Decisions of the United States
Court of International Trade

Slip Op. 06–60

ABRAM K. ANDERSON Plaintiff, v. UNITED STATES, SECRETARY OF AGRICULTURE, Defendant.

Before: WALLACH, Judge
Court No.: 04–00655

[Plaintiff's Motion to Supplement the Record Or, In The Alternative To Excise Documentation from the Record is Denied and this Matter is Remanded for Action Consistent with this Opinion.]

Dated: April 28, 2006

Collier, Shannon, Scott, PLLC, (*Robin H. Gilbert* and *Paul C. Rosenthal*) for Plaintiff.

Peter D. Keisler, Assistant Attorney General; *David M. Cohen*, Director; *Patricia M. McCarthy*, Assistant Director; *Delfa Castillo*, Trial Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch; and *Jeffrey Kahn*, Attorney-Advisor, Office of the General Counsel, International Affairs & Commodity Programs Division, U.S. Department of Agriculture, of Counsel, for Defendant.

OPINION

Wallach, Judge:

I
Introduction

This matter comes before the court following Plaintiff's Motion to Supplement the Record or, in the Alternative to Excise Documentation from the Record ("Plaintiff's Motion") filed on October 11, 2005. Defendant filed its Memorandum in Opposition to Plaintiff's Motion to Supplement the Record or, in the Alternative, to Excise Documentation from the Record ("Defendant's Opposition") on October 31, 2005. For the reasons set forth below, Plaintiff's Motion is denied and this matter is remanded to Defendant to re-open the record and admit evidence sufficient to determine whether Plaintiff is eligible to

receive Trade Adjustment Assistance ("TAA") benefits. This court has jurisdiction pursuant to 19 U.S.C. § 2395 (2004).

II
Background

Plaintiff is challenging the U.S. Department of Agriculture's ("Defendant" or "Agriculture") denial of TAA cash benefits regarding his Alaskan salmon crop for the year 2002. This Motion to Supplement the Record arises from Plaintiff's challenge to Defendant's original denial of Plaintiff's eligibility for TAA benefits.

III
Arguments

Plaintiff, under Rule 56.1, filed its Motion to Supplement the Record on the grounds that Plaintiff discovered, after receipt of the administrative record, certain erroneous statements in an e-mail which resulted in the denial of Plaintiff's application for TAA benefits. Plaintiff asserts that he had no knowledge of these errors until the administrative record was filed in this matter and had no prior opportunity to correct these errors. As a result, Plaintiff wishes to supplement the record with a declaration stating his own firsthand knowledge of the contents of the conversation described in the record e-mail. In the alternative, Plaintiff wishes to strike from the record any references to the statement in the e-mail regarding Defendant's conversation with Mr. Anderson.

Defendant opposes Plaintiff's motion on the grounds that it is unsupported by any legal authority or precedent. Furthermore, Defendant contends that the administrative record is complete and sufficient for the court to determine whether Plaintiff qualifies for TAA cash benefits. Defendant argues that Plaintiff had not submitted documentation to verify his net fishing income and his technical service certification form in a timely manner and therefore Defendant denied his application for benefits. Accordingly, Defendant argues that since Plaintiff failed to provide this documentation, he may not now supplement the record.

IV
Applicable Legal Standard

This court has jurisdiction to affirm or remand the actions of the Secretary of Agriculture "in whole or in part." 19 U.S.C. § 2395(c) (2004). The Department of Agriculture's determination regarding certification of eligibility for TAA will be upheld if it is supported by substantial evidence and otherwise in accordance with law. 19 U.S.C. § 2395(b); *Former Employees of Swiss Indus. Abrasives v. United States*, 17 CIT 945, 947, 830 F. Supp. 637, 639 (1993). The scope of review of the agency's actions is limited to the administra-

tive record. *Defenders of Wildlife v. Hogarth*, 25 CIT 1309, 1315, 177 F. Supp. 2d 1336, 1343. In addition, the Administrative Procedures Act ("APA") provides that agency determinations shall be held invalid if they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A)(2004).

