

DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-55,704]

Quantegy, Incorporated; Opelika, AL; 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 Quantegy, Incorporated, Opelika, Alabama. 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-55,704; *Quantegy, Incorporated, Opelika, Alabama (January 14, 2005)*.

Signed at Washington, DC this 18th day of January 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5-272 Filed 1-25-05; 8:45 am]

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DEPARTMENT OF LABOR**Employment and Training Administration**

[TA-W-51,120, TA-W-51,120A and TA-W-51,120B]

Sun Apparel of Texas, Armour Facility, Sun Warehouse Facility and Goodyear Distribution El Paso, TX; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor (Department) for further investigation in *Former Employees of Sun Apparel of Texas, et al v. U.S. Secretary of Labor*, No. 03-00625.

On March 11, 2003, a company official filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers at the subject firm. Supplemental Administrative Record (SAR) 50. While the petition was dated January 8, 2003, 29 CFR 90.2 provides, in the definition for "Date of the petition," that, for TAA purposes, the date of the petition shall not be more than thirty days prior to the date of the filing. Thus, given the March 11, 2003 filing date, the petition date is considered to be February 11, 2003. In accordance with Section 223(b) of the Trade Act, no certification may apply to any worker whose last total or partial

separation from the subject company occurred before February 11, 2002, one year prior to the date of the petition. Thus, any worker separated before February 11, 2003 falls outside the subject worker group.

In addition, 29 CFR 90.2 provides, in the definition for "Increased imports," for comparison between domestic production 12 months prior to the date of petition and domestic production for the 12-month period starting two years before the date of the petition. Therefore, during the initial investigation, the Department requested and received sales, production, employment, import and shift of production information from the subject company for the period that the Department determined to be the relevant period: The two calendar years prior to the date of the petition (2001 and 2002). SAR 74. Information pertaining to 2001 is relevant only to the extent that it provides a basis for comparison with 2002 events. The Department determined that the petition covered three facilities in El Paso, Texas: Armour, Sun Warehouse, and Goodyear Distribution. Further, the Department found that the only production of an article (manufacture of jeans at the Armour Facility) had ceased by June 2000 and that the production activity had been shifted to Mexico.

On April 7, 2003, the Department issued a negative determination regarding eligibility to apply for TAA for the workers of the subject facilities. SAR 82. Workers at the Armour Facility generated patterns used for jeans production in Mexico. Workers at the Sun Warehouse Facility included laundry workers, trim workers and administrative staff. Workers at the Goodyear Distribution facility were forklift operators and shipping and receiving clerks. The negative determination was based on the investigation's finding that the Armour Facility did not import patterns or shift pattern production abroad during the investigatory time period (2001 and 2002) and that neither the Sun Warehouse Facility nor the Goodyear Distribution facility produced an article. The Notice of determination was published in the **Federal Register** on April 24, 2003 (68 FR 20177). SAR 87.

On May 22, 2003, the petitioners requested administrative reconsideration of the Department's negative determination. In the request, the petitioners stated that the workers at the Armour Facility produced samples and that a shift of sample production from the Armour Facility to Mexico was supported by a TAA certification that expired in September 2002. SAR 111.

On July 1, 2003, the Department issued a Notice of Determination Regarding Application for Reconsideration. SAR 130. The Notice of determination was published in the **Federal Register** on July 15, 2003 (68 FR 41847). SAR 137. The allegations about the production of samples had first appeared in the request for reconsideration. In response, the Department conducted a comprehensive inquiry of all operations, including sample production, at the subject facilities during the relevant period (2001 and 2002). SAR 123-129.

In the request for reconsideration, the petitioners alleged that sample production at the Armour Facility shifted to Mexico and inferred that samples were being imported from Mexico by the subject firm. The Department conducted an inquiry into this allegation and determined that sample production did not shift to Mexico and that the subject firm did not import samples from Mexico. SAR 123-129.

The reconsideration investigation also revealed that patterns were generated and transmitted "primarily" (See SAR 123) electronically and, therefore, did not constitute an article. SAR 123-129. Therefore, the Department determined that, with regard to the petitioner's allegations, production of an article did not occur at the Armour Facility. Accordingly, the Department reaffirmed the negative determination for that worker group.

During the reconsideration investigation, the Department also found that the functions at the Armour Facility's "Print Shop" constituted production, that label production had shifted to Mexico during the relevant period, and that the subject firm was relying exclusively on the labels produced at the affiliated facility in Mexico. SAR 123-129. Therefore, the Department determined that there were increased subject firm imports of labels and certified the separately-identifiable "Print Shop" workers.

