

and that this mainframe was moved to Connecticut, necessitating a separation for workers at the West Palm Beach facility. The official also stated that other workers were engaged in creating design specifications for Pratt & Whitney's SAP applications, and that some "source coding services" were performed in India.

The Department has traditionally deemed custom software design and programming as a service. Electronically generated software code is not a tangible commodity. This is supported by the fact that they are not marketable products listed on the Harmonized Tariff Schedule of the United States (HTS), published by the United States International Trade Commission (USITC), Office of Tariff Affairs and Trade Agreements, which describes all articles imported to or exported from the United States.

Further support that Computer Sciences Corporation workers in West Palm Beach did not produce an article is found in examining what items are subject to a duty. Throughout the Trade Act, an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule, an article will have a value that makes it marketable, fungible, and interchangeable for commercial purposes.

However, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, customized software code such as that created by the petitioning worker group is not listed in the HTS. Such items are not the type of work products that customs officials inspect and that the Trade Adjustment Assistance program was generally designed to address.

Further, a discussion with an official at the U.S. Customs Service clarified that, when software is considered dutiable, the tariff is based on the cost of the media (such as paper, CD, or computer disk) and not on the value of the information contained on the media. As the customized computer code in question for this worker group is transmitted electronically, no value could be assessed in terms of import impact.

In addition, the 2002 edition of the North American Industrial Classification System (NAICS), a standard used by the Department to categorize products and services, designates "establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer" as "Custom Computer Programming Services" (NAICS 541511).

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

#### 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 at Washington, DC this 17th day of December, 2003.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-52,362]

##### **Cookson Electronics, Assembly Material Group, a Division of Frys Metals, Inc., d/b/a Alpha Metals, Jersey City, NJ; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Cookson Electronics, Assembly Material Group, a division of Frys Metals, Inc., d/b/a Alpha Metals, Jersey City, New Jersey. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-52,362; Cookson Electronics, Assembly Material Group, a div. of Frys Metals, Inc., d/b/a Alpha Metals, Jersey City, NJ (January 8, 2004).

Signed at Washington, DC this 14th day of January 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-52,627]

##### **Flextronics Logistics, Including Leased Workers of Wood Personnel, Mount Juliet, TN; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Flextronics Logistics, including leased workers of Wood Personnel, Mount Juliet, Tennessee. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-52,627; Flextronics Logistics, including leased Workers of Wood Personnel, Mount Juliet, Tennessee (January 7, 2004)

Signed at Washington, DC this 14th day of January 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

[TA-W-53,187]

##### **Harriet & Henderson Yarns, Inc., Corporate Office, Henderson, NC; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Harriet & Henderson Yarns, Inc., Corporate Office, Henderson North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-53,187; Harriet & Henderson Yarns, Inc. Corporate Office, Henderson, North Carolina (January 8, 2004)