V
Discussion

A
Defendant's Determination that Plaintiff is Ineligible for TAA Benefits is Not Supported by Substantial Evidence on the Record

Plaintiff moves to supplement the record in this matter via a declaration to clarify certain allegedly erroneous statements in Defendant's notes in the administrative record. Plaintiff's Motion at 1. Plaintiff contends that a December 7, 2004, e-mail memorializing a telephone conversation between a U.S. Department of Agriculture ("USDA") employee and Mr. Anderson is hearsay. *Id.* at 2. Specifically, Plaintiff wants to challenge the statement that he " 'indicated that his wife faxed the information, then sort of backtracked and said he had the AD–1026 and CCC–502 completed and in his hands.' " *Id.* Plaintiff seeks to clarify the record to dispel the conclusion that he did not complete the requisite supporting paperwork and offer proof that he had sent the documents to the agency because he had copies of the documents which were supposedly missing from the administrative record. *Id.* Plaintiff seeks to file this motion out of necessity because Defendant is questioning his honesty and truthfulness on the record and wishes to ensure that the integrity of the proceeding is preserved. *Id.*

Defendant objects to Plaintiff's Motion on the grounds that the administrative record is complete and sufficient for the court to determine whether or not the Plaintiff's TAA application was properly reviewed and considered by the Department of Agriculture. Defendant's Opposition at 1–2. Defendant contends that Plaintiff was sent a deficiency letter and that his TAA application was placed on hold pending receipt of the supporting income documentation. *Id.* at 3. Defendant claims that the Plaintiff was notified of this deficiency, that he failed to submit the documents, and thus did not satisfy the requirements of 19 U.S.C. § 2401e(a)(1)(C) or 7 C.F.R. § 1580.301(e)(1) & (4). *Id.* at 5.

Defendant argues that supplementation of the record is only permissible when there is a reasonable basis to believe that the record is materially incomplete. Defendant's Opposition at 5–6. Defendant contends that the court does not have the power to supplement the record at this stage, but that it must remand the matter to the agency to develop the record further if it finds that the administra-

tive record is insufficient. *Id.* at 6 (citing *Florida Power and Light Co. v. Lorion et al.*, 470 U.S. 729, 744, 105 S. Ct. 1598, 84 L.Ed. 2d 643 (1985)). Defendant further claims that Plaintiff's assertions regarding the disputed e-mail are mischaracterizations. *Id.* at 7. Defendant asserts that the documents in question were not filed by Plaintiff initially, therefore there is no basis to re-open the record to admit them now. *Id.* at 7–8. Finally, Defendant argues that Plaintiff not only failed to submit the requisite documentation, he also failed to apprise Defendant about his address changes, and failed to contact Farm Service Agency ("FSA") to inquire about the status of his application. *Id.* at 11. For these reasons, Defendant asserts that Plaintiff's Motion should be denied.

The Department of Agriculture's discretion in conducting its investigations of TAA claims is prefaced by the existence of "a threshold requirement of reasonable inquiry" and investigations which fall below this "cannot constitute substantial evidence upon which a determination can be affirmed." *Former Employees of Sun Apparel of Texas v. United States Sec'y of Labor*, Slip Op. 04–106 at 15, 2004 Ct. Int'l Trade LEXIS 105 (August 20, 2004). In making its determination, the court must sustain Agriculture's decisions as long as it is "reasonable and supported by the record as a whole." *See Hyundai Elecs. Co. Ltd. v. United States*, 23 CIT 302, 306, 53 F. Supp. 2d 1334 (1999). Nevertheless, the court will not and "cannot uphold a determination based upon manifest inaccuracy or incompleteness of record when relevant to a determination of fact." *Former Employees of Pittsburgh Logistics Sys. Inc. v. United States Sec'y of Labor*, 2002 CIT 21, 32–33 (CIT 2003); *see also* 28 U.S.C. § 2640(c) (2004). If the court determines that Defendant did not meet the threshold requirement of a reasonable inquiry, it may, for good cause shown, remand the case to Agriculture to take further action. 19 U.S.C. § 2395(b). Good cause exists "if [Agriculture's] chosen methodology is so marred that [its] finding is arbitrary or of such a nature that it could not be based on substantial evidence." *Former Employees of Galey & Lord Indus. v. Chao*, 26 CIT 806, 809, 219 F. Supp. 2d 1283, 1286 (2002) (citing *Former Employees of Barry Callebaut v. United States*, 25 CIT 1226, 177 F. Supp. 2d 1304, 1308 (2001) (citing *Former Employees of Linden Apparel Corp. v. United States*, 13 CIT 467, 469, 715 F. Supp. 378 (1989) (quoting *United Glass & Ceramic Workers of North America, AFL-CIO v. Marshall*, 584 F. 2d 398, 405 (D.C. Cir. 1978)))).

