TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73730	The Berry Company, LLC (LIYP) (COMP)	Federal Way, WA	03/17/10	03/10/10
73731	The Berry Company, LLC (LIYP) (Comp)	Erie, PA	03/17/10	03/10/10
73732	The Berry Company, LLC (LIYP) (COMP)	Rochester, NY	03/17/10	03/10/10
73733	The Berry Company, LLC (LIYP) (COMP)	Matthews, NC	03/17/10	03/10/10
73734	Purchasingnet, Inc. (Wkrs)	Austin, TX	03/17/10	03/16/10
73735	Product Action (ONE–ST)	Dayton, OH	03/17/10	03/05/10
73736	Toyota engineering and Manufacturing North America Team (TEMA) (State).	Fremont, CA	03/18/10	03/17/10
73737	Cullman Casting Corporation (State)	Cullman, AL	03/18/10	03/17/10
73738	Allied Systems, Ltd. (Comp)	Atlanta, GA	03/18/10	03/17/10
73739	World Wide Technology (Wkrs)	St. Louis, MO	03/18/10	03/17/10
73740	Allstate Insurance Company (State)	Northbrook, IL	03/18/10	03/12/10
73741	Kenco/Komptsu America (State)	Lexington, KY	03/18/10	03/16/10
73742	Covidien (Comp)	Oriskany Falls, NY	03/18/10	03/17/10
73743	American Fiber and Finishing, Inc. (Comp)	Allemarte, NC	03/18/10	03/17/10
73744	Sony Ericsson, USA (Wkrs)	Research Triangle Park, NC	03/18/10	02/15/10
73745	Zumtobel Lighting Inc. (UAW)	Garfield, NJ	03/19/10	03/17/10
73746	Price Water House Coopers LLP (Wkrs)	New York, NY	03/19/10	03/17/10
73747	Payroll Solutions/Synergy (Wkrs)	North Las Vegas, NV	03/19/10	03/17/10
73748	Commercial Construction Management and Resource (STATE).	Milford, OH	03/19/10	03/09/10
73749	Assembly and Test Worldwide, Inc. (STATE)	Shelton, CT	03/19/10	03/17/10
73750	General Motors Corporation (Wkrs)	Detroit, MI	03/19/10	03/08/10
73751	RHealth, LLC (STATE)	Memphis, TN	03/19/10	03/17/10
73752	Industrial Metal Products Corp. (STATE)	Lansing, MI	03/19/10	03/17/10

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,433]

American Racing Equipment, LLC, Denver, CO; Notice of Negative Determination on Remand

On January 8, 2010, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of American Racing Equipment, LLC* v. *United States Secretary of Labor* (Court No. 09–00288).

On April 6, 2009, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of American Racing Equipment, LLC, Denver, Colorado (the subject firm). (AR 49) The Department's Notice of negative determination was published in the **Federal Register** on June 25, 2009 (74 FR 3033). (AR 59.) The determination stated that the subject firm's affiliate did not import two piece wheels like or directly competitive with those warehoused and wholesaled by the subject worker group. Additionally, the customers of the affiliate did not make import purchases of these articles in the period under investigation. (AR 50.)

By application dated April 25, 2009, the petitioner requested administrative reconsideration on the Department's negative determination. In the request for reconsideration, the petitioner alleged that the workers of the subject firm supported production of cast, one piece wheels and that the subject firm shifted production of these articles abroad and increased imports of these products. (AR 61–73.)

Because new information was provided by the petitioners that had not been previously considered, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration for workers at the subject firm on May 11, 2009. (AR 76.) The Notice was published in the **Federal Register** on June 16, 2009 (74 FR 28552). (AR 79.)

In the request for reconsideration, the petitioner alleged that the workers of the subject firm supported production of cast, one piece wheels, that the subject firm shifted production of the cast, one piece wheels abroad, and that there was an increase in imports of these articles. (AR 62–64, 68–70.)

During the reconsideration investigation, the Department obtained additional information from the company official regarding the petitioners' claims. The additional material, however, did not contain information sufficient to reverse the initial negative determination.

