APPENDIX—Continued

[TAA petitions instituted between 5/27/08 and 5/30/08]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63453	Dell, Inc.—Topfer Manufacturing Center (State)	Round Rock, TX	05/30/08	05/29/08

[FR Doc. E8–13400 Filed 6–13–08; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,601]

Intel Corporation Fab 23 Colorado Springs, CO; Notice of Negative Determination on Remand

On March 24, 2008, the U.S. Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of Intel Corporation* v. *U.S. Secretary of Labor,* Court No. 07–00420.

On May 30, 2007, an official of Intel Corporation, Fab 23, Colorado Springs, Colorado (subject firm) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of the subject firm. The subject firm official stated that the subject firm produced ''WiFi products'' for Intel Corporation (Intel) and communication microprocessors for a company that replaced purchases from the subject firm with products manufactured by a Taiwanese company. The official further stated in the petition that ''As a result of the production of these two product lines going overseas, Fab 23 no longer has product to build and will be ceasing production on August 4, 2007.'' AR 2–3.

The institution of the TAA petition was published in the **Federal Register** on June 14, 2007 (72 FR 32915). AR 10–11.

In determining whether a petitioning worker group has met the statutory criteria, the Department refers to the applicable regulation, 29 CFR part 90, for guidance.

During the initial investigation, the subject firm official stated that the subject firm produced ''silicon wafers'' and that the worker separations were due to the subject firm's customer shifting to another company. AR 12. The company official also stated that the subject firm made silicon wafers for wireless fidelity (WiFi) chips and that the wafers were a component of the WiFi cards imported into the United States. The company official further stated that the subject firm shifted silicon wafer production to Taiwan. AR 13. Further, information provided during the initial investigation confirmed that the subject firm produced silicon wafers bearing WiFi chips and communications microprocessors, that the subject workers were not separately identifiable by product line, and that the subject firm would close on August 4, 2007 due to the shift of production to Taiwan during the second and third quarters of 2007 (April–September 2007). AR 14.

The initial investigation further revealed that subject firm's production of silicon wafers increased in 2006 from 2005 levels and increased during January through April 2007 from January through April 2006 levels. AR 16.

The Department's Notice of negative determination, issued on June 15, 2007, regarding the subject workers' eligibility to apply for TAA/ATAA stated that sales and production for silicon wafers increased in 2005, 2006, and year to date 2007, that the subject firm did not import silicon wafers, and that the subject firm did not shift production of silicon wafers to a foreign country during the relevant period. AR 23–25. The determination published in the **Federal Register** on June 28, 2007 (72 FR 35517). AR 26–30.

In a letter dated July 14, 2007, a former worker, David Alexander, requested administrative reconsideration of the Department's negative determination. AR 39. The request for reconsideration alleged:

(1) That when Intel Corporation (Intel) sold the rights to the ''Hermon'' chip to another company, Intel became an agent of that principal company, and, subsequently, the subject workers became employees of the principal company;

(2) That the subject firm did not produce silicon wafers but ''manufactures electronic circuits * * * on a silicon wafer'';

(3) That ''(a) INTEL buys the bare silicon wafer from a supplier, (b) Fab 23 then manufactures the electronic circuit on the wafer called a die and (c) then die is tested and assembly. Item c can be done else where, I believe at this time (July 2007) Marvel chooses elsewhere'';

(4) That the subject workers are secondary/downstream employees to the so-called principal company; and

(5) That the principal company's shift of production to Taiwan is a basis for TAA certification of the subject workers. AR 40–43.

In the request for reconsideration, Mr. Alexander stated that ''packaged dies are called 'chips.' '' AR 41.

During the reconsideration investigation, the Department confirmed that a company, Marvel, purchased from Intel the rights to the Hermon chip, and that, under the agreement, the subject firm would produce silicon wafers bearing the Hermon chip until Marvel's Taiwanese supplier was fully operational. The subject firm ceased production in April 2007 and the last shipment of silicon wafers from the subject firm to Marvel was in the second quarter of 2007. AR 54–55. The Department also confirmed that the articles produced at the subject firm were silicon wafers bearing ''WiFi semiconductor chips.'' AR 57.

The subject firm also provided information about Intel's semiconductor chip production process.

