Getting Certified for Trade Adjustment Assistance:

A Guide for Unions, Workforce Agencies, and Community Groups

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Rick McHugh
Staff Attorney
National Employment Law Project
P.O. Box 369
Dexter MI 48130
734/426-6773
rmchugh@nelp.org

Phil Gilliam
Associate General Counsel
UAW Legal Department
8000 East Jefferson Avenue
Detroit MI 48214
313/926-5216
pgilliam@uaw.net

About the Authors

Rick McHugh has been a staff attorney at the National Employment Law Project since 2000. He has been a legal aid and union attorney representing jobless and dislocated workers for nearly 30 years, including 11 years with the UAW Legal Department. As Midwest Coordinator for NELP, Rick concentrates on advising policy and community groups on unemployment insurance legislation. He is a member of UAW Local 2320.

Phil Gilliam is Associate General Counsel with the International Union, UAW in Detroit. Phil has worked for the UAW since 1988, beginning with the UAW's Unemployment Insurance Clinic as a law clerk, claimant advocate, and later as director. His duties with the UAW Legal Department include administrative law , trade adjustment assistance, and National Labor Relations Board matters. Phil was hired by Ford in 1968 and has been a UAW member since that time. He is a Machine Repairman Specialist under the UAW Skilled Trades program.

Layout and design of this manual by Bukola Ashaolu, a member of UAW Local 2320.

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Introduction

This manual[1] is designed as a practical guide for getting groups of workers certified for Trade Adjustment Assistance (TAA). TAA is the overall program name that is also known as TRA or trade benefits.[2] Strictly speaking, TRA (Trade Readjustment Allowances) is a name for weekly income benefits provided under TAA. In other words, TAA is the name used for the overall program that includes TRA benefits, job training, relocation allowances, and job search assistance. A single petition is used to gain certification for all benefits, training, and reemployment services offered under the TAA program.[3]

To get either TAA training or TRA benefits, or both, dislocated workers must first be "certified" as trade-impacted workers by the U.S. Department of Labor. This manual is designed for unions, workforce intermediaries, community groups, and others seeking to successfully petition for TAA certification. To begin, we start by discussing the basics of getting certified for trade benefits, or TAA. A detailed overview of the legal requirements for TAA certification follows. We next include a review of a sample TAA petition and supporting materials. Throughout the manual, we include practical tips based upon our experience with TAA that will help you get a favorable TAA certification decision from the Labor Department.

Trade Adjustment Assistance (TAA) has its own set of rules, abbreviations, and terms. A basic grasp of these rules and terminology will help you get workers certified for TAA and then move them into eligibility for retraining and TRA benefits. For your convenience, a glossary of TAA terms is found at the end of this manual. In addition, a sample TAA petition for certification, cover letter and related materials, as well as some important forms involving TAA investigations are found in the Appendix at the rear of the manual.

Overview of TAA

Rising imports and outsourcing expose much of the labor market to the negative impacts of trade, including plant closings and manufacturing job losses. Both opponents and supporters of free trade and globalization have promoted TAA as a promise that victims of government trade policy will not be left on their own when they lose their jobs as a result of those policies. TAA falls short of this promise, but it can provide workers dislocated by free trade policies with training and income support, especially if properly implemented by states and local workforce agencies.

Trade Adjustment Assistance (TAA) for workers provides training, income support, reemployment services and other assistance to jobless individuals separated from work as a result of specified trade impacts. TAA, in some important ways, represents one of the very best programs for income support and retraining for jobless workers in the U.S. In reality, TAA has never lived up to its promise as a comprehensive vehicle for readjustment of those losing work as a result of trade. Instead, TAA has most often operated in the shadows of overall training policy. Inconsistent and overly technical administration by the U.S. Labor Department and neglect or lack of experience in many states impedes those certified for TAA from taking full advantage of its features. As a result, only about 50,000 workers actually got either TAA retraining or TRA benefits in recent years of record trade deficits. This is certainly a tiny portion of those affected by trade policy and only a modest proportion of those with job losses certified as trade-impacted by the government each year. In short, active monitoring and advocacy are required if dislocated workers are going to get what's potentially available to them under the TAA program.

Currently, TAA can pay up to 78 weeks of Trade Readjustment Allowances (or TRA) to eligible workers in training. When combined with up to 26 weeks of state unemployment insurance (UI) benefits, the program potentially offers up to 104 weeks of total income support.[4] In addition, certified workers have an entitlement to TAA training, up to the capped yearly appropriation by Congress and per-worker spending limits set by individual states. Given the potential duration of income support, certified workers can complete meaningful retraining programs paid for by TAA, a dramatic contrast to short-term reemployment services without income support that are offered to many dislocated workers under the Workforce Investment Act (WIA). In addition, the 2002 amendments established a health insurance tax credit that pays 65 percent of trade impacted workers' health insurance costs through a refundable income tax credit. This Health Coverage Tax Credit also assists workers whose underfunded pension plans have been assumed by the federal Pension Benefit Guaranty Corporation (PBGC).

What Certified Workers Get from TAA

- Training for up to 2 years, with added 6 months for remedial education.
- Income support with TRA benefits for up to 78 weeks (following up to 26 weeks of unemployment benefits).
- Health Coverage Tax Credit (HCTC), that pays 65% of health insurance premiums for workers eligible for TRA or receiving PBGC pensions.
- Option to use Alternative TAA, a wage subsidy of no more than $10,000 for older workers accepting jobs in lieu of participating in TAA.

TAA requires two steps for workers to gain full eligibility. First, affected groups of workers must petition the U.S. Department of Labor's Division of Trade Adjustment Assistance (DTAA) for a TAA certification. We call this process "certification," and say that these workers are trade "certified." Second, individuals within a certified group of workers must meet individual eligibility guidelines while applying for training and readjustment assistance in order to receive services and benefits under TAA. We use the term "eligible" when we are discussing the process of showing that individual certified workers meet the qualification requirements for TAA training and TRA benefits. This manual is focused mainly on the first hurdle; namely, getting workers certified for TAA.[5] We now look at the basic requirements for TAA certification.

