce or support production of an article within the meaning of the Trade Act, 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 Gale Group, A Division of the Thompson Corporation, Belmont, California.

Signed in Washington, DC this 27th day of January 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,239]

Gasque Plumbing Company, Inc., Myrtle Beach, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 22, 2004, in response to a petition filed on behalf of workers at Gasque Plumbing Company, Inc., Myrtle Beach, South Carolina. Workers at the subject firm install plumbing in commercial buildings.