In interpreting the TAA statute and accompanying regulations, the court has found that "it is evident that the law is and was intended to be remedial in nature . . . in the sense of providing assistance to displaced workers." *Former Employees of Champion Aviation Prods. v. Herman*, 23 CIT 349, 352 (1999). Because of the remedial nature of the legislation, "[t]he trade adjustment assistance [TAA] statutes . . . are to be construed broadly to effectuate their intended purpose." *Former Employees of Elec. Data Sys. Corp.*

v. United States, 350 F. Supp. 2d 1282, 1290 (internal quotations and citations omitted); *see also Former Employees of Champion Aviation Prods.*, 23 CIT at 352; *Gardner v. Brown*, 5 F.3d 1456, 1463 (Fed. Cir. 1993). The court has also held that strict "rigidity in implementation of the [TAA] statute would undermine the remedial nature of the Act," and is therefore "obliged to conduct [its] investigation with the utmost regard for the interests of the petitioning workers." *Former Employees of Elec. Data Sys.*, 350 F. Supp. 2d at 1290; *Former Employees of Oxford Auto. UAW Local 2088 v. United States Dep't of Labor*, Slip Op. 03–129 at 14, 2003 Ct. Int'l Trade LEXIS 128 (CIT 2003)).

In TAA cases, Agriculture bases its determination of eligibility on whether or not the applicant's net farm income declined between two comparable years. Here, Plaintiff was required to demonstrate whether his net farm income declined from 2001 to 2002 and to provide proof of any decline. Agriculture required certified information such as the Plaintiff's tax records and other supporting documentation in order to make its determination. Agriculture says it attempted to notify Plaintiff of the absence of critical documents in the record in a timely manner, but Plaintiff claims he did not receive this notification until the final decision was already made. Defendant's Opposition at 2; Declaration of Abram K. Anderson, dated June 27, 2005, at ¶ 9. Plaintiff wishes to clarify the record and ensure that his application is complete. For Agriculture to have properly examined and considered Plaintiff's application for benefits, Defendant must have on record the requisite supporting income documentation and training certification. *See* 19 U.S.C. § 2401e(a)(1)(C) and 7 C.F.R. §§ 1580.301(e)(4) & (6).

Defendant failed to meet the threshold of reasonable inquiry by not investigating the series of discrepancies in Mr. Anderson's application, not ensuring that Mr. Anderson was notified of the absence of critical information, and by ignoring his attempts to rectify these discrepancies during the administrative process. Declaration of Abram K. Anderson, dated June 27, 2005, at ¶¶ 5, 6, & 7. As a result, Agriculture's determination to deny Mr. Anderson's TAA benefits relied solely on the original TAA application with no evidence of any attempt at further investigation or analysis to substantiate Plaintiff's claim, and Agriculture did not meet the reasonable inquiry threshold.

Accordingly, this matter is remanded to Agriculture to (1) notify Plaintiff of any deficiencies in the record; (2) re-open the record and obtain all evidence reasonably necessary to ensure that its administrative record is complete and sufficient to make its determination of eligibility; and (3) make its determination based upon substantial evidence and consistent with 19 U.S.C. § 2401e(a)(1)(C) and 7 C.F.R. § 1580.301(e)(1) & (4).

V
Conclusion

For the reasons stated above, Plaintiff's Motion to Supplement the Record is denied and this matter is remanded to Agriculture for action consistent with this opinion.

Slip Op. 06–61

SANGO INTERNATIONAL L.P., Plaintiff, v. UNITED STATES, Defendant, WARD MANUFACTURING, INC., ANVIL INTERNATIONAL, INC., Defendant-Intervenors.

Before: Judith M. Barzilay, Judge
Court No. 05–00145

OPINION

[Plaintiff's motion for judgment on the agency record is denied.]

Dated: May 1, 2006

Baker & McKenzie LLP (*William D. Outman, II*), (*Stuart P. Seidel*), (*Kevin J. Sullivan*) for Plaintiff Sango International, L.P.