The petitioners also stated that trim functions shifted to Mexico. According to the petitioners, the "TRIM Department in the administrative area" controlled entry and exit of inventory of sample production (See SAR 96) and involved "checking that the orders for thread, zippers, patches, whatever accessories were needed for the production were distributed correctly here in El Paso as well as Mexico." SAR 121. In response to the allegations, the Department inquired into the matter (See SAR 123-129) and determined that trim work was a service incidental to internal quality control procedures and

did not constitute production of an article.

The Department also investigated petitioners' allegation that the subject firm produced articles other than samples and labels and found that only sample and label production took place during the relevant period. SAR 123.

The Department also inquired into the petitioners' assertion that the basis for certifications of previous petitions filed on behalf of the subject firm (TA-W-37,187 and TA-W-37,412) should be used to establish eligibility for the immediate TAA petition. The basis for TAA certification for the more recent of the two petitions (TA-W-37,412) was increased imports of articles like or directly competitive with laundered denim produced at the subject firm. The certification was issued on July 7, 2000. Because the shift to Mexico had been completed by June 2000, which was prior to the relevant period (See SAR 126), the basis for certification for the previous petition could not provide a basis for certification of the immediate petition.

On reconsideration, the Department determined that only sample production and label production at the "Print Shop" took place at the Armour Facility during the relevant period; that there was no shift of production or imports of samples during the relevant period; and that neither the Sun Warehouse Facility nor the Goodyear Distribution facility produced an article. Therefore, the Department reaffirmed the negative determinations for those worker groups. SAR 130.

On August 20, 2004, the USCIT ordered the Department to conduct a full and complete investigation into the petitioners' allegations and to determine subject workers' TAA eligibility.

During the remand investigation, the Department requested information from the petitioners (See SAR 163, 276), and even requested extensions of the deadline for filing its findings with the USCIT in order to fully elicit and consider the petitioners' input. SAR 246, 271.

The Department also requested the subject firm to provide extensive information regarding job functions, production operations, and organizational structure, as well as sales, production, employment and import figures for each subject facility for periods 2001, 2002, January through March 2002 and January through March 2003. For each subject facility, the firm completed a Business Confidential Data Request (BCDR) form which required sales, production, employment, imports, and production shift figures for specified time periods. The subject firm

also provided detailed and comprehensive responses to an extensive questionnaire as well as clarification of their responses on specific matters during follow-up inquiries.

A careful review of the company's submissions reveals that the Armour Facility handled a wide variety of operations during the relevant period, including administrative and accounting functions (such as billing, payroll, and human resources), sample production, label production, pattern/ marker design, and product development. SAR 249.

During 2002, production planning and raw material management functions were reduced due to the installation and use of a new computer system, Apparel Business Solutions (ABS), and some administrative functions, such as billing, transferred to the parent company's corporate headquarters in Bristol, Pennsylvania. SAR 249. In 2003, the "Print Shop" moved to Mexico and all production planning and raw material management functions were shifted to New York and/or California prior to its closure on March 3, 2003. SAR 232, 238, 249

While patterns and markers were created at Armour Facility, the design process did not constitute production of an article. The patterns and markers were custom-designed for specific uses and were created by using special computer programs. The patterns and markers were neither stored nor transmitted in a physical medium, but existed in an electronic form (such as a file on a computer server or an electronic mail); were electronically manipulated; and were sent exclusively via electronic mail. SAR 124, 127, 213, 214, 215. Therefore, pattern and marker design were services and, thus, the Department does not consider these patterns and markers to be articles, for TAA purposes.

After the "Print Shop" operation shifted to Mexico, the only production activities remaining at the Armour Facility was sample production. SAR 274. According to the BCDR for the Armour Facility, sample production did not shift abroad. Rather, sample production shifted to California. SAR 216, 282.

An analysis of the BCDR for the Armour Facility shows that both subject company imports and subject company reliance upon imports declined during the relevant period. Subject company production decreased slightly in 2002 from 2001 levels while subject company imports decreased significantly in 2002 from 2001 levels.

Further, the remand investigation considered data for the first quarter of 2003. The Department found that the decline in imports during January through March 2003 from January through March 2002 levels was more than triple the decline in 2002 from 2001 levels. SAR 217. The decline in subject company production during January through March 2003 is attributable to the shift of production to California. SAR 236, 282. During the same time period, the decrease in subject company imports was even more significant than the decline in production. SAR 217. Further, since the product samples are used internally by the subject firm, rather than provided to customers, a customer survey was not conducted.

In addition, the remand investigation found that repair work was performed, infrequently, at the Armour Facility. SAR 273, 274. The Department has consistently maintained that repair work does not constitute production, since the activity merely returns an item to its original condition. Hence, repair is a service. In any event, the repair work was done at irregular intervals and at insignificant levels, making it irrelevant to the case at hand because it cannot be a basis for certification.