The subject firm purchased bare silicon wafers from various vendors, AR 66, then used a photolithographic printing process to fabricate each chip onto the silicon wafer. AR 57, 65, 66. Each chip is called a die and is tested on the wafer before it was separated from the silicon wafer. AR 65, 74. The process of separating chips from the wafer is called ''dicing'' or ''scribing.'' AR 113.

The silicon wafers bearing WiFi semiconductor chips were sent from the subject firm to other Intel facilities. At these facilities, the wafers were diced and the semiconductor chips were packaged. AR 65–66, 101. The packaging of the chip entails ''mounting the chip on a stamped lead-wire harness in a process called die bonding, then encapsulating this assembly in the final package.'' AR 113.

Without this packaging process, the chip could not electrically communicate outside of itself, could not be placed into a motherboard, and had no customer application. AR 65–66. The dicing of silicon wafers and the

packaging of dies used in WiFi products for Intel occur in Taiwan and the Philippines, with testing of the packaged dies occurring in Malaysia and the Philippines. AR 66, 101. The separation of Marvel's Hermon semiconductor chip from the silicon wafer and the packaging of Hermon chips occurs in Korea, with the testing occurring in the Philippines. AR 66.

During the reconsideration, the Department contacted the subject firm and ascertained that the subject firm did not shift production to a country that is a party to a free trade agreement with the United States or named as a beneficiary under the Andean Trade Preferences Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, AR 55, 56, 70, 101. Through contact with the subject firm, the Department also confirmed that the articles imported by Intel are not silicon wafers bearing semiconductor chips, dies, or packaged dies but are WiFi cards. AR 101–102.

The negative determination on reconsideration, issued on September 26, 2007, stated that the subject firm produced silicon wafers and explained that since Taiwan is not a country that is a party to a free trade agreement with the United States or named as a beneficiary under the Andean Trade Preferences Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, the subject workers cannot be certified for TAA based on a shift of production to that country absent evidence of increased imports (actual or likely) of like or directly competitive articles following the shift of production to another country. The determination also stated that the subject workers are not secondary workers because the subject firm neither supplied a component part to a buyer nor finished or assembled a final product for a buyer. AR 114–120. The Department's Notice determination was published in the **Federal Register** on October 3, 2007 (72 FR 56387). AR 121–123.

By letter dated November 5, 2007, former workers of the subject firm applied to the USCIT for review. The complaint alleged that ''the Department of Labor decision is flawed by lack of technical knowledge and adherence to previous CIT decisions.''

The USCIT granted the Department's request for voluntary remand, and directed the Department to determine whether, following the subject firm's shift of semiconductor wafer production to a foreign country, there were (actual or likely) increased imports of articles like or directly competitive with semiconductor wafers produced by the subject firm.

Mr. Alexander stated in the request for reconsideration that packaged dies are referred to as chips. AR 41. However, the subject firm refers to semiconductor devices, on the silicon wafer or separated from the wafer, as chips. AR 57, 65, 66.

In order to have consistent terminology during the course of the remand determination, the Department refers to a semiconductor device on the wafer as a chip, a chip separated from the wafer as a die, and a packaged die as an integrated circuit. The terminology is defined in a pamphlet titled ''How to Make an Integrated Circuit.'' AR 113–114.

In their March 26, 2008 letter, Plaintiffs alleged that the Department misidentified the article produced at the subject firm during the relevant period, that semiconductor chips produced at the subject firm were like or directly competitive with imported semiconductor chips, and that it is possible that if ''Intel retained production of the Hermon chips,'' the subject firm would have stayed open. SAR 2–3.

To apply for TAA, the group eligibility requirements under Section 222(a) the Trade Act of 1974, as amended, must be met. The group eligibility requirements can be satisfied in one of two ways:

I. Section 222(a)(2)(A)—

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; *and*

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; *and*

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section 222(a)(2)(B)—

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; *and*

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; *and*

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; *or*

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; *or*

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Because the subject firm ceased production in April 2007, AR 54–55, the Department determines that section 222(a)(2)(A)(A) and (B) have been met. Further, because the subject firm has shifted semiconductor wafer production to a foreign country, the Department determines that section 222(a)(2)(B)(A) and (B) have been met.

The only issues in the case at hand, therefore, are whether the subject worker group has satisfied section 222(a)(2)(A)(C)—increased imports of like or directly competitive products contributed importantly to subject firm sales and/or production declines and worker separations—or section 222(a)(2)(B)(C)—shift of production to a qualified country and/or increased imports following the shift of production to a foreign country.

Article Produced by the Subject Firm During the Relevant Period

Plaintiffs allege that the subject firm did not produce silicon wafers but produced semiconductor chips in wafer form and that the subject firm may have produced dies and/or packaged dies (integrated circuits) during the relevant period. SAR 2–3.

In support of the allegation that the subject firm did not produce silicon wafers, Plaintiffs submitted a declaration by Mr. Alexander, dated May 1, 2008, SAR 55–57 and a supplemental declaration, dated May 7, 2008, by Mr. Alexander. SAR 61.

In the May 1, 2008 declaration, Mr. Alexander stated that ''I performed a variety of complex operations and routine technical duties in a wafer fabrication environment'' and ''Fab 23 manufactured semiconductor chips on silicon wafers.'' Mr. Alexander also stated that the subject firm produced ''silicon wafers, which * * * contain multiple semiconductor chips'' and that a ''wafer sort'' was conducted to identify defective chips. Mr. Alexander further stated that ''Following the wafer sort

process, INTEL typically would cut semiconductor chips from each silicon wafer; however, these tasks could be undertaken outside of INTEL.'' SAR 55. Exhibit 1 of the declaration identifies the activities that occur at the subject firm as ''Preparing wafer for manufacturing,'' ''Manufacturing of dies/chips on wafer,'' and ''Wafer Sort.'' SAR 57.

In the May 7, 2008 declaration, Mr. Alexander stated that ''My responsibilities included a variety of duties directly related to the preparation, manufacturing and testing of silicon wafers at Fab 23.'' The supplemental declaration did not address the allegation that the subject firm may have produced dies and/or packaged dies (integrated circuits). SAR 61.

The subject firm, in an earlier submission, explained that the bare silicon wafers were purchased from various vendors and that the articles produced at the subject firm were silicon wafers bearing semiconductor chips (these wafers are also referred to in the industry as semiconductor wafers). AR 57, 65, 66. During the remand investigation, the subject firm stated that the articles that left Intel, Fab 23 and were sent to its customer were semiconductor wafers, SAR 31, 32, 64–73, and that semiconductor wafers were sold uncut and unpackaged. SAR 32. A subject firm official sent pictures of the article produced at the subject firm, SAR 65–68, which show that the article is an eight-inch diameter wafer, SAR 66, with multiple chips on it. SAR 64–68.

Based on previously-submitted information and additional information obtained during the remand investigation, the Department determines that, during the relevant period, the subject firm did not produce silicon wafers but produced semiconductor wafers.

Subject Worker Were Not Adversely-Impacted by Increased Imports

The Trade Act of 1974 provides for certification in cases in which production of an article was shifted to a country that is neither a party to a Free Trade Agreement nor a beneficiary of the Andean Trade Preference Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act only if the increased imports are of articles like or directly competitive with articles produced by the subject firm.

The articles produced by the subject firm were eight-inch diameter semiconductor wafers. SAR 64–68. The articles imported by the subject firm are WiFi cards. AR 101–102.

The applicable regulation, 29 CFR 90.2, defines ''like'' articles as ''those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which the articles are made, appearance, quality, texture, etc.)''

The semiconductor wafers produced at the subject firm were made with a silicon base and measured eight inches in diameter. AR 57, 65, 66, SAR 64–68. A WiFi card is a portable, electronic device that consists of multiple parts. AR 108–111. Because these two articles are markedly different, they do not meet the definition of ''like articles'' in 29 CFR 90.2, and the Department determines that WiFi cards are not ''like'' semiconductor wafers.

29 CFR 90.2 defines ''directly competitive'' articles as those articles ''which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefore).''

The semiconductor wafers produced at the subject firm cannot be used in any capacity, even though chips on them may be fully functional, because until the chip is cut away from the wafer (becomes a die) and is packaged, the chip cannot communicate outside of itself. AR 65–66.

A WiFi card consists of an integrated circuit and can be inserted into a laptop computer for immediate use. AR 108–111. The integrated circuit is a mere component of the WiFi card, and the Department has consistently determined that components cannot be considered like or directly competitive with the finished product. Because these two articles do not meet the definition of ''directly competitive articles'' in 29 CFR 90.2, the Department determines that semiconductor wafers are not directly competitive with WiFi cards.

Based on the afore-mentioned regulation and information, the Department determines that the alleged imports are not like or directly competitive with the semiconductor wafers that were produced at the subject firm, and, as such, the subject workers cannot be adversely impacted by the increased imports by the subject firm.