(*Patricia M. McCarthy*), Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; (*Kelly B. Blank*), Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice; (*David Samuel Silverbrand*) Commercial Litigation Branch, Civil Division, United States Department of Justice, *Peter D. Keisler*, Assistant Attorney General, Commercial Litigation Branch, Civil Division, United States Department of Justice; *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; *Kemba Eneas*, Attorney, Office of the Chief Counsel for Import Administration, United States Department of Commerce, of counsel, for Defendant.

Schagrin Associates (*Roger B. Schagrin*), (*Brian E. McGill*), (*Michael J. Brown*), for Defendant-Intervenors Ward Manufacturing, Inc., & Anvil International, Inc.

I. Introduction

This case concerns the scope of the antidumping duty order issued by the Department of Commerce ("Commerce" or "Department") on *Certain Malleable Iron Pipe Fittings, Cast, Other Than Grooved, from the People's Republic of China*. 68 Fed. Reg. 69,376 (Dec. 12, 2003) ("Order"). Pursuant to Rule 56.2 of the United States Court of International Trade, Plaintiff Sango International L.P. ("Sango") has moved for a judgment upon the agency record declaring that Commerce's scope ruling holding that gas meter swivels and gas meter nuts fall within the ambit of the Order is unsupported by substantial evidence on the record and otherwise is not in accordance with the law. *See Notice Final Scope Ruling* (Jan. 11, 2005) (Pl.'s App. 630–44)

("Scope Ruling"). For the reasons stated below, this court denies Plaintiff's motion for judgment on the agency record.

II. Procedural History

On December 12, 2003, Commerce issued an antidumping order imposing duties on "certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China" ("China" or "PRC"). *Order*, 68 Fed. Reg. 69,377. The Order described the covered products as

> certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS). Excluded from the scope of this order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from 1/2 inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the scope of this proceeding is dispositive.

Id.[1] Pursuant to 19 C.F.R. § 351.225(c)(1), on July 28, 2004, Nitek Electronics, Inc., an importer of gas meter swivels and gas meter nuts, and Sango, an United States manufacturer which insulates imported gas meter swivels, applied to Commerce for a scope ruling that would exclude gas meter swivels and nuts from the Order. *See Application Scope Ruling Meter Swivels & Meter Nuts* (Pl.'s App. 1–12). On August 10, 2004, Defendant-Intervenors Ward Manufacturing, Inc. ("Ward"), and Anvil International, Inc. ("Anvil"),[2] submitted comments to Commerce contending that gas meter swivels and nuts fall within the Order because they are "malleable iron pipe

---

[1] The language describing the scope of the antidumping investigation remained identical from the investigation's initiation, through the preliminary and final determinations, to the antidumping order, except that the investigation notice had yet to exclude metal compression couplings from the scope. *See Notice of Initiation of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 67 Fed. Reg. 70,579, 70,579 (Dep't Commerce Nov. 25, 2002); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 Fed. Reg. 33,911, 33,913 (Dep't Commerce June 6, 2003); *Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 Fed. Reg. 61,395, 61,397 (Dep't Commerce Oct. 28, 2003); *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 Fed. Reg. 65,873, 65,873 (Dep't Commerce Nov. 24, 2003).

[2] Defendant-Intervenors were petitioners in Commerce's original antidumping investigation.

fittings which are cast and that are not grooved fittings and are not compression fittings." *Ward Resp. Application Scope Ruling* (Def.'s App. Tab 1, at 1).

Commerce began a formal scope inquiry on September 13, 2004, in accordance with 19 C.F.R. § 351.225(e), as it was "unable to determine conclusively that meter swivels and meter nuts are pipe fittings and are treated as such within the industry." *Scope Inquiry Initiation* (Pl.'s App. 289–90). As interested parties, Anvil and Ward respectively submitted briefs on whether meter swivels and nuts lie within the scope of the Order on October 4, 2004, and October 14, 2004. On October 18, 2004, Commerce notified Ward that it had submitted these filings without the certifications mandated by 19 C.F.R. § 351.303(g), forcing the Department to reject them. The Department, however, gave Ward a one-day extension to resubmit its briefs, which Ward promptly did. *See Commerce Deficiency Letter* (Def.-Intervenors' App. Tab 4); Ward Case Br. (Oct. 19, 2004) (Def.-Intervenors' App. Tab 5); Ward Rebuttal Br. (Oct. 19, 2004) (Def.-Intervenors' App. Tab 5).