As a result of the reconsideration investigation, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration on June 26, 2009. (AR 83–85) The determination stated that the Department did not find additional information pertaining to a shift in production or increased imports that contributed to the petitioners' separations. (AR 84, 85) On July 14, 2009, the Notice was published in the **Federal Register** (74 FR 34044). (AR 87, 88.)

In a letter to the Colorado Department of Labor, dated July 23, 2009, the Plaintiff appealed to the USCIT for judicial review. The Plaintiff stated that "the relevant period" for the investigation should have been identical to the relevant time period covered in TAA certifications TA–W–58,665 and TA–W–63,760 and based the appeal on "facts not considered" and misinterpretation of the facts.

On December 14, 2009, the Department requested the USCIT to grant its request for remand to investigate further the Plaintiffs' allegations. On January 8, 2010, the USCIT granted the Department's Motion for voluntary remand.

On May 18, 2009, the Department implemented the Trade and Globalization Adjustment Assistance

Act of 2009 (TGAAA). Under Section 1891(a) of the TGAAA, only worker groups covered by petitions filed on or after May 18, 2009 are eligible to apply for TAA under provisions set forth in the TGAAA. Worker groups covered by petitions filed before May 18, 2009 must meet the eligibility criteria that existed at the time the petition was filed. Because the petition for TA–W–65,433 was filed on February 26, 2009, in order for the subject worker group to be eligible to apply for TAA as primary workers (workers of a firm that produces an article), the workers must meet the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended, which existed on February 26, 2009.

The group eligibility requirements under Section 222(a) of the Trade Act which existed on February 26, 2009 can be satisfied in one of two ways:

I. Section (a)(2)(A)—

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; *and*

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)—

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; *and*

B. There has been a shift in production by such workers' firm or subdivision to a foreign country 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; *or*

2. The country to which the workers' firm has shifted production of the articles is 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.

In order to determine whether the subject workers meet the TAA group eligibility requirements, the Department must first determine whether or not an article was produced at the subject firm, then determine whether the workers are adversely impacted by increased imports of articles like or directly competitive with those produced by the subject firm or by a shift in production abroad of articles like or directly competitive with those which are produced by the subject firm.

It is the Department's policy that in order for petitioners to qualify for TAA as primary workers, they must be (1) engaged in domestic production; or (2) be in support of an affiliated domestic production facility; or (3) under the control of an unaffiliated company that produces the article that the subject workers support. Where the workers support production, the facility that they support must be import-impacted or have shifted to a country identified under Section 113 of the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210).

In conducting the remand investigation, the Department obtained additional information from the subject firm, SAR 89–90, 99–100, 111–113, and solicited input from the Plaintiff. SAR 91. Based on the information collected, SAR 99–100, 107–110, 111–113, the Department determined that the worker group at the subject firm providing services such as warehousing and wholesaling of wheels was not in direct support of the production of these articles and, therefore, does not meet the test of being engaged in the production of an article for the purposes of the Trade Act.

The Department's policy is to provide TAA benefits to workers covered by a petition filed before May 18, 2009, who work in a facility of the workers' firm (the "appropriate subdivision" identified in the petition) that supports an import-impacted domestic production facility of the workers' firm. 29 CFR Section 90.11(c)(7) requires that the petition includes a "description of the articles produced by the workers' firm or appropriate subdivision, the production or sales of which are adversely affected by increased imports, and a description of the imported articles concerned." Further, 29 CFR Section 90.2 describes an appropriate subdivision as "an establishment in a multi-establishment firm which produces the domestic article in question" and includes "auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities."

The Plaintiffs allege that they were impacted by increased imports of wheels following a shift in production abroad from the subject firm's production facility located in Rancho Dominquez, California. The remand investigation revealed that the worker group at the Denver, Colorado facility did not support the production at the Rancho Dominguez, California location. Rather, the majority of the product warehoused and wholesaled by the Denver, Colorado worker group was imported from China and a small portion entered the Denver, Colorado facility as a finished article from the subject firm facility in Kansas City, Missouri. The remand investigation also revealed that the worker group at the Denver, Colorado location was not engaged in the assembly or finishing of the articles warehoused and wholesaled out of that location. Furthermore, when the Denver, Colorado facility ceased to operate in May 2008, the work was consolidated domestically. SAR 99–100, 107–110, 111–113.