Getting Certified for TAA

Basics of Filing a TAA Petition

The process of TAA certification begins with a "petition" asking that a group of workers get "certified" as trade impacted. Many potentially certified workers do not file TAA petitions. There is definitely a role for more participation by state agencies, community groups, and unions in boosting the number and quality of petitions for TAA certification.

To begin the process of getting TAA, a petition for TAA is filed simultaneously with both the Division of Trade Adjustment Assistance (DTAA) of the U.S. Department of Labor and the TAA coordinator in the state dislocated worker unit where the affected workplace is located. A sample TAA petition is included at the beginning of the Appendix at the end of this manual. You can get petitions in both Spanish and English at the U.S. Department of Labor's website **<www.doleta.gov/tradeact/petitions.cfm>.** File a petition by fax or by mail. There is no charge for filing. The DTAA mailing address and fax number in Washington, D.C. is on the back of the petition form. Instructions on the petition include information on how to find the TAA coordinator in each state. For your convenience, we have put state coordinator information (current in May 2005) in the Appendix to this manual. If the petition is not filed simultaneously with the state and DTAA, the last date of filing with the federal DTAA and state TAA coordinator will be the date your petition is treated as filed. **Remember to file a dated, signed petition with both DTAA and the appropriate state TAA coordinator.**

A petition for certification for TAA can be filed by a union representing affected workers, by any group of three workers, by a company official, by the operator of a local one-stop center, by a state dislocated worker unit, or by a state employment security agency. Information requested on the petition includes contact information for the workers or other entities filing the petition, the address and contact person at the workplace impacted by trade, and some basic information regarding the nature of the products impacted by trade. Again, the petition must be dated and include a signature, or three signatures if filed by a group of workers. As we discuss in more detail later, a supporting letter or other materials can be sent with a TAA petition.

One potential headache is that DTAA will accept only one petition for a group of workers, and DTAA treats the first petition as the controlling petition. This means that less complete or poorly documented petitions can block the filing of a later petition with supporting information from being considered. In such a case, work with the filers of the original petition to get your documentation submitted while DTAA's investigation of the first petition is still underway, or file a new petition once the first petition is denied. In order to prevent conflicts between petitions, early coordination and communication with state and local government officials, the affected workers and their union, and employer representatives is key.

You can keep track of the handling of your TAA petition online at **<http://www.doleta.gov/tradeact/determinations.cfm>**. DTAA updates this website regularly. It will note when your petition is filed as well as advising you when a decision is reached.

Increasing the Chances for TAA Certification on Your Petition

Although it is simple to file a petition for TAA certification, we do not recommend filing a petition just meeting the minimum requirements. Due to the volume of petitions and lack of sufficient staff at DTAA, anything you can do to show a trade impact with materials supporting your petition is highly recommended. Invest the time and effort up front to file an effective petition for certification. Once the petition is filed, it is investigated by DTAA. A written decision either granting or denying the petition for certification is issued at the end of DTAA's investigation. According to law, DTAA is supposed to decide the petition within 40 days, although this time period is sometimes more of a guideline than a deadline.

The TAA certification process is a challenging process for workers and their advocates. The Labor Department treats all information obtained from firms and other suppliers as confidential trade secrets, making it nearly impossible for petitioning workers to fill in information gaps or respond to incomplete or false information. When firms fail to cooperate, the department has a policy against using subpoenas to obtain information. **When submitting your petition, we recommend that you advise DTAA that you would like a chance to respond or supplement your petition in the event they get contrary or incomplete information from the employer or its suppliers while investigating your petition.**

As with any government decision, it is better to get a favorable decision from the start than to correct a bad decision later. **The easier you make it for the investigator to establish impact from trade at the workplace for which you are seeking TAA certification, the more likely it is that your petition is going to get granted.** Remember that hundreds of thousands, even millions, of federal dollars in TAA training and TRA benefits are potentially hanging on the outcome of your TAA petition. A denial of certification, at a minimum, means delays in retraining and income support for dislocated workers, possible appeals to court, and a greater use of your resources. **If it is worthwhile petitioning for TAA certification, it is worthwhile doing a decent job completing your petition.**

DTAA permits Congressional representatives and Senators an opportunity to preview certification decisions on TAA petitions (both grants and denials). For this reason, consider giving your U.S. Representative and Senators notice when filing TAA petitions, and when appropriate, seek their assistance with petitions. The participation of members of Congress can influence employers, local officials, and others to assist petitioners in obtaining supporting information for TAA certification. And, the interest of members of Congress might ensure full investigation and careful consideration of TAA petitions.

When to File Your TAA Petition

It is possible to file a TAA petition too early or too late. When granted, a TAA certification will cover a period of at least three years. In all cases, DTAA sets an "impact date" one year before the date your petition is filed. And, the certification normally extends for a two-year period from the date of certification. Only workers separated during this certification period will be qualified for TAA retraining or TRA benefits. Workers separated before or after the certification period are not eligible for TAA. (If separations from employment continue over a long period of time, an existing certification can sometimes be extended.)

Do not file a petition well before a layoff or plant closing is scheduled. DTAA policy requires the rejection of any petition filed more than 60 days prior to any expected layoffs of affected workers. While there are advantages to filing a timely petition, there is no need to file before local workforce officials, training providers, and others start planning to respond to a mass layoff or plant closing. Use any available time after an announcement of job losses, but before layoffs happen, to gather information to support the petition, instead of filing a petition too soon.

Because there are time limits that start running once a TAA certification is granted, a premature petition can adversely impact workers later. Even if a small number of workers are already out of work, there may be circumstances where filing a TAA petition will prejudice the majority of workers later. Seek technical advice if you face questions about when to file a petition.