In its investigation, Commerce analyzed the Order, the petition, the initial investigation, determinations of the United States International Trade Commission ("ITC"), and the determinations of the Secretary of Commerce to determine whether these sources proved dispositive as to whether gas meter swivels and nuts fall within the Order's scope. *See* 19 C.F.R. § 351.225(k)(1). Commerce found these sources dispositive and issued the Scope Ruling on January 11, 2005, finding that gas meter swivels and gas meter nuts fall within the scope of the Order. *See Scope Ruling* at 12–14. Specifically, it determined that:

> First, these products are manufactured from malleable iron using a casting process in the PRC. Second, these products are indisputably "fittings;" they are "pipe fittings" because they are parts of a piping system, they direct the flow of the gas through a piping system, and can be, although are not always, connected to other pipe fittings or pipes. Finally, they are neither grooved fittings nor compression couplings, both of which are specifically excluded.

Id. at 12. Sango then brought this action to contest the Scope Ruling.

Plaintiff Sango sets forth three contentions in its motion for judgment on the agency record. First, it maintains that it was clear error for Commerce to grant Defendant-Intervenors extensions to refile their case and rebuttal briefs after discovering that the initial submissions lacked administratively-mandated certifications. Consequently, Sango avers that these submissions should not constitute a part of the agency record. Second, Sango claims that gas meter swiv-

els and gas meter nuts lie unambiguously outside the scope of the Order, "as evidenced by the language of the Order, the facts of the record and other administrative determinations," rendering Commerce's Scope Ruling unsupported by substantial evidence and otherwise not in accordance with the law. Pl.'s Mot. J. A.R. 2. Finally, Sango believes the court should deem Commerce's Scope Ruling invalid because the Department failed to consider the so-called *Diversified Products* criteria[3] enumerated in 19 C.F.R. § 351.225(k)(2).

III. Discussion

A. Preliminary Issues: Defendant-Intervenors' Submission Extension

Sango asserts that the Department erred by granting Anvil and Ward a one-day extension to re-file their case brief and rebuttal case brief, which lacked certifications required by 19 C.F.R. § 351.303(g), and that the briefs therefore should not become part of the record. *See* Mem. Supp. Pl.'s Mot. J. A.R. 35. Plaintiff's argument is without merit. Only with a demonstration of "substantial prejudice" can Sango challenge Commerce's decision to provide Defendant-Intervenors with a one-day extension to resubmit their documents. *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970) (citation omitted); *see* 5 U.S.C. § 706 (1966) ("due account shall be taken of the rule of prejudicial error" in reviewing agency action); *Intercargo Ins. Co. v. United States*, 83 F.3d 391, 394–95 (Fed. Cir. 1996). The Supreme Court has long upheld "the general principle that (i)t [sic] is always within the discretion of . . . an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it." *Am. Farm Lines*, 397 U.S. at 539 (quotations & citation omitted). Further, Commerce's own regulations state that "[u]nless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established" within the antidumping and countervailing duties regulations. 19 C.F.R. § 351.302(b).[4] Plaintiff makes no assertion that substantial prejudice to its case arose from the Department's decision. Therefore, its claim must fail.

---

[3] These factors receive their name from *Diversified Prods. Corp. v. United States*, 6 CIT 155, 572 F. Supp. 883 (1983), in which this Court first outlined them prior to their regulatory codification. These descriptive elements encompass: "(i) The physical characteristics of the product; (ii) The expectations of the ultimate purchasers; (iii) The ultimate use of the product; (iv) The channels of trade in which the product is sold; and (v) The manner in which the product is advertised and displayed." 19 C.F.R. § 351.225(k)(2).

[4] The court assumes that such consideration is given equally to submissions of both petitioners and respondents.