The Plaintiffs also allege that they were impacted by the shift in production abroad and subsequent imports. The worker group at the Denver, Colorado facility did not support the production at the Rancho Dominguez, California facility nor did they support production at any other domestic or affiliated facility of the subject firm. SAR 99–100, 107–110, 111–113.

Additionally, the Plaintiffs allege that the period under investigation should be the same as the period used for the TAA certifications of petitions TA–W–58,665 and TA–W–63,760. The period of the investigation is determined by the date of filing of the petition. *See, e.g.,* 29 CFR 90.2 "increased imports" definition identifying the representative base period. During the relevant period of investigation for the subject petition, however, the Denver, Colorado facility did not support production at the Rancho Dominguez, California facility, nor was the product manufactured at the Rancho Dominguez, California facility sold out of the Denver, Colorado location. SAR 99–100, 107–110, 111–113.

The Department determined that the subject workers are not engaged in the production of an article or in support of an affiliated, domestic production facility. As such, the Department determines that there was no "shift in production by such workers' firm or subdivision to a foreign country" as required by the Trade Act. Because the workers did not produce an article, and did not support a firm or appropriate subdivision that produced an article domestically, the workers cannot be considered import impacted or affected by a shift of production abroad.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of American Racing Equipment, LLC, Denver, Colorado.

Signed at Washington, DC, this 8th day of April, 2010.

Del Min Amy Chen

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–8870 Filed 4–16–10; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,634]

Yale Industrial Trucks-PGH, Inc. Monroeville, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application received March 16, 2010, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The Department's Notice of determination was issued on March 3, 2010 and will soon be published in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the TAA petition filed on behalf of workers at Yale Industrial Trucks-PGH, Inc., Monroeville, Pennsylvania, was based on the findings that: The subject firm had not shifted abroad forklift truck sales and maintenance services or imported forklift truck sales and maintenance services during the relevant period; the declining customers of the subject firm had not obtained truck sales and maintenance services from foreign firms during the relevant period; and the workers did not produce an article or supply a service that was used by a firm with TAA-certified workers in the production of an article or supply of a service that was the basis for TAA-certification.

The petitioner stated that the workers of the subject firm should be eligible for TAA because some of that firm's largest customers, who are TAA-certified, have cut back production in some plants and shut down production at other plants because of foreign steel imports and have consequently sent back a large number of the fork lift trucks leased and serviced by the subject firm. Moreover, the petitioner alleged that there were many fork lift truck companies selling foreign-made fork lift trucks.

The initial investigation revealed that the secondary certification that the petitioner is seeking is not possible because the subject firm provided tools and related services used in production but not component parts, as required by Section 222(d) of the Act, 19 U.S.C. 2272(d).

Furthermore, during the initial investigation the Department surveyed the subject firm's major declining customers regarding their purchases of forklift trucks and maintenance services during the relevant period. The survey revealed no imports of forklift trucks or related maintenance services.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 1st day of April, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–8874 Filed 4–16–10; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,103]

Terex USA, LLC, Cedar Rapids, IA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 8, 2010, the State of Iowa Trade Adjustment Assistance (TAA) Coordinator requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for TAA applicable to workers and former workers of the subject firm. The Notice of negative determination was signed on February 3, 2010. The Department's Notice was published in the **Federal Register** on March 12, 2010 (74 FR 11925).

The petitioner states in the request for reconsideration that the initial customer survey was limited to only the largest customer of the subject firm and that perhaps many of the subject firm's customers are purchasing imports of products like those produced by the subject firm, and that such purchasing of imports by many small customers could have brought about the worker separations at the subject firm.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination, which was based on the finding that shifts of production of crushing, screening, and paving equipment (types of construction equipment) did not contribute importantly to worker separations at the subject firm and that a major portion of the sales decline of the subject firm can