An example of filing a petition too early can arise when layoffs at another firm impacted by trade have caused layoffs at a secondary firm. The secondary firm's petition cannot be granted until the primary firm is certified for TAA. Filing earlier for secondary workers will still get you a denial in most cases, even if you advise DTAA that your petition is filed in conjunction with a related petition for a primary firm. Instead, wait for the primary firm to get certified and then file a fully documented secondary petition. This later-filed secondary petition will be granted promptly if your petition is filled out correctly.

It is also possible to file a TAA petition too late. Individuals laid off prior to the impact date will not get TAA retraining or TRA benefits, even if they were members of the group of affected workers that was later certified. In most cases, this means that a TAA petition must be filed no more than one year after layoffs began in order to ensure that all affected workers are covered by a certification.

Selecting Your Employer Contact

DTAA is going to conduct its investigation beginning with the employer contact that you list on your petition. If possible, discuss the designation of the employer contact with the affected firm in advance. Some managers take an adversarial posture regarding TAA petitions. They can view the investigation as just another government intrusion that they want to spend the least amount of their time possible to complete. In a few cases, management wishes to keep future production locations confidential or they do not want to admit that politically sensitive imports were the cause of a plant closing.

In our experience, employers too often assume that a TAA certification is like an unemployment compensation claim and that it is going to cost them money. It is important for employers to know that TAA is a federally funded program and will have no financial impact on them. Explain that the TAA certification will include both affected blue-collar and white-collar employees, and will assist the affected workers and community by bringing in federal dollars for retraining and TRA benefits.

In many cases, someone in management that is losing his or her job along with the production workers is going to be more interested in cooperating with DTAA's investigation than a manager higher up the corporate ladder who is unaffected by a layoff or plant closing. Keep in mind that a manager with production experience or in sales is often more informed about the firm's customers than someone in human resources or data processing. **To the extent possible, get the affected employer to provide a responsible representative that will promptly gather all the information required by DTAA investigators and to work with the petitioning union or one-stop to ensure the petition's success.**

If possible, get the affected firm to provide an alphabetical list of employees to the local one-stop, community group, state agency, or the union, including addresses and other contact information, so that workers can be properly notified of TAA certifications, meetings, and other important matters after they are no longer employed by the firm. Generally, it is easier to get this list at the time layoffs are announced, rather than at a later time.

Legal Standards for TAA Certification

In order to gain certification, workers have to meet specific criteria provided by law. To briefly summarize, workers gain certification for TAA when the Labor Department's DTAA finds that your petition satisfies at least one of three main legal requirements for showing trade impact in the TAA law. These three main ways to gain TAA certification include: (a) increased imports of products made by your firm, (b) a shift in production from your firm to countries that have free trade agreements with the U.S., or (c) loss of work at a secondary firm supplying production to or accepting or finishing work from a certified primary firm.[6] These three legal requirements represent a combination of criteria employed under the old TAA program and the NAFTA Transitional Adjustment Assistance program. Congress adopted the current rules when it passed the Trade Act of 2002.

In addition to these three trade-related criteria for certification, there are other requirements contained within these three main criteria that DTAA's investigation must find are satisfied before your TAA petition will be favorably certified. If you look in the Appendix to this manual, you will find the forms that DTAA investigators complete while conducting an investigation. We now discuss these legal requirements in detail.

Key Legal Standards for TAA Certification

A. Workers involved in the "production of articles," AND

B. Layoffs or threatened layoffs/Decline in sales or production, AND

C. Imports as an important contributing cause of job losses, OR

D. Shift in production from the U.S. to some foreign countries with trade agreements, or imports resulting from shift in production from any foreign country, OR

E. Layoffs at certain secondary supplier firms of certified primary firm.

A. Production of Articles

First of all, under current law, in order to gain TAA certification; affected workers must be involved in "production" of an "article".[7] This basically means that those working for manufacturing firms are potentially protected by TAA. What exactly is an "article" and what precisely constitutes "production" is a subject of ongoing legal challenges. For example, is software code an "article" and what sorts of employees are involved in its production? If your workplace doe not make something "tangible" in the traditional sense of that term, or if your firm is not clearly involved in "manufacturing," obtaining technical or legal advice in drafting your TAA petition is advisable.

The key line on the TAA petition in this respect asks for a description of "products produced by affected group." Answering this question can be key in doubtful situations. Remember that in most cases investigators at DTAA have no idea what product is involved, so you must educate them through your petition and supporting materials.

The legal requirement that workers be involved in the production of articles excludes workers employed in firms primarily providing services or those employed in most government or nonprofit agency jobs. This does not mean that clerical or administrative employees working at manufacturing firms cannot be covered

by a TAA certification, but it does mean that engineers, architects, lawyers, medical technicians, and similar occupations working outside the manufacturing arena are potentially excluded from TAA.

In general, we recommend that you do not narrow your petition as applying to only a particular group of workers at a worksite. For example, do not file on behalf of "production and maintenance employees" or on behalf of "all employees represented by Local Union 3." Instead, unless the facts dictate otherwise, you should advise DTAA that all workers are affected and that they are not separately identifiable. Again, in doubtful cases, seek advice when preparing your petition.

Under DTAA policy, any "leased" employees in your workplace will not be covered under your petition unless you specifically include them in your description of the affected workers filing the petition. We suggest you mention them under the "total number of employees" item on the petition, as in "___ number of employees, including leased employees." If you send a cover letter, we also recommend that you specify that your petition is "filed on behalf of all employees at the workplace, including leased employees."

