DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,498]

Marsh Advantage America, Spartanburg, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2005, in response to a petition filed on behalf of workers of Marsh Advantage America, Spartanburg, South Carolina.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 8th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1140 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,434]

Metso Minerals Industries, Inc., Keokuk, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 31, 2005, in response to a petition filed by a company official on behalf of workers at Metso Minerals Industries, Inc., Keokuk, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 7th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1137 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,580]

Milliken & Company, Magnolia Finishing Plant Division, Blacksburg, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 15, 2005, in response to a worker petition filed by a company official on behalf of workers at Milliken & Company, Magnolia Finishing Plant Division, Blacksburg, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 24th day of February, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1154 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–50,588]

Murray Engineering, Inc. Complete Design Service, Flint, MI; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor for further investigation *Former Employees of Murray Engineering* v. *U.S. Secretary of Labor*, USCIT 03–00219. The Department concludes that the subject worker group does not qualify for eligibility to apply for Trade Adjustment Assistance (TAA) benefits. There was neither a shift of production, nor increased imports of articles like or directly competitive with those produced at the subject facility, as required under section 222(a) of the Trade Act of 1974, as amended (Trade Act). The workers also do not qualify as adversely affected secondary workers under section 222(b) of the Trade Act.

On January 15, 2003, a petition was filed on behalf of workers of Murray Engineering, Inc., Complete Design Service, Flint, Michigan (''Murray Engineering'') for TAA. The petition stated that workers design automotive gauges, tools, fixtures, and dies.

The Department's initial negative determination for the former workers of Murray Engineering was issued on February 5, 2003. The Notice of Determination was published in the **Federal Register** on February 24, 2003 (68 FR 8620). The Department's determination was based on the finding that workers provided industrial design and engineering services and did not produce an article within the meaning of Section 222 of the Trade Act.

In a letter dated February 19, 2003, the petitioner requested administrative reconsideration of the Department's negative determination. The petitioner alleged that Murray Engineering produced a ''tangible drawing essential and integral to the making or building of a product'' and that the Department was misled by the word ''Service'' in the company's name.

The Department denied the petitioner's request for reconsideration on March 31, 2003, stating that the engineering drawings, schematics, and electronically generated information prepared by the subject worker group were not considered production within the meaning of the Trade Act. The Department further stated that the fact that the information is generated on paper is irrelevant to worker group eligibility for TAA. The Department's Notice of Negative Determination Regarding Application for Reconsideration was published in the **Federal Register** on April 15, 2003 (68 FR 18264).

By letter of April 30, 2003, the petitioner appealed the Department's denial of eligibility to apply for TAA to the USCIT, asserting that ''machine drawings (plans) are an article.'' The petitioner asserted that the subject worker group should be eligible to apply for TAA due to imports of like or directly competitive articles and, alternatively, because they are adversely affected secondary workers.

The Department filed a motion requesting that the USCIT remand the case to the Department for further investigation, and the USCIT granted the motion.

The Department issued its Notice of Negative Determination on Remand on August 20, 2003. The Notice was published in the **Federal Register** on September 10, 2003 (68 FR 53395). The remand determination stated that the workers did not produce an article and were not eligible for certification as workers producing an article affected either by a shift of production or by imports, or as adversely affected secondary workers.

On May 4, 2004, the USCIT remanded the matter to the Department for further investigation, directing the Department to investigate: (1) The nature of the

designs provided by Murray Engineering to its customers; (2) how the designs are sold to Murray Engineering's customers; (3) what proportion of the designs are printed or embodied on CD-Rom/diskette; and (4) how the petitioner's eligibility to apply for TAA is affected by the different formats in which the designs are embodied. The USCIT reserved judgment whether the Murray Engineering workers are qualified for certification as adversely affected secondary workers.

The Department's Notice of Negative Determination on Remand was issued on August 19, 2004, and was published in the **Federal Register** on August 30, 2004 (69 FR 52935). In the second remand determination, the Department affirmed its previous determination that workers at Murray Engineering do not qualify for eligibility to apply for TAA. The Department again concluded the subject firm does not produce an article for TAA purposes, and also found there was neither a shift of production from the subject facility nor increased imports of like or directly competitive articles as required by section 222(a) of the Act. Finally, the Department again concluded the subject firm does not supply a component part to a TAA-certified company as required by section 222(b) of the Act for certification of a worker group as adversely affected secondary workers.

