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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—01994]

Champion Aviation Products, Weatherly, PA; Notice of Negative Determination on Remand

On June 4, 1999, the United States Court of International Trade remanded this matter to the Secretary of Labor for further investigation in *Former Employees of Champion Aviation Products* v. *Secretary of Labor,* No. 98–02–00299 (Ct. Int'l Trade 1999).

The Department's initial negative determination of eligibility to apply for NAFTA Transitional Adjustment Assistance (''NAFTA–TAA'') for the workers and former workers of Champion Aviation Products, Weatherly, Pennsylvania was issued on December 11, 1997 and published in the **Federal Register** on January 6, 1998, *see* 63 FR 577 (1998). The denial was based on the finding that criteria (3) and (4) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, 19 U.S.C. 2231(a)(1)(A)(iii) and (B), were not met: i.e., there were no increases in imports from Mexico or Canada of articles like or directly competitive with articles produced by the workers' firm or appropriate subdivision that contributed importantly to the workers' separations; and there was no shift in production of such articles from the workers' firm or subdivision to Mexico or Canada. *See* Administrative Record (''AR'') 58–60.

The petitioners' request for reconsideration resulted in a negative determination, which was issued on January 27, 1998 and published in the **Federal Register** on February 6, 1998, *see* 63 FR 6208 (1998). The Department's determination reaffirmed its finding that imports did not contribute importantly to the workers' separations and that the workers' firm did not shift production of aircraft displays or power supplies to Mexico or Canada. AR 63–66.

On remand, the court ordered the Department to make additional findings (1) determining the appropriate subdivision in light of the intent of NAFTA–TAA and accounting for the possibility that a two-step shift in production may have occurred; (2) providing a more detailed explanation of whether the articles produced at the Pennsylvania facility are like or directly competitive with the articles produced in Mexico; and (3) describing the types and amount of equipment that moved to Mexico from Pennsylvania. *Champion Aviation,* No. 98–02–00299, slip op. at 10. In addition, the court suggested that the Department develop a methodology that does not rely on product lines alone to determine what constitutes the appropriate subdivision in a ''shift in production'' case. *Id.* at 7.

The court further suggested that the Department.

1. Describe the parent company's (Cooper Industries) organizational structure and the Weatherly's plant's position within it; *id.* at 8;

2. Interview other sources besides the former Weatherly plant manager, *id.* at 9; and

3. Provide evidence that it did not base its denial of the plaintiffs' two-step shift-in-production argument on the sole ground that the workers at the Sparta, Tennessee facility did not apply for adjustment assistance, *ibid.*

The Department contacted the successor parent firm of Champion Aviation—Federal Mogul Corporation—to obtain the additional information required by the Court.

New Methodology

At the outset, the Department respectfully disagrees with the court that a new methodology for determining the appropriate subdivision in a shift-in-production case is either apposite or warranted by the statute or its legislative history. It is well settled under the Trade Adjustment Assistance provision for group eligibility of the Trade Act, 19 U.S.C. 2271(a), that the ''determination of what constitutes an appropriate subdivision must be made along product lines.'' *See Kelley* v. *Secretary, United States Dep't of Labor,* 626 F Supp. 398, 402 (Ct. Int'l Trade 1985). The Department's use of the same methodology for determining what an appropriate subdivision is under the NAFTA–TAA increased-import criterion for group eligibility, 19 U.S.C. 2332(a)(1)(A), is not in dispute. The court's broader interpretation of the same ''firm or appropriate subdivision'' language in the NAFTA–TAA ''shift in production'' criterion for group eligibility, 19 U.S.C.(a)(1)(B), seems to rest on its inference that because Congress intended to expand coverage of workers in NAFTA–TAA by adding that criterion, it must also have intended to use these terms more expansively in that criterion. We think that Congress achieved the intended expansion by adding the ''shift in production'' criterion, which accounts for over half of the certifications under NAFTA–TAA, and that the Congressional desire to expand the program does not evince an intent to use terms with a well-established judicial meaning in a radically different manner.[1]

Appropriate Subdivision and Like or Directly Competitive Articles

The petition was filed on behalf of workers and former workers who produced aircraft power supplies (power converters) and cockpit displays in the Weatherly, Pennsylvania plant, part of Cooper Automotive's Ignition/Aviation Products Division, *see* Supplemental Administrative Record (''SAR'') 28, 32. Weatherly was the only Cooper facility that made these products before its closure, *see* SAR 36, and it produced only these articles during the period covered by the investigation. The articles were produced from 1994 until the plant closed. The plant had previously manufactured automotive headlamps, but production of these articles was stopped before 1994 and moved to Cooper's Hampton, Virginia facility. *See* SAR 17. Workers who lost their jobs as a result of this transfer of automotive headlamps cannot be certified on the present petition because the transfer was domestic and because any such workers lost their jobs more than a year before the NAFT–TAA petition was filed.[2]

By contrast, the Sparta, Tennessee facility is a part of Cooper's Automotive Lighting Products Division. *See* SAR 29. The Sparta plant produces automotive incandescent miniature lamps, halogen capsules and molds, and assembles some automotive interior lighting fixtures. SAR 18. There were no common or similar products or production processes at the Weatherly and Sparta plants from 1994 through the closure of the Weatherly plant. *See* SAR 4, 18. The aviation display products produced at Weatherly cannot

[1] In this regard is revealing that the court's quotation of the NAFTA–TAA legislative history, *Champion Aviation,* No. 98–02–00299, slip op. at 6 (''[T]he new program is designed to remedy what has been identified as one of the current shortcomings of the current TAA program'') omits the explanatory preceding clause ''By expanding eligibility to include those who lose their jobs as a result of shifts in production to Mexico or Canada, not only as a result of increased imports,'', Senate Proceedings and Debates of the 103rd Congress, First Session, 139 Cong. Rec. S16092–01, S16107 (Nov. 18, 1993). Contrary to the court's interpretation, this passage demonstrates Congress's intent to expand coverage by adding a new criterion but provides no evidence of a Congressional desire to redefine established terms within that new criterion in a way that would further expand coverage.