B. Layoffs or Threatened Layoffs/Decline in Sales or Production

Loss of jobs, or threatened loss of jobs, at the affected workplace is one element required for certification. For this reason, if layoffs are threatened or have occurred, you should provide that information in the material supporting your petition. Include the number of workers affected, the dates of separation, any layoff announcements from the employer, or if none, then provide press reports or WARN notices. While DTAA does not rely solely upon the workers or other petitioning party to prove this requirement, you might as well go ahead and do so in most cases. Again, if no layoffs have occurred, consider waiting before filing a TAA petition. Do not file more than 60 days prior to announced layoffs.

A second, related requirement for all TAA certifications is that "sales or production, or both" have decreased. Again, while DTAA is going to ask the employer about this, in cases where you have the information on sales or production supply it with your petition. For example, "the second shift has been laid off on May 1 and production has been reduced at the plant by 30 percent" will show that the reduction in sales and production requirement has been met.

C. Imports

The first trade-related criterion for certification is met if DTAA finds that imports of similar products are a significant cause of a loss of work at your firm. The exact legal language requires an increase in imports of "like or directly competitive" products. This means how you define your product on your petition can be important. For example, if you allege that your employer makes "mufflers" and you show that increased imports of "muffler hangers" are the cause of layoffs at the workplace, you might face a denial based upon the fact that you have not shown that imports of a "like" product caused unemployment at your firm. Instead, if you list "mufflers, muffler hangers, and related products" as what is produced at your firm, you have eliminated that issue. For that reason, accurately describe all the products made by your firm.

If your petition alleges import competition as the reason for loss of work at your firm, you will have to show that imports of the products made at the affected workplace have increased in the past two years and that those products are similar to those made at your plant. It is possible to use public information from U.S. Customs to document increased imports of competitive products. We illustrate this approach later.

You must also show that increased imports "contributed importantly" to the loss of jobs and the decline in sales and/or production at the affected workplace. The contributed importantly test is basically a test of causation. **Imports need not be the only cause of job losses or declining sales or production, but they should be a significant factor**. Obviously, the bigger the impact from imports you can show, then the more likely it is that you will get over the "contributed importantly" hurdle.

The next step in showing that imports were connected to job losses is to show that customers of the affected workplace have started using imported products in lieu of domestic products. **If at all possible, you should provide DTAA with the names of firms that previously used products made at your plant that now use imported products instead**. While this may seem difficult or impossible, this is what DTAA is going to ask your employer when they investigate your petition.

At a minimum, you need to ensure that your employer contact listed on your petition advises DTAA of all important customers of the affected firm, especially those that it believes have reduced purchases from your firm because of imports. In some cases, petitioning workers will know the names of former customer firms that have reduced or stopped buying products from the affected workplace. By all means, furnish this information to DTAA in the supporting materials sent with your TAA petition. In most cases, you are going to have to rely upon information furnished by your employer contact. Again, this points to the importance of gaining cooperation from the affected firm and exercising some care when designating your employer contact.

D. Shift of Production

In some cases, you cannot show an increase in imports as a basis for TAA certification. In others, it may be easier to show that job losses are related to a switch in the location of production. A second trade-related basis for gaining TAA certification is provided when the affected workers' employer has shifted production of articles from the U.S. to a foreign country. [8] Because a showing of increased imports is not essential for TAA certifications due to shifts in production to free trade countries, there are cases where this criterion can be more easily satisfied than the increased import criterion.[9]

The "shift of production" criterion contains two subparts, depending upon whether the country to which production is moving is participating in a free trade agreement. **If the shift of production is to a country that is a signatory to a free trade treaty, then TAA certification is provided without respect to whether or not there is an increase in imports**. At this time, countries with free trade agreements that are covered by the shift of production criterion for TAA certification are Canada, Mexico, Israel, and Jordan. In addition, countries that are beneficiaries of the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act are covered by the shift in production criterion. If the relocation of production is not to a country covered by these trade agreements, then you are going to have to show the products formerly made by the affected workers are being imported, or are going to be imported.

As noted, the second option for TAA certification available under the "shift in production" criterion comes up when the country involved is not one of the listed free trade countries. **Where the producer is importing or planning to import the products the affected workers produced prior to the shift in production, TAA certification can still be granted on the basis of shifts in production without regard to whether or not the shift involves a free trade country.**[10] In other words, production work shifted overseas to a country without a free trade agreement must be imported back into the U.S. to satisfy this second part of the shift in production certification rules. However, under this second subpart concerning a shift in production, you do not have to prove that imports have already started to hurt employment at the affected firm, as you would if you petitioned for import-related TAA certification.

In summary, **with the shift in production criterion, it is not necessary to show increased imports when the shift of production is to Canada or Mexico or the other free trade countries**. In addition, if the employer involved in the shift overseas admits or can be shown to be importing the products or planning to import them, then certification is still possible under the second element of the shift of production criterion.

Unfortunately, because employers are sometimes sensitive about job losses caused by plant relocations or other shifts in production overseas, petitions on this basis sometimes face non-cooperation from employers. Sometimes this sensitivity is based upon trade secrets or concerns about competition. In others, employers do not want to take political heat. Once again, explaining to employers the advantages of a TAA certification to affected workers and their community may help. As we said, using a local contact at the affected firm, instead of a distant manager, when filling out the TAA petition, can usually gain greater employer cooperation as well.

There is no valid reason why you should not or can not allege both a shift in production and an increase in imports in your petition, assuming that you can provide facts supporting both allegations. You can simply check the appropriate boxes on the petition.

E. Secondary Workers

"Secondary workers" are individuals employed at firms that do business with another firm that has been negatively impacted by trade. **Note that secondary firms cannot be certified unless the primary firm is already TAA certified.** In some cases, secondary workers are qualified for TAA certification under the third main TAA certification criterion. Secondary workers are covered by TAA in two circumstances. First, those that made articles supplied to TAA-certified primary sites are qualified, so long as the work for the primary firm was a significant portion of the supplier firm's sales or production. These firms are called "upstream," or supplier secondary firms. Second, affected workers that provided value-added final assembly or finishing of the articles of the primary firm, known as downstream secondary firms, can be certified for TAA, if the primary firm's certification was based upon imports to Canada or Mexico or a shift in production to either of those two countries.