B. The Scope Ruling

1. Standard of Review

In reviewing a Commerce antidumping order scope determination, this court upholds the Department's conclusion unless the court finds it "unsupported by substantial evidence or otherwise not in accordance with law." *Steel Auth. of India, Ltd. v. United States*, 25 CIT 482, 485, 149 F. Supp. 2d. 921, 926 (2001) (quoting 19 U.S.C. § 1516a(b)(1)(B) (1994)) (quotations omitted); *see* 19 U.S.C. § 1516a(b)(1)(B)(i) (1996); *Nippon Steel Corp., NKK v. United States*, 219 F.3d 1348, 1355 (Fed. Cir. 2000). In this context, "substantial evidence" denotes "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 619–20 (1966) (quoting *Consol. Edison Co. of N.Y. v. NLRB*, 305 U.S. 197, 229 (1938)) (quotations omitted). Crucially, "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Id.* at 620 (citation omitted). Similarly, a scope determination is not in accordance with law "if it changes the scope of an order or interprets an order in a manner contrary to the order's terms." *Allegheny Bradford Corp. v. United States*, 28 CIT ___ , ___ , 342 F. Supp. 2d 1172, 1183 (2004). "Scope orders may be interpreted as including subject merchandise only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it." *Id.* at 1184 n.6 (quoting *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1089 (Fed. Cir. 2002)) (quotations omitted).

The first step in evaluating whether Commerce properly placed gas meter swivels and nuts within the scope of the Order requires the court to examine "the antidumping petition, the factual findings and legal conclusions adduced from the administrative investigations, and the preliminary order." *Duferco Steel*, 296 F.3d at 1097 (quoting *Smith Corona Corp. v. United States*, 915 F.2d 683, 685 (Fed. Cir. 1990)) (quotations omitted); *see Tak Fat Trading Co. v. United States*, 396 F.3d 1378, 1382 (Fed. Cir. 2005); 19 C.F.R. § 351.225(k). Among these sources, the language of the order receives the greatest weight. *See Tak Fat Trading*, 396 F.3d at 1382; *Duferco Steel*, 296 F.3d at 1097. If these materials do not prove dispositive, the court then turns to the *Diversified Products* criteria outlined in 19 C.F.R. § 351.225(k)(2) to make its determination. *See Tak Fat Trading*, 396 F.3d at 1382; *Allegheny Bradford*, 342 F. Supp. 2d at 1183; 19 C.F.R. § 351.225(k).

2. The 19 C.F.R. § 351.225(k)(1) Factors

As noted earlier, Commerce's Order defined the Order's scope as encompassing

> certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS). Excluded from the scope of this order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from 1/2 inch to 2 inches and are carried only in galvanized finish.

Order, 68 Fed. Reg. at 69,376. Likewise, throughout the antidumping proceedings, Commerce used almost identical language to describe the scope. *See supra* n.1. The antidumping petition and related ITC documents employed the same terminology as well. *See* Anvil & Ward, *Malleable Iron Pipe Fittings from China: Antidumping Duty Petition* 4 (Oct. 30, 2002) (describing requested investigatory scope as in Order, though lacking metal compression coupling exception) ("Petition"); *Malleable Iron Pipe Fittings from China*, ITC Publ'n No. 3649, Investigation No. 731–TA–1021 (Final), at 5 (Dec. 2003) ("ITC, 3649 ").

The ITC publications and administrative documents regarding the antidumping investigation flesh out the meaning of the Order's text. According to the ITC,

> [p]ipe fittings generally are used for connecting the bores of two or more pipes or tubes, connecting a pipe to some other apparatus, changing the direction of fluid flow, or closing the pipe. The material from which MCIPF [malleable cast iron pipe fittings] are made, cast iron, is a general term for alloys composed primarily of iron, carbon (greater than two percent) and silicon.

Malleable Iron Pipe Fittings from China: Determination and Views of the Commission, ITC Publ'n No. 3568, Investigation No. 731–TA–1021 (Preliminary), at 5 (Dec. 2002) (footnote omitted) ("ITC, 3568 "); *see* ITC, 3649 at 3; *see also Petition* at 5 ("Malleable pipe fittings are *normally* . . . attached to pipe by screwing.") (emphasis added); Anvil& Ward, *Amendment to the Petition for the Imposition of Antidumping Duties: Malleable Iron Pipe Fittings from China*, at 4 (Nov. 12, 2002) (same) ("Pet. Am."). Further, pipe fittings are threaded, "normally" to the American National Standards Institute (ANSI) B1.20.1 specification. *Pet. Am.* at 3; *Petition* at 4; *see* ITC, 3568 at 6.[5]

---

[5] Union nuts, which are undisputably covered by the Order, are threaded to a different ANSI specification, B16.39. Def.-Intervenors' Mem. P. & A. Opp'n Mot. Sango J. A.R. 12 n.7.