Although the Department determined that designs created by Murray Engineering are conveyed and transmitted via physical media, the Department concluded that rote application of HTSUS classification codes is not the sole arbiter in determining whether the designs in question constitute articles for TAA purposes, and relied on other sources of information in concluding designs are not articles.

The second remand investigation also revealed that, even if one concludes that designs are articles, Murray Engineering did not shift design production abroad and did not import designs during 2001 or 2002. The Department's survey of Murray Engineering's major declining customers also revealed no imports of designs like or directly competitive with those made at the subject firm during 2001 and 2002.

In its November 15, 2004, decision, the USCIT concluded that designs are articles, remanded the case to the Department for further review, and deferred consideration of the claim that the subject worker group is eligible for TAA certification as adversely affected secondary workers.

The USCIT, citing the definition of ''like or directly competitive'' in 29 CFR 90.2, stated that the ''the record fails to show the legal basis for Labor's finding that there were no imports of directly competitive articles.'' The relevant definition under 29 CFR 90.2 (emphasis in original) states that:

Like or directly competitive means that *like* articles are those which are substantially identical in inherent or intrinsic characteristics (*i.e.*, materials from which the article are made, appearance, quality, texture, etc.); and *directly competitive* articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (*i.e.*, adapted to the same sues and essentially interchangeable therefor).

An imported article *is directly competitive with* a domestic article at an earlier or later stage of processing, and a domestic article is *directly competitive with* an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article.

The USCIT ordered the Department to interpret and apply this definition to determine whether or not ''designs for heavy machinery'' represent an ''earlier stage of processing'' of either the machinery or the products manufactured on such machines, and if designs are an ''earlier stage of processing'' of machinery or manufactured products, whether the importation of such machinery or manufactured goods has an economic effect comparable to importation of articles in the same stage of processing as the domestic article, *i.e.*, the designs.

The issue is whether there were increased imports of articles directly competitive with the designs produced by Murray Engineering during the investigatory period of 2001 and 2002. The issue must be resolved by determining whether the Murray Engineering designs are directly competitive with either the machinery designed, or the products manufactured by such machinery. The USCIT suggested that Murray's designs might be ''directly competitive'' with ''items of manufacturing which formerly would have been built in the United States on machines produced by Murray's customers,'' on the ground that the designs might represent an ''earlier stage of processing'' of those goods under the 29 CFR 90.2 definition of ''directly competitive.'' Slip Op. at 11.

Examples of what Congress meant by ''directly competitive'' are found in the legislative history of the first adoption of that term in the Trade Expansion Act of 1962 (which created the original worker adjustment assistance program that evolved into the current TAA program), as follows:

> Your committee has incorporated in the bill a provision which has the effect of permitting an extension of the scope of the term 'directly competitive'. Under this provision, an imported article may be considered 'directly competitive with' a domestic article, or vice versa, if the one is at an earlier or later stage of processing than the other, or if one is a processed and the other an unprocessed form of the same article, and if the economic effect of importation of articles in the same stage of processing as the domestic article.
>
> The term 'earlier or later stage of processing' contemplates that the article remains substantially the same during such stages of processing, and is not wholly transformed into a different article. Thus, for example, zinc oxide would be zinc ore in a later stage of processing, since it can be processed directly from zinc ore. For the same reason, a raw cherry would be a glace cherry in an earlier stage of processing, and the same is true of a live lamb and dressed lamb meat. * * *
>
> H.R. Rep. No. 1818, 87th Cong., 2d Sess. 24 (1962).

This legislative history, whose language very closely mirrors the definition of ''directly competitive'' in 29 C.F.R. § 90.2, supports that the phrase ''earlier stage of processing'' has a limited meaning as recognized later in TAA court decisions. The court in *United Shoe Workers* v. *Bedell*, 506 F.2d 174, 186 n.80 (DC Cir. 1974), quoted from the above House report in reinforcing that ''[t]he term 'earlier or later stage of processing' contemplates that the article remains substantially the same during such stages of processing, and is not wholly transformed into a different article.'' *See also United Steelworkers* v. *Donovan*, 632 F.Supp. 17, 22 (Ct. Int'l Trade 1986). Under this interpretation, even component parts of finished domestic products are not ''directly competitive'' with imported finished products, as explained with regard to component parts of television sets in *Morristown Magnavox Former Employees* v. *Marshall*, 671 F.2d 194, 197–198 (6th Cir. 1982), *cert. denied*, 459 U.S. 1041 (1982). Also illustrating this point were the USCIT decisions in *ACTWU Local 1627, AFL-CIO* v. *Donovan*, 7 CIT 212, 587 F.Supp. 74 (1984), concerning automotive batteries for cars, and *Gropper* v. *Donovan*, 6 CIT 103, 569 F.Supp. 883 (1983), concerning fabric for knit fabric garments.