Funding for TAA coverage of secondary workers was added to the TAA law in late 2002. To date, few TAA petitions have been filed on behalf of secondary workers and even fewer have been certified. Identifying and filing TAA petitions for secondary workers should be a higher priority in most states. One-stop centers, rapid response, state dislocated worker units, and others involved with assisting dislocated workers need to better identify affected secondary firms and file TAA petitions on their behalf. Mass layoff notices under WARN should be monitored in conjunction with recent TAA certifications. When TAA certifications are announced, some basic inquiry by state and local officials could well identify other affected firms where layoffs have happened or are likely, and TAA petitions for those secondary workers should then be filed.

The central task when filing a TAA petition for affected secondary workers will be showing the required relationship with the primary firm certified for TAA. For an upstream or supplier firm, the firm must meet the definition of "supplier," which requires that the secondary firm "produces and supplies directly" to the primary firm "component parts" of the articles that formed the basis for the primary firm's certification for TAA.[11] In addition, the statute requires that component parts furnished by the secondary firm to the primary firm accounted for at least 20 percent of the production or sales of the secondary firm OR that the loss of business with the primary firm "contributed importantly" to job losses at the secondary firm.[12] It is our informal understanding that this "contributed importantly" factor could be satisfied by showing that at least 5 percent of the causation for job losses were related to production for, or assembly from, a primary firm.

With both supplier secondary firms and downstream secondary firms, the relationship with the primary firm must be "direct." This means that "secondary-worker coverage applies only to workers employed by firms in the first tier" of supplier firms.[13] In order to certify component parts workers further up or down the supply stream, a petitioner would have to show that imports of component parts, rather than finished "articles" were an important cause of job losses at the firm with which you are concerned. Or, alternatively, you could show that a shift in production of component parts to Canada or Mexico from a firm within the supplier chain, but directly related to the affected secondary firm you are concerned with, was an important cause for job losses of workers you are trying to help.

An important limitation is contained in TAA law pertaining to downstream secondary firms. For a downstream firm, the TAA law requires that the secondary firm "performs additional, value-added production processes" directly for the primary firm, "including a firm that performs final assembly or finishing, directly" for the primary firm "for articles that were the basis for a certification of [TAA] certification," AND the TAA certification of the primary firm was "based upon an increase in imports from, or a shift in production to, Canada or Mexico."[14] In other words, establishing TAA certification for a downstream secondary firm requires not only trade impact–whether from increased imports or shifts of production–but also specifically trade impact involving Canada or Mexico.

Summary of TAA Certification Requirements

There is no need to become an expert on the legal requirements to file a successful TAA petition. However, a general knowledge of what DTAA is looking for when investigating your petition is helpful when filling out the petition and providing supporting information. In summary, you must show that affected workers are involved with the production of an article, that they have experienced layoffs, and that these layoffs are due to increased imports or a shift of production to a foreign country. In the case of secondary workers laid off due to loss of work supplied to another site, or work performed on unassembled products shipped to the affected workers' workplace, a secondary petition should be filed after the primary plant is certified.

A Real Life Example of a TAA Petition and Supporting Materials

Due to the severe impact of trade on the automobile industry, the UAW has gained considerable experience with filing petitions for TAA certifications. We offer as a sample a 2004 TAA petition filed on behalf of affected workers at an automotive component parts firm in Warren, Michigan. Not all petitions will have this level of documentation or support, but the sample petition was selected as a good example that follows many of the suggestions we have just discussed in previous sections of the manual.

Take the time to read the sample cover letter and petition in the Appendix to this manual. Note that the cover letter states the dates and extent of layoffs at the facility. A seniority list with expected dates of layoff is attached. This establishes the required element of significant job losses or threatened job losses.

Next, the cover letter for the sample petition describes the product made by the affected firm, in this case "steel fastening devices." A parts list is attached to show the wide variety of parts manufactured by the firm. The main customers of the plant are then listed. Finally, the petition's cover letter includes documentation of increased imports of the products made by the affected firms by using data from the United States International Trade Commission's database. This database is online at **<http://www.usitc.gov>** and it is worth your time to investigate this information and furnish it to DTAA whenever possible.

In summary, the investment in filing a well documented petition speeds consideration of your petition and increases the chances of a TAA certification. The more work you do with regard to your petition to DTAA, the more likely it is that your TAA petition will be favorably considered. Use your knowledge of the affected firm as well as your imagination when filing your TAA petition. Include statements from knowledgeable workers or others that have information that can assist with meeting the TAA certification requirements.

Alternative TAA for Older Workers (ATAA)

In 2003, a new option was provided under TAA. Known as Alternative Trade Adjustment Assistance, or ATAA, this program is especially for affected older workers (those age 50 or older). ATAA is an option that is selected by checking a box on the TAA petition. **We recommend always checking the box on the petition for ATAA, unless there are no affected workers age 50 years or older.** (If you do not check the ATAA box initially, USDOL has indicated it will grant requests for reopening in order to consider ATAA eligibility.)

ATAA is different from the rest of TAA in significant ways.[15] First, it offers older affected workers in a TAA-certified workforce the option to look immediately for new work. Second, for up to two years, ATAA pays half the difference between pre-layoff wages and a lower-wage job accepted after layoff, up to a cap of $10,000. (Note: the ATAA payment cap is for the two-year ATAA period, not a yearly figure. However, we have found that some states pay the $10,000 in a one-year period at the state's option.) Third, certified workers accepting ATAA will not get retraining, relocation or job search allowances, or weekly income support (TRA benefits). However, participants in ATAA can use the Health Coverage Tax Credit (HCTC) program offered under TAA.