3. Plaintiff's Argument

Sango believes that "the discussion of the class or kind of merchandise contained in the Order unambiguously excludes" gas meter swivels and gas meter nuts from this rubric and that therefore "the Department's Scope Ruling to the contrary is not supported by substantial evidence nor is it otherwise in accordance with the law." Mem. Supp. Pl.'s Mot. J. A.R. 2. It bases this claim on the specialized nature of the products. A meter swivel can connect only with a gas meter on one end and a pipe fitting on the other,[6] while a "pipe 'fitting' is *almost always* physically threaded onto one end of a length of pipe and is the means whereby the pipe is joined to (i) another length of pipe; (ii) a gas meter bar or (iii) a gas meter swivel." Mem. Supp. Pl.'s Mot. J. A.R. 9 (emphasis added). In essence, because neither gas meter swivels nor nuts can attach to a length of pipe,[7] they cannot qualify as pipe fittings. *See* Mem. Supp. Pl.'s Mot. J. A.R. 10, 16, 19; Pl.'s Reply 2, 4. In a parallel line of reasoning, Plaintiff claims that gas meters and swivels constitute different articles of commerce than pipe fittings and, therefore, cannot fall within the scope of the Order. *See* Mem. Supp. Pl.'s Mot. J. A.R. 9.

4. Analysis

Despite Sango's protests to the contrary, gas meter nuts and swivels possess the characteristics of pipe fittings outlined in the Order and thus fall within its scope. As Plaintiff concedes, the products are cast, made of malleable iron, manufactured in the PRC, and do not fall within the express exceptions within the Order. *See* Pl.'s App. 610. Likewise, the swivel-nut unit[8] connects to a gas meter and links this apparatus to a piping system via a less specialized pipe fitting to manipulate the flow of the gas. *See* Pl.'s Br. 10; *see, e.g.*, Pl.'s App. 369, 374. Although the swivel may not directly touch a pipe, there is nothing in the record of this case to require that pipe fittings must directly connect to a pipe to be considered pipe fittings. Further, swivels are threaded according to the ANSI B1.20.1 specification characteristic of all pipe fittings. Even Sango's brief notes that pipe fittings "almost always" connect to a pipe on one end; sometimes they do not. Mem. Supp. Pl.'s Mot. J. A.R. 9. Finally, Sango's conten-

---

[6] A gas meter nut is secured to a meter swivel to attach the latter to a gas meter. *See* Mem. Supp. Pl.'s Mot. J. A.R. 16, 17.

[7] Whether a swivel can connect directly to a pipe remains contentious. In contrast to Sango, Commerce insists that "[m]eter swivels and nuts can be physically connected to a pipe." Def.'s Mem. Opp'n Pl.'s Mot. J. A.R. 10 (quoting *Scope Ruling* at 12) (quotations omitted); *see* Def.-Intervenors' Mem. P. & A. Opp'n Mot. Sango J. A.R. 12.

[8] Since a gas meter swivel and nut must bind with each other to function, the court will treat them as one unit for this discussion, just as it would, for example, a pipe fitting union comprised of three pieces screwed together. *Cf.* Def.-Intervenors' Mem. P. & A. Opp'n Mot. Sango J. A.R. 12 & n.7.

tion that gas meters and swivels are separate articles of commerce from pipe fittings fails since the Order does not address this issue when outlining its scope. Together, these facts, read in light of the Order's language, reasonably provide adequate evidence to place gas meter swivels and gas meter nuts within the scope of the Order.[9] Consequently, this court must uphold the Department of Commerce's Scope Ruling as supported by substantial evidence and in accordance with law.[10]

IV. Conclusion

For the reasons stated above, Sango's motion for judgment on the agency record is DENIED.

Slip Op. 06–62

FORMER EMPLOYEES OF COMPUTER SCIENCES CORPORATION, Plaintiffs, v. UNITED STATES SECRETARY OF LABOR, Defendant.