During the remand investigation, the Department surveyed the subject firm's only declining customer to determine whether it had increased its imports (relatively or absolutely) of semiconductor wafers (and articles like or directly competitive with semiconductor wafers). SAR 37–40, 51–53. Because there were no such increased imports, SAR 53, the Department determines that the subject workers cannot be adversely impacted by increased imports by the subject firm's declining customer.

Whether Subject Firm Would Have Stayed Open if Intel Retained Production of Hermon Chip Is Irrelevant

Plaintiff further allege that it is possible that if ''Intel retained production of the Hermon chips,'' the subject firm would have stayed open. SAR 2–3.

Because the statute requires the Department to consider events that occurred during the relevant period, the Department does not predict possible results based on events that did not occur. As such, the Department determines that this allegation is irrelevant.

Subject Firm Did Not Shift Production to a Country With Whom the U.S. Has a Free Trade Agreement

The U.S. does not have a free trade agreement with Taiwan. Therefore, a shift of production to Taiwan cannot be a basis for TAA certification for the subject worker group.

Based on the information obtained during the initial investigation, the reconsideration investigation, and the remand investigation, the Department determines that, in the case at hand, neither section 222(a)(2)(A)(C) nor section 222(a)(2)(B)(C) have been met. Therefore, the Department determines that the group eligibility criteria set forth in the Trade Act of 1974, as amended, has not been met.

In addition, in accordance with section 246 of the Trade Act of 1974, as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA.

In order to apply the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the workers are denied eligibility to apply for TAA, they cannot be certified eligible to apply for ATAA.

Conclusion

After careful review of the findings of the second remand investigation, I affirm the notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Intel Corporation, Fab 23, Colorado Springs, Colorado.

Signed at Washington, DC, this 6th day of June, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,832]

GAF Materials Corporation, Quakertown, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 5, 2008, International Association of Machinists and Aerospace Workers, District 1 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), applicable to workers and former workers of the subject firm. The denial notice was signed on March 26, 2008 and published in the **Federal Register** on April 11, 2008 (73 FR 19900).

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 initial investigation resulted in a negative determination was based on the finding that imports of residential roofing materials did not contribute importantly to worker separations at the subject facility and there was no shift of production to a foreign country. The subject firm did not import residential roofing materials during the relevant period. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's declining domestic customers. A survey conducted by the Department of Labor revealed that major customers did not purchase imported residential roofing materials during 2006, 2007 and during the January through February 2008 period.

The petitioner indicates that ''The workers produced asphaltic roofing materials and that the sales and employment at the firm declined during the relevant period.''

Since the worker group was denied on the fact that imports did not contribute importantly to the layoffs at the subject firm and no shift of production to a foreign source occurred, the information provided by the petitioner in the request for reconsideration does not help to satisfy the criteria necessary for certification for TAA.

The request for reconsideration also appears to address workers eligibility for ATAA. The petitioner states that ''a significant number of employees at this location are 50 or older and do not possess skills that are easily transferable.''

In order for the Department to issue a certification of eligibility to apply for ATAA, the worker group must be certified eligible to apply for trade adjustment assistance (TAA). Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The Union did not supply facts not previously considered; nor 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.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

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 in Washington, DC, this 4th day of June, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,254]

Teva Neuroscience, Inc., Global Clinical Professional Resources Group, Horsham, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 26, 2008, a petitioner 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 May 9, 2008 and published in the **Federal Register** on May 22, 2008 (73 FR 29783).

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 negative TAA determination issued by the Department for workers of Teva Neuroscience, Inc., Global Clinical Professional Resources Group, Horsham, Pennsylvania, was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that Global Clinical Professional Resource Group (GCPRG) ''belonged to the Innovative Research and Development division, which had no involvement in the manufacturing process.'' The petitioner also stated that GCPRG was strictly dealing with the clinical trials and with the clinical data collected from the American population. The petitioner further infers that employment at the subject firm was negatively impacted by the outsourcing of some functions from the subject facility to India.

The initial investigation revealed that the workers of Teva Neuroscience, Inc., Global Clinical Professional Resources Group, Horsham, Pennsylvania, are engaged in operations in support of the conduct of clinical trials of pharmaceutical products manufactured abroad, including database management, clinical quality control, and administration. These functions, as