In order to certify a group of workers for ATAA, the Labor Department must find that a significant number of affected workers (at least 5 percent) are age 50 or over, that workers in the affected workplace have skills that are not easily transferable to other work, and that competitive conditions within the industry make reemployment unlikely.[16] When certified for ATAA, individuals must be 50 or over, accept work within the first 26 weeks of their layoff, earn less than $50,000 in yearly wages when reemployed, and work on a full-time basis other than the employment from which he or she was separated. ATAA will then pay these individuals 50 percent of the difference between their former wages and their wages in reemployment, up to the $10,000 cap. ATAA is limited to a two-year period. A decision denying ATAA is appealed in the same manner as any other unfavorable certification decision. We discuss appeals near the end of this manual.

In short, while ATAA has limitations, it can offer an added option for older workers who do not wish to participate in retraining or who have an ability to find reemployment quickly. Once a TAA certification is issued, these older workers have an option within the first 26 weeks after their separation from employment to either accept reemployment and use ATAA, or to participate in regular TAA.

What Happens Next

After the affected firm and its customers are contacted, DTAA's investigator makes a recommended decision based upon his or her review of the file. A certifying officer from the Labor Department issues a written decision that grants or denies the petition for TAA certification. DTAA decisions are held for review for 7 days by Congressional staff. After that period, both favorable and unfavorable decisions are mailed to petitioners–either the three workers filing the petition or the other petitioning entity (union, one-stop, state agency). In addition, a notice of the decision is published within the next week or two by the Labor Department in the Federal Register. And, the decision is noted on the DTAA's website at **<http://www.doleta.gov/tradeact/determinations.cfm>.**

A. Favorable Decision

If the decision is favorable, you now have the job of helping ensure that the certified workers have a prompt opportunity to learn their rights and responsibilities under the TAA program. Training providers, community college representatives, local one-stop officials, unemployment insurance agency staff, and unions are among those that should work together to plan for successful handling of a TAA certification. There are specific time limits and steps that must be satisfied, or certified workers are going to lose out on retraining opportunities and income support from TRA.

In particular, in order to get involved in TAA training, a certified worker must have enrolled in training by no later than the end of the 16th week after the individual's separation from certified employment or the end of the 8th week after the TAA certification decision, whichever is later. Participation in, or completion of, training is required for receipt of TRA benefits after the initial 26 weeks of so-called "basic TRA." For this reason, complying with the so-called 8/16 week enrollment rule is important. Note: A single 45-day waiver of the enrollment period for extenuating circumstances is permitted.

Waivers of the training requirement are available under specific circumstances. If training is not available, enrollment is not possible, the worker is within two years of Social Security retirement or pension eligibility, the individual has been notified of a recall to the affected firm, or in other limited circumstances, a waiver of training is possible for up to 26 weeks. A training waiver permits an eligible worker to receive basic TRA benefits without participating in training. But, in order to receive the last 52 weeks of TRA benefits (so-called "additional TRA"), an eligible worker must participate in full time training. Because a training waiver effectively shortens the time during which a worker can participate in training while receiving TRA benefits, waivers are not preferable for individuals wanting to enroll in longer term training.

Key Steps After Certification

- Advise all members of affected group of workers about TAA certification and rights and responsibilities. Use a group meeting over individual counseling whenever possible.
- Continue having UI claims filed and processed.
- Enroll all interested workers in TAA training by the 16th week after layoff or the 8th week after certification. Get 45 day enrollment extension where necessary.
- Apply for TAA training waivers where needed and applicable.
- All TRA eligible certified workers should be advised about Health Coverage Tax Credit (HCTC) options.
- Enroll older workers seeking reemployment in ATAA.

In summary, to receive TRA benefits, the worker must have (1) a training waiver, (2) enroll in and participate in training, or (3) have completed TAA training. In addition, to gain eligibility for TRA, a certified worker must (a) be laid off (separated) after the impact date and during the certification period; (b) have 26 weeks of employment within the 52 week period prior to his or her separation (with at least $30 in earnings in each of those 26 weeks); and (c) have filed (or be eligible to file) a claim for state unemployment benefits, or have already exhausted an unemployment claim.

There is a close relationship between unemployment insurance and TRA benefits. Ordinarily, a worker files for and gets unemployment benefits for the weeks after his or her initial separation from affected employment. During those initial weeks, the TAA petition is filed and certified and enrollment in training (or a waiver) is arranged. Weeks of unemployment benefits are deducted from the potential weeks of TRA in the 104-week period of potential TRA eligibility. Typically, this results in 26 weeks of unemployment benefits followed by up to 78 weeks of TRA benefits. And, the weekly amount of unemployment benefits ordinarily determines the amount of TRA benefits.

B. Unfavorable Decision Denying Certification

In the case of a denial of certification, all the later steps are governed by the date of publication of the unfavorable decision in the Federal Register. You can check the Federal Register online at **<http://www.gpoaccess.gov/fr/index.html>.** Usually, the date of publication in the Federal Register is several days after the mailing date of the decision, so you will gain some added time beyond the time limit that you would calculate from the date on the face of your denial letter.

You can appeal the denial directly to the Court of International Trade in New York City within 60 days, or you can request an administrative reconsideration with the Labor Department within 30 days. Or, you can give up and file a new petition with newly discovered documentation. We discuss each of these options.

1. File a New Petition. You can simply file a new petition rather than appealing in some cases. Where a "naked" petition was filed without documentation, you potentially have little or no record to take to court. If you have new evidence, then you can ask for administrative reconsideration. But, it may make sense to simply wait a few weeks and file a new petition, get a better investigation, and hope for a better result.

2. Ask for Administrative Reconsideration. You can go back to the Labor Department with a request for administrative reconsideration. A reconsideration request must be in writing, describe the workers covered by the petition, include the petition number, and be dated and signed. It must be filed within 30 days of the date of publication of DTAA's denial of your petition.