Other TAA court decisions further clarified the meaning of directly competitive. *Sugar Workers Union* v. *Dole*, 755 F.Supp. 1071, 1075 (Ct. Int'l Trade 1990), held that:

> Congress chose to make adjustment assistance available not to all persons or industries displaced by 'imports', nor even to just those displaced by 'competitive' imports, but instead to those displaced by 'directly competitive' imports. It is not enough, then, that the imports compete with or affect the plaintiffs' product indirectly or circuitously. [Emphasis in original.]

The point in the text quoted above from *Sugar Workers Union* was illustrated in an earlier case, *Machine Printers and Engravers Association* v. *Marshall*, 595 F.2d 860 (DC Cir. 1979) (per curium). There, the Secretary denied certification to workers who were employed by firms ''engaged in the business of engraving copper or plastic rollers and rotary screens for use by domestic textile manufacturers to print designs and fabrics.'' 595 F.2d at 861. The workers claimed that they were entitled to assistance ''because increased imports of textile fabrics have reduced the demand for the engraved rollers which are produced by their employers.'' *Ibid.* Affirming the Secretary, the DC Circuit Court noted that the imported textile fabrics that were harming the domestic textile industry were ''plainly'' not ''directly competitive'' with the engraved rollers and screens produced and engraved by the workers'' seeking assistance. *Ibid.* Another illustration of this point was in *Kelley* v. *Secretary, United States Dep't of Labor*, 626 F.Supp. 398, 402 (Ct. Int'l Trade 1985). In *Kelley*, the USCIT rejected the plaintiffs' argument that the Department should have considered the effect of imported finished articles and immigrant labor in determining whether imports caused a producer of cotton and synthetic thread to reduce its labor force.

That component parts of an article are not directly competitive with the article itself is further reinforced by 2002 amendments to the worker adjustment assistance provisions of the Trade Act. The 2002 amendments added paragraph (b) to Trade Act section 222 to authorize TAA certification of workers—referred to as adversely affected secondary workers—who, among other things, produce component parts for an article produced by another TAA-certified worker group. That Congress enacted this provision as an alternative basis for TAA certification supports that Congress believed that makers of component parts did not qualify for certification under the criteria of Trade Act section 222(a) because component parts of an article are not directly competitive with the article itself.

The Department conducted the third remand investigation mindful of the above principles and also the CIT's November 15, 2004, orders. In the third remand investigation, the Department conducted a survey to determine the various uses of those designs purchased by Murray Engineering's major declining customers. The survey revealed that Murray Engineering's designs were used to make several types of dies (a type of machinery used in manufacturing) and other machinery related to dies. The Department surveyed five customers, one of whom did not conduct business with the subject firm during the relevant period (2001 and 2002). Three customers purchased designs which were used to make dies used to produce automotive parts, and one customer used the designs purchased from the subject firm to make dies used to make machinery used to produce automotive parts. None of the customers surveyed imported dies or related machines.

The Department also inquired into whether the subject firm's major declining customers' customers imported those automotive parts which were produced using machines or dies which were produced using designs created by the subject firm. The investigation revealed that the subject firm's major declining customers all produced their dies or other machines for the same single customer, which was the firm that made the automotive parts which were the finished product. According to this end-user customer, all of the automotive parts used in its domestic cars are made in the United States; therefore, there were no imports of automotive parts.

Applying the principles in the legislative history and case law cited above to the Murray Engineering worker group, it is clear that the workers do not meet the certification criteria of Trade Act section 222(a) because their designs are not, under the meaning of the definition of ''directly competitive'' in 29 CFR 90.2, directly competitive with either the machinery designed or the finished products made by such machinery.

The Murray Engineering designs do not represent an earlier stage of processing, as that phrase is used both in the definition of ''directly competitive'' in 29 CFR 90.2 and in the legislative history discussed above. This is because the designs, machinery, and finished products do not constitute an article that remains substantially the same from the development of the design to the manufacture of the finished products. Rather, the designs are a wholly different article from both the machinery designed and the finished products—dies and automotive parts—made by such machinery.

Nor can the designs in question be considered component parts of the machinery designed, let alone of the finished products made by such machinery. The Department interprets a component to be a physical part of an article that helps the article to function. A design is helpful to creating the machinery, but it is not incorporated into the machinery as a physical part and does not help the machinery function. A machine's design is a wholly separate thing from both the machine itself and the products made by the machine.