The Sun Warehouse Facility was the only warehouse until April 2000, when Goodyear Distribution facility opened. SAR 209. Both facilities perform shipping and handling activities (receiving, stocking, packing and labeling, billeting, loading, quality control, etc.) and administrative activities related to warehousing and distribution. SAR 209, 211. Because warehousing and repair do not constitute production, both the Sun Warehouse and the Goodyear Distribution facilities had no sales, production, imports, and shift figures to report in their BCDRs. SAR 222, 227. Again, it is irrelevant that repair work was occasionally performed at the warehouses (See SAR 210) or outsourced to another local company (See SAR 274) because repair work is a service. Sun Warehouse Facility closed on March 31, 2003 and the Goodyear Distribution facility closed on August 18, 2003. SAR 196.

During the remand investigation, the Department repeatedly requested information from the petitioners. In response, the petitioners made two substantive submissions. First, in an October 1, 2004 letter, the petitioners stated that workers traveled to Mexico to provide training to the workers there; that repair work shifted to Mexico; and that marker and sample production are shifting to Mexico. SAR 247. Second, in

an affidavit dated November 24, 2004, a petitioner stated that she was separated from the subject company on February 3, 2002; that she worked in the sample and trim departments; that workers were sent to train workers in Mexico; that workers came from Mexico for training from 2000 through 2002; and that production equipment moved to Mexico. SAR 280.

Although the October 1, 2004 letter did not provide dates of the alleged activities and the November 24, 2004 affidavit was provided by a worker who is not, in fact, a member of the subject worker group (she was separated prior to February 11, 2002), the Department nonetheless inquired into whether any of the alleged actions took place during the relevant period in case they could constitute a basis for TAA certification.

According to the company's submissions, workers in Mexico were trained in preparation for the shift of the "Print Shop" label production, trained to use the new ABS computer system to improve production operations, and trained to design patterns and markers. SAR 212, 232. As previously stated, the Department considers the design of patterns and markers to be service work, not the production of an article, so any shift of such design work would be irrelevant. Further, a marker design facility was not created in Mexico until March 2004, well after the relevant period. SAR 242.

As directed, the Department also investigated whether the subject workers could be certified as either service workers or secondarily-impacted workers and determined that there was no activity at the subject facilities that could constitute a basis for certification under either category.

A careful review of the company's submissions shows that, during the relevant period, the El Paso, Texas facilities did not support a domestic production facility negatively-impacted by increased imports or a shift of production abroad and, therefore, do not qualify as a service company. Further, since none of the three El Paso, Texas facilities supplied components to or assemble and/or finish products for an affiliated domestic production facility negatively-impacted by increased imports or a shift of production abroad during the relevant period, the petitioners do not qualify as a secondarily-affected worker group. Rather, the three El Paso, Texas facilities supported a production facility located in Mexico. SAR 237, 274.

In summary, the remand investigation has enabled the Department to determine comprehensively that (1) patterns and markers were generated

and transmitted electronically; (2) production of samples was shifted from the Armour Facility to California, not to Mexico; (3) there has been no importation of samples; (4) samples have been produced for internal use only and have no impact on imports; and (5) there has been no production of jeans by the subject facilities since 2000 (prior to the relevant period).

Conclusion

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Sun Apparel of Texas, Inc., Armour Facility, El Paso, Texas (TA-W-51,120), Sun Warehouse Facility, El Paso, Texas (TA-W-51,120A), and Goodyear Distribution, El Paso, Texas (TA-W-51,120B).

Signed at Washington, DC this 16th day of December 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-56,002]

Taisho Electric Corporation of America; El Paso, TX; 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 Taisho Electric Corporation of America, El Paso, Texas. 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-56,002; Taisho Electric Corporation of America, El Paso, Texas (January 14, 2005).

Signed at Washington, DC this 18th day of January 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-56,126]

Teleflex Automotive, Inc., Waterbury, Connecticut; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 3, 2004, in response to a worker petition filed by a State Government representative on behalf of workers at Teleflex Automotive, Inc., Waterbury, Connecticut.

The petition regarding the investigation has been deemed invalid. In order to establish a valid worker group, there must be at least three full-time workers employed at some point during the period under investigation. Workers of the group subject to this investigation did not meet the threshold of employment. Consequently the investigation has been terminated.

Signed at Washington, DC, this 16th day of December, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-55,996]

Union Wadding Company; Pawtucket, RI; Notice of Revised Determination of Alternative Trade Adjustment Assistance

By letter dated December 29, 2004, a company official, requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification for Trade Adjustment Assistance was signed on December 16, 2004. The Notice of determination will soon be published in the **Federal Register**.

The initial investigation determined that subject worker group possess skills that are easily transferable.

The petitioner provided new information to show that the workers possess skills that are not easily transferable.

At least five percent of the workforce at the subject firm is at least fifty years of age. Competitive conditions within the industry are adverse.