Reconsideration is appropriate when you feel that DTAA has missed a significant point or made a mistake or factual error in its denial. Reconsideration can also be based upon new evidence or documentation that was not available during the initial investigation of your petition. Reconsideration is quicker and cheaper than a court appeal. And, you do not need a lawyer. And, it gives you more time to go to court, if that is what you are ultimately forced to do.

If your request for reconsideration is based upon new evidence, this material should be submitted with your request for administrative reconsideration. Given the short time frame for reconsideration, if you don't have your new evidence when filing your request, you may be precluded from providing it later.

3. Go To Court. The Court of International Trade is basically equivalent to a U.S. District Court, but it has a specialized jurisdiction that deals with customs appeals, including TAA. An appeal is initiated by essentially suing the Secretary of Labor to challenge the unfavorable decision. In order to win, you are going to have to show that the denial of TAA certification is not supported by "substantial evidence" or is contrary to law.

An advantage to a court appeal is that your lawyer is going to be able to get access to the investigative file. Subject to a protective order forbidding disclosure, this access will include material supplied to DTAA by the affected workers' employer as well as its customers. A court appeal is the only way to examine the entire file in most cases because DTAA treats all information obtained from employers and customers as confidential. In addition, a court appeal gets you an independent review by a federal judge.

In order to file an appeal with the Court of International Trade, you should contact the Office of the Clerk, U.S. Court of International Trade, One Federal Plaza, New York, NY 10007, (212) 264-7090. Remember you have 60 days from the date DTAA's denial is published in the Federal Register, or 60 days from the date that DTAA's denial of your request for administrative reconsideration was published.

In theory, you do not need a lawyer to go to court, but, in reality; a lawyer is virtually a necessity for success. If you don't have a lawyer, the Clerk's office at the Court of International Trade can put you in contact with lawyers that have been recruited by the Court of International Trade Bar Association to assist with appeals of denials of TAA certification. Or, your local or state bar association may have lawyers that will assist you.

Conclusion

The guidelines found here should provide you with support in assisting dislocated workers in obtaining certification for TAA. We hope that this manual assists readers with the filing of better TAA petitions and that it results in greater numbers of favorable certification decisions.

If you have comments or suggestions, feel free to contact us. It is our intention to keep this manual up to date; as well as producing other manuals dealing with advising workers after a favorable TAA certification decision and about avoiding the pitfalls of the trade benefit program.

Rick McHugh
Staff Attorney
National Employment Law Project
P.O. Box 369
Dexter MI 48130
(734) 426-6773
rmchugh@nelp.org

Phil Gilliam
Associate General Counsel
UAW Legal Department
8000 East Jefferson Avenue
Detroit MI 48214
(313) 926-5216
pgilliam@uaw.net

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2. There are smaller, separate TAA programs for firms affected by imports and for farmers and fishermen. The program for firms is administered by the Commerce Department and the farmer/fishing program is run by the Department of Agriculture. These separate programs are not discussed further in this paper.
3. In addition to retraining and TRA, TAA includes less-frequently used relocation and job search allowances. There is also a "wage insurance" program called Alternative TAA (ATAA) designed for workers over 50. ATAA pays eligible workers half the difference between their pre-layoff wages and the wages of a lower-paying job they accept in lieu of participating in the TAA program. We discuss ATAA in a little more detail later in this manual. The relocation and job search features are not widely used. You can find the regulations governing their use at 20 C.F.R. Sec. 617.3 et seq. (job search allowances) and Sec. 617.4 et seq. (relocation allowances). Another new element of TAA is the Health Coverage Tax Credit (HCTC), a program operated by the Internal Revenue Service that uses a refundable tax credit covering 65 percent of the costs of health care premiums for certified workers eligible for TRA, or individuals whose pensions have been assumed by the Pension Benefit Guaranty Corporation.
4. An additional 26 weeks of income support for "remedial education" is available under the 2002 amendments. This additional 26 weeks is used for basic literacy or English as a Second Language (ESL) training to enable trainees to complete other job retraining courses. While those eligible for remedial education take this remedial training at the outset of their retraining, the extra 26 weeks is tacked on to the end of the 104-week eligibility period. This, in theory, means a potential maximum of 130 weeks of TRA and TAA retraining, although we don't know any workers that have done this in the real world yet.
5. At the end of this manual, we briefly review the requirements that an individual must satisfy after TAA certification to gain eligibility for TAA training or TRA benefits. But, a full discussion of what to do after you win TAA certification is not part of this manual. We hope to have a second manual covering this aspect of TAA in the near future.
6. 19 U.S.C. §2272(a), (b), and (c).
7. 19 U.S.C. §2272(a).
8. 19 U.S.C. §2272(b).
9. The eligible countries are listed at <www.doleta.gov/tradeact/_2002act_freetradeagreements.cfm>
10. U.S. Department of Labor, Employment and Training Administration, Training and Guidance Letter No. 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002," (October 10, 2002), p. 13-14.

11. 19 U.S.C. §2272(c)(4).
12. 19 U.S.C. §2272(b)(3).
13. U.S. Department of Labor, Employment and Training Administration, Training and Guidance Letter No. 11-02, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002," (October 10, 2002), p. 16.
14. 19 U.S.C. §2272(c)(3).
15. The rules for ATAA are found in U.S. Department of Labor, Employment and Training Administration, "Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program," Training and Employment Guidance Letter No. 2-03 (August 6, 2003).
16. U.S. Department of Labor, Employment and Training Administration, "Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002," Training and Employment Guidance Letter No. 11-02 (October 10, 2002), p. 38-39.

Glossary of Terms

Here are some abbreviations and terms you will encounter when working on Trade Adjustment Assistance (TAA).