[2] The petition was received by the Commonwealth of Pennsylvania on October 27, 1998. *See* SAR 35.

reasonably be considered like or directly competitive with the Sparta automotive headlamps that were transferred to Mexico. The two products are not substantially identical in their inherent or intrinsic characteristics, nor are they commercially interchangeable or substitutable. The aviation lamps made in Weatherly were very different in size and method of production from the automotive lighting produced in Sparta. *See* SAR 4, 18. Aviation lamps and automotive lamps are produced by very different processes. *See* SAR 21, 24. Aviation lamps are made by a very manual process. SAR 24. ''The lamp is extremely small and the assembly requires the use of a microscope. The automotive lamps are made of highly automated production lines and are of a much larger size.'' *Ibid.*

In view of the fact that the Weatherly plant, the plaintiffs' plant, was the only Cooper facility that produced aviation products during the period covered by the investigation and that Weatherly produced only those products during that period, I find that Weatherly was the appropriate subdivision for determining wheather a shift in production occurred. I have considered whether the automotive articles produced at Sparta were sufficiently similar to Weatherly's aviation products to warrant finding Sparta an appropriate subdivision. I conclude, however, that the products' differences in inherent or intrinsic characteristics, production process and commercial use preclude such a finding. I also note that the facts that the two plants that made these products belonged to different divisions of Cooper and that neither plant made components or finished products for the other provide additional support for my conclusion.

Two-Step Shift in Production

According to a vice president of Cooper, there was no relationship between the transfer of automotive products from Sparta to Matamoros, Mexico and the transfer of aviation lamp production from Weatherly to Sparta. *See* SAR 4, 18. The same official stated that the move of aviation lighting from Weatherly to Sparta could have happened even if Cooper had not moved any operations to Mexico; in his opinion, the two transfers were totally unrelated. *See* SAR 24. He also observed that the Weatherly production that was moved to Sparta was a very small lamp assembly operation, especially in comparison to the automotive lamp production in Sparta. *See ibid.*

Both in our initial investigation and in our remand investigation, the former Weatherly plant manager (who co-signed the plaintiffs' petition for administrative reconsideration, *see* AR 62) asserted that the plaintiffs lost their jobs because of the shift in production of automotive lamps from Sparta to Mexico. *See* AR Business Confidential Information (''BCI'') 5, 36; SAR 23. As noted above, however, a Cooper vice president flatly rejected this contention. When informed of the conflict the former plant manager's and the higher company official's views on this matter, Cooper told us that the plant manager had no responsibility for Sparta and that the vice president was more knowledgeable about Sparta's operations. *See* SAR 24.

I also note that, during the initial investigation, the former Weatherly plant manager gave us an inconsistent explanation of why his plant closed. At that time, he attributed the closing to the plant's loss of 80% of its capacity when it shifted its automotive line to another Cooper domestic plant in 1992. *See* BCI 36 (''The Weatherly plant is being closed because you can't support this size plant with what's left''). As noted earlier, a 1992 domestic transfer of production is not a ground for certifying workers who lost their jobs in late 1997 or early 1998 under the NAFTA–TAA shift-in-production criterion.

I conclude that the record does not support the theory that the plaintiffs lost their jobs because of a two-step shift in production form Weatherly to Mexico. The unrelated nature of the domestic shift of aviation lamp production from Weatherly to Sparta and the shift of automotive lamp production from Sparta to Mexico, and the great differences between these two product lines both refute the notion that a two-step shift in production occurred here. This conclusion is further supported by the finding of our original negative determination that the real cause of the plaintiff's separation was their employer's failure to procure avionics contracts that were awarded to domestic competitors. *See* AR 59.

Equipment Moved From Pennsylvania to Mexico

Notes taken during the initial investigation indicated that some equipment was transferred from Weatherly to Mexico. On remand, the Department queried Cooper executives and the former Weatherly plant manager about the company's equipment transfers. The former plant manager clarified his comments and stated that the only equipment Cooper moved from Weatherly to Mexico consisted of two large air compressors, which are not production equipment. *See* SAR 23. Two Cooper vice presidents stated that the company transferred no equipment from Weatherly to Mexico. Production equipment from Weatherly was either sold at auction or transferred either to Cooper's Liberty, South Carolina or Sparta, Tennessee facilities. *See* SAR 18, 24, 34.

Conclusion

After careful consideration of the results of the remand investigation, I affirm the original notice of negative determination of eligibility to apply for NAFTA–TAA for workers and former workers of Champion Aviation Products, Weatherly, Pennsylvania.

Signed at Washington, DC this 17th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03247]

Procter and Gamble Paper Products Co., Greenville Plant, Greenville, NC; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on July 14, 1999, applicable to workers of Procter and Gamble Paper Products Co., Greenville Plant, Greenville, North Carolina engaged in the assembly of feminine hygiene products. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43725).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly limited the certification to ''all workers engaged in employment related to the assembly of feminine hygiene products.''

The intent of the Department's certification is to include ''all workers'' of Procter and Gamble Paper Products Co., Greenville Plant, Greenville, North Carolina adversely affected by increased imports from Canada.

The Department is amending the certification determination to correctly identify the worker group to read ''all workers.''