BEFORE: SENIOR JUDGE NICHOLAS TSOUCALAS
Court No. 04–00149

JUDGMENT

On September 22, 2003, a petition for trade adjustment assistance ("TAA") was filed on behalf of the Former Employees of Computer Sciences Corporation ("Plaintiffs"). On October 24, 2003, the United States Department of Labor ("Labor") denied Plaintiffs' petition. *See Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance*, TA–W–53,209 (Dep't Labor Oct. 24, 2003) *published at* 68 Fed. Reg. 66,878 (Dep't Labor Nov. 28, 2003). Labor determined that Plaintiffs did not produce an article within the meaning of Section 222 of the Trade Act of 1974,as amended 19

---

[9] Sango's argument that the HTSUS classification headings invoked in the Order and other administrative materials preclude the inclusion of gas meter swivels and nuts within the scope is groundless. *See* Mem. Supp. Pl.'s Mot J. A.R. 11, 21–27. The Order itself states that "[a]lthough HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the Department's written description of the scope of this proceeding is dispositive." *Order*, 68 Fed. Reg. at 69,376; *see Tak Fat Trading Co.*, 396 F.3d at 1383.

[10] Because the court finds that the language of the antidumping petition, administrative factual findings and legal conclusions, and the preliminary antidumping order dispositively places gas meter swivels and gas meter nuts within the scope of the antidumping order, it holds that the Department did not err by not examining the *Diversified Products* factors in 19 C.F.R. § 351.225(k)(2), and the court also need not address these criteria. *See Tak Fat Trading*, 396 F.3d at 1382; *Allegheny Bradford*, 342 F. Supp. 2d at 1183; 19 C.F.R. § 351.225(k).

U.S.C. § 2272 (West Supp. 2004) (the " Trade Act"). Plaintiffs challenged Labor's determination on November 24, 2003. Labor again denied Plaintiffs' request for certification. *See Notice of Negative Determination on Reconsideration for Computer Sciences Corporation, Financial Services Group ("FSG"), East Hartford, Connecticut,* (Dep't Labor Feb. 3, 2004) *published at* 69 Fed. Reg. 8,488 (Dep't Labor Feb. 24, 2004). Labor found that although the Plaintiffs produced software, they were nonetheless ineligible to apply for TAA benefits since Computer Sciences Corporation ("CSC") neither shifted software production abroad nor imported software directly competitive with that produced at the subject facility.

On March 15, 2004, Plaintiffs sought judicial review and filed a letter with the Court which the Clerk of the Court deemed as the filing of a summons and complaint. On May 28, 2004, Labor filed a consent motion for voluntary remand indicating that it would further investigate conflicting information in the record. The Court granted this motion on June 2, 2004. Labor again denied Plaintiffs' eligibility for TAA benefits in its *Notice of Negative Determination on Reconsideration on Remand for Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut,* (Dep't Labor July 29, 2004) *published at* 69 Fed. Reg. 48,526 (Dep't Labor Aug. 10, 2004). On remand, Labor determined that all storing and copying functions remained in the United States, packing functions did not shift to India and CSC did not import software directly competitive with that produced at the subject facility. On April 14, 2005, the Court remanded the matter to Labor with instructions to investigate whether Plaintiffs produced code and if they did, whether the production of code shifted to India. On its second remand, Labor again determined that Plaintiffs were not eligible for TAA certification because Plaintiffs do not produce an article under the Trade Act. *See Notice of Negative Determination on Remand for Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut,* (Dep't Labor Aug. 24, 2005) *published at* 70 Fed. Reg. 52,129, 52,130 (Dep't Labor Sept. 1, 2005). On January 27, 2006, the Court again remanded while instructing Labor to adequately explain its conclusion as to why software code is not an article under the Trade Act. On March 24, 2006, Labor filed its *Notice of Revised Determination on Remand* ("*Remand Determination*"), TA–W–53,209 (Dep't Labor March 2006) *published at* 71 Fed. Reg. 18355 (Dep't Labor Apr. 11, 2006).

In its *Remand Determination*, Labor determined that Plaintiffs produced an intangible article (financial software) that would have been considered an article if it was embodied in a physical medium. As such, "[s]oftware and similar intangible goods that would have been considered articles for the purposes of the Trade Act if embodied in a physical medium will now be considered articles regardless of