Additional TRA is the last 52 weeks of trade readjustment allowances, the cash benefits paid as extensions of unemployment benefits under TAA. In order to receive additional TRA, a worker must be participating in approved training, or involved with a break of 30 days or less during his or her approved training program. Individuals cannot receive additional TRA based upon a training waiver.

Adjustment Assistance includes all the non-TRA aspects of TAA, including training, relocation assistance, mileage, and job search allowances. This TAA term is roughly equivalent to reemployment services for unemployed workers, or intensive services under the Workforce Investment Act.

Adversely affected individual is a worker who has been separated from a firm, or an appropriate subdivision of a firm, where trade impacted employment took place--often called adversely affected employment.

Alternative TAA, or **ATAA**, is a separate program under TAA that provides a wage subsidy to workers 50 years of age or older who accept work within 26 weeks of their separation from adversely affected employment. ATAA pays participants 50 percent of the difference in wages between their old job in adversely affected employment and their newly found work. ATAA benefits are capped at $10,000 and are limited to a period of 2 years. Wages in the new job must be less than $50,000 a year. ATAA participants are not able to get TAA training, TRA, or other adjustment assistance, but they are eligible for Health Coverage Tax Credits (HCTC).

Basic TRA is the first round of "trade readjustment allowances," or TRA. TRA is the abbreviation for the cash benefits paid under TAA, sometimes called "trade benefits." Basic TRA is paid for up to 26 weeks for eligible workers that remain jobless after they have exhausted state unemployment benefits. Basic TRA is paid to individuals that are participating in TAA training or have a training waiver.

Certified workers are those individuals separated from work under a TAA *certification* granted by the U.S. Department of Labor. "Certification" requires a finding that specific criteria for trade impact set by Congress are met by a group of workers. After TAA certification, affected workers must meet individual requirements to obtain "eligibility" for TAA training and/or TRA benefits.

Certification period is a three-year period covered by a TAA certification. The certification period is made up of a one-year period preceding the date of certification followed by a two-year period following certification. The certification period starts with the *impact date* and ends with the *termination date*. Under circumstances where layoffs continue for a long period of time, the termination date can be extended.

Dislocated worker is a term used by one-stops and other workforce agencies to designate workers who have lost work permanently as a result of a workplace closing or mass layoff. All TAA certified workers are dislocated workers, but they differ from other dislocated workers because they are also adversely affected by trade impacts. For this reason, certified workers can receive services under the Workforce Investment Act (WIA) as well as under the TAA program.

Health Coverage Tax Credit (HCTC) is a TAA-related program administered by the Internal Revenue Service that provides a refundable tax credit that pays for 65 percent of the cost of health care in a qualified health care plan for a TRA eligible individual, or for an individual whose underfunded or bankrupt pension plan has been assumed by the federal Pension Benefit Guaranty Corporation (PBGC). Other eligibility requirements apply.

Impact date is the date falling one year prior to the date a TAA petition was certified that begins the certification period.

Qualifying separation is a loss of work that falls within a period of TAA certification and satisfies other eligibility criteria for TRA. Generally speaking, earlier separations that were not qualifying separations should be disregarded in order to make an individual eligible for TAA or TRA.

Separation date is generally the day in a certification period when an individual was laid off from adversely affected employment or, in the case of workers on leave, would have been laid off if he or she had been in active employment.

Suitable employment under TAA is defined as work of substantially equal or higher skill levels than an individual's past adversely affected employment with wages no less than 80 percent of his or her past average weekly wages. Under TAA, an individual has a right to refuse unsuitable work or to quit unsuitable work in order to participate in TAA training.

Trade Adjustment Assistance (TAA) for Workers is the full name of the overall program, which was created by the Trade Act of 1974 and most recently reauthorized in the Trade Adjustment Assistance Act of 2002. The abbreviation TAA is used in this manual to mean the overall TAA program, including training, TRA benefits, relocation allowances, and job search allowances. In some cases, TAA is called "trade benefits" or the "trade program."

Trade Readjustment Allowances (TRA) are the cash benefits provided under TAA for workers certified as trade impacted. TRA weekly benefits are typically the same amount as weekly state unemployment benefits. TRA is also frequently referred to as "trade benefits." Certified workers must individually establish TRA eligibility once they are covered by a favorable certification decision. TRA eligibility also is required for HCTC.

TRA eligibility is determined by examining the 52-week period preceding the individual's qualifying separation. TRA eligibility is established by having at least 26 weeks of employment in adversely affected employment with wages of $30 or more within each of those 26 weeks. In the case of basic TRA, each individual also must exhaust his or her state unemployment benefits and enroll in training or have a training waiver. To get additional TRA benefits following receipt of up to 26 weeks of basic TRA, individuals must participate in TAA training or be within a break in training of 30 days or less in duration.

Training eligibility under TAA is provided up to an annual cap set by Congress and individual spending limits set by states. By law, training should be approved if (1) there is no suitable employment for an individual, (2) the worker would benefit from the training by obtaining skills or remedial education and can reasonably be expected to complete the training, (3) there is a reasonable expectation of employment upon completion of training, (4) training is reasonably available to the worker, (5) the individual worker is qualified to undertake and complete training, and (6) training is suitable for the individual and available at a reasonable cost. If no TAA training is available due to lack of funds, other sources like Pell grants, Workforce Investment Act funds, or other funds should be considered.

Waivers of training are required whenever TAA training is "not feasible" or "not appropriate." Waivers permit workers to receive basic TRA. Reasons for a training waiver include (1) training start date beyond 30 days, (2) training not reasonably available or not available at a reasonable cost, (3) training funds not available, (4) a reasonably foreseeable recall to former employer exists, or (5) the individual possesses skills for "suitable employment" and there is a reasonable expectation of employment in the foreseeable future. A decision denying a requested training waiver should be in writing and is subject to appeal.