

**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.*

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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