Applying the USCIT decision in *Sugar Workers Union*, neither the machinery designed by Murray Engineering nor the automotive parts produced by such machinery directly competitive with Murray Engineering's designs. At most, imports—of which there were none in this case—of automotive parts or machinery to make such parts might affect design makers only indirectly or circuitously, which is not enough to consider either automotive parts, or machinery to make such automotive parts, directly competitive with designs under *Sugar Workers Union*. Applying the principle of the court decision in *Machine Printers*, the economic impact of imported dies or automotive parts—again, of which there were none in this case—has no bearing on whether the makers of designs for machinery that makes those items are entitled to adjustment assistance. All that matters regarding imports is whether the importation of designs, or items that directly compete with designs, contributed importantly to the workers' layoffs. The Department addressed this question in a previous Murray Engineering remand investigation and found there were no such imports.

In sum, the Department interprets the definition of ''directly competitive'' in 29 CFR 90.2 as meaning, consistent with Congressional intent and TAA case law, that an article, in order to be directly competitive with an article in a different stage of processing, remains substantially the same during such stages of processing, and is not wholly transformed into a different article. The Murray Engineering designs are not directly competitive with either the machinery designed or the finished products made by such machinery because the designs do not remain substantially the same but rather are wholly different articles from machinery and automotive parts.

Regarding TAA eligibility as adversely affected secondary workers under section 222(b) of the Trade Act, the Department examined this issue in

previous investigation of this case. The subject worker group can be certified as eligible to apply for TAA as adversely affected secondary workers only if Murray Engineering either: (1) Supplied components or unfinished or semi-finished goods to a firm employing workers who are covered by a certification of eligibility for adjustment assistance; or (2) assembled or finished products made by such a firm. In the case at hand, neither criterion is met because Murray Engineering did no assembly or finishing work, nor did any of Murray Engineering's customers' workers receive a certification of eligibility to apply for TAA during the relevant time period.

In order to be eligible as suppliers of components or unfinished or semi-finished goods, as petitioner claims the subject worker group to be, the subject worker group must have produced a component part of the product that is the basis of the TAA certification. Because Murray Engineering did not produce a component part of a final product, they were not secondary suppliers of a TAA-certified facility, as required by section 222(b) of the Trade Act. Even if the design specifications were sometimes mounted or affixed to their customers' manufacturing equipment, the display of the design specifications on the equipment is not necessary for the equipment to function properly and does not enhance the equipment's performance; thus, the designs are not component parts.

Further, Murray Engineering did no business with a TAA-certified company during the relevant time period. The petitioning worker specifically claims that Murray Engineering provided designs to Lamb Technicon, a TAA-certified company (TA–W–40,267 & TA–W–40,267A). However, Murray Engineering did business with Lamb Technicon most recently in 1999, which is before the relevant time period for the Murray Engineering petition at issue in this case. Therefore, Lamb Technicon's certification (TA–W–40,267 & TA–W–40,267A) is not a valid basis for certifying Murray Engineering workers as adversely affected secondary workers eligible to apply for TAA.

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 Murray Engineering, Inc., Complete Design Service, Flint, Michigan.

Signed in Washington, DC this 28th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1134 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,456]

Parker Cone Company, Maiden, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 1, 2005, in response to a petition filed by a company official on behalf of workers of Parker Cone Company, Maiden, North Carolina.

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 this threshold level of employment. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of March 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1138 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,517]

Shirley's Sewvac, Hermiston, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 12, 2004, in response to a worker petition filed by a company official on behalf of workers at Shirley's SewVac, Hermiston, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 17th day of February, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1142 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,606]

Solo Cup Company, Springfield, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 18, 2005, in response to a petition filed by the International Brotherhood of Electrical Workers Union, Local 1553 on behalf of workers at Solo Cup Company, Springfield, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of March, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–1158 Filed 3–15–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Snyder Coal Company

[Docket No. M–2005–007–C]

Snyder Coal Company, 66 Snyder Lane, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 77.403(a) (Mobile equipment; rollover protective structures (ROPS) to its N & L Slope Mine (MSHA I.D. No. 36–02203) located in Northumberland County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the Case Front End Loader, Model W26B, S/N No. 9107513 to be used at the N & L Slope Mine without being equipped with rollover protection structures (ROPS). The petitioner asserts that the proposed alternative method would provide at least the same