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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,536, TA–W–56,536A and TA–W–56,536B]

Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd, Building Division, Wall and Roof Panels Production, Galesburg, IL; Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd, Building Division, Trim and Components Production, Galesburg, IL; Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd, Building Division, Secondaries Production, Galesburg, IL; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Butler Manufacturing Company* v. *United States Secretary of Labor* (Court No. 05–00440, issued September 2, 2005). AR 181–182.

On February 7, 2005, three workers filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers at Butler Manufacturing Company, Galesburg, Illinois (TA–W–56,536). The petitioners stated that the workers' separations were due to the shift of the subject firm's production of prefabricated buildings to India, Mexico, and China and Butler's imports of that article from Mexico and China. AR 2.

The Secretary of Labor may certify as eligible for TAA benefits only those workers who are employed in the subdivision that produces the article that is adversely affected by imports of ''like or directly competitive'' articles. *Paden* v. *U.S. Department of Labor, 562 F.2d 470, 475 (7th Cir.1977); See Abbott* v. *Donovan*, 596 F.Supp 475 (C.I.T. 1984). Therefore, during the investigation, the Department of Labor (hereafter referred to as ''the Department'') requested information from Butler Manufacturing Company in order to determine what articles were produced at the subject firm during February 2004 through February 2005, the twelve month period prior to the petition date (February 7, 2005) which is the ''relevant period'' for investigation. The Department also requested sale, production, and import figures regarding those articles produced at the Galesburg, Illinois facility during (AR 25–39, 57–66, 68) and conducted a survey of the company's major customer's regarding their purchases of those articles during the relevant period. AR 53–56, 67.

Based on information provided by the subject firm (AR 68), the Department partitioned the petition into three subparts (Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Wall and Roof Panels Production, Galesburg, Illinois, TA–W–56,536; Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Trim and Components Production, Galesburg, Illinois, TA–W–56,536A; and Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Secondaries Production, Galesburg, Illinois, TA–W–56,536B)—hereafter referred to collectively as ''the subject firm''—to address those articles produced at Butler Manufacturing Company, Galesburg, Illinois facility during the relevant period: Panels, trim and components, and secondaries.

On March 2, 2005, the Department issued a determination denying certification of the workers' eligibility to apply for TAA and ATAA. AR 72–75. The negative determination was based on the investigation's findings that the subject firm did not shift its production of panels, trim and components, or secondaries to a foreign country and that there were no increased imports by the subject firm or its customers of panels, trim and components, or secondaries. The Department's Notice of determination was published in the **Federal Register** on April 1, 2005 (70 FR 16847). AR 80.

By application of April 1, 2005, the petitioners requested administrative reconsideration of the Department's denial, alleging that the workers were not separately identifiable by product line and that the workers' separations were due to a shift of production abroad and increased imports. AR 84–87. On April 1, 2005, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration. AR 92. On April 23, 2005, the Notice was published in the **Federal Register** (70 FR 21247). AR 125.

During the reconsideration investigation, the Department contacted the subject company (AR 100, 133–139) and the workers (AR 104–105) for additional information. Based on information received by the company officials (AR 100, 129, 133–139) and the workers (AR 106–124, 126–128, 130–132), the Department determined on reconsideration that the workers were ineligible to apply for TAA and ATAA. The Department determined that those workers were not separately identifiable by product line and, nevertheless, that the subject firm did not shift production of panels, trim and components, or secondaries abroad. Instead, the subject firm was shifting production of those articles to domestic, affiliated facilities. AR 140–143. The Department issued a Notice of Negative Determination on Reconsideration on May 11, 2005. The Notice of Negative Determination on Reconsideration was published in the **Federal Register** on May 25, 2005 (70 FR 30142). AR 179–180.

By letter dated July 21, 2005 to the USCIT, petitioners requested judicial review. AR 154–155.

On September 2, 2005, the USCIT granted the Department's request for voluntary remand and directed the Department to further investigate the subject workers' eligibility to apply for TAA and ATAA. AR 181–182.

During the remand investigation, the Department carefully reviewed previously submitted information, solicited information from the plaintiff and workers (AR 201), and contacted the subject firm to obtain new and additional information regarding the articles produced during the relevant period, the work done by the subject workers, and the shift of production from the subject firm.

A careful review of previously-submitted information and newly-obtained information revealed that the Department's finding in the determination on reconsideration that the workers are not separately identifiable by product line was in error (AR 141), and the initial negative determination (of TA–W–56,536) finding on this issue (AR 74) was correct. The information shows that the workers were dedicated to particular production lines, that workers' movements between production lines were infrequent, and that such movement were determined by union guidelines and usually based on seniority. AR 41–49, 196–199. Because the workers' assignments to product lines in the Buildings Division were constant and changes among workers on the production lines were not the norm but the exception, the Department determines that the workers were separately identifiable by product line. However, regardless of whether or not the workers were separately identifiable by product line, the evidence obtained from all parties during the investigations do not support the workers' claim that there was a shift of production of prefabricated buildings or

their components abroad or increased imports of those articles during the relevant period.

Information provided by the subject firm revealed that the only articles produced during the relevant period were panels, trim and components, and secondaries. AR 183, 194–195. As such, the Department focused its remand investigation on those articles produced at the subject firm during the relevant period. AR 195–201.

According to the subject firm, all trim and component, secondaries, and panel production at the subject facility had ceased by April 2005 and had shifted to a newly built facility in Jackson, Tennessee. As anticipated by the subject firm (AR 41–42), the production shift began in February 2005 and finished in May 2005. AR 184, 195. Information provided by the subject firm revealed no imports of panels (AR 186), trim and components (AR 187), or secondaries (AR 188). The previously conducted customer survey covered the appropriate products and revealed no increased imports of any products produced by the subject firm. AR 53–56, 67.

In response to the plaintiff's assertion that production had shifted to Mexico, India and China, the company official agreed that a representative of the Mexico plant had visited the subject firm. However, the reason for that visit was related to securing replacement and updated equipment for truss purlin production in Mexico (an article not produced at the subject firm during the relevant period). AR 195. While some production of component parts of these articles did shift to Asia (China), that shift occurred in 2003, which is prior to the relevant period for this petition. Further, those components were not made during the relevant period at the subject firm. AR 184, 195.

Because the remand investigation revealed no imports of articles like or directly competitive with panels, trim and components, secondaries produced by the workers of the subject firm by the subject firm or its customers during the relevant period and no shifts of production of those articles abroad during the relevant period, the statutory requirements of neither Section 222(a)(1) and (2)(a) nor Section 222(a)(1) and (2)(B) of the Trade Act or 1974, as amended, were met, and the Department cannot certify the subject workers as eligible to apply for TAA. Further, since the workers are not eligible to apply for TAA, the workers cannot be found eligible to apply for ATAA under Section 246(a)(3)(B)(i) of that law.

Conclusion

As the result of the findings of the investigation on remand, I affirm the negative determination of eligibility to apply for adjustment assistance for workers and former workers of Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Wall and Roof Panels Production, Galesburg, Illinois (TA–W–56,536); Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Trim and Components Production, Galesburg, Illinois (TA–W–56,536A); and Butler Manufacturing Company, Subsidiary of BlueScope Steel, LTD, Buildings Division, Secondaries Production, Galesburg, Illinois (TA–W–56,536B).

Signed at Washington, DC this 1st day of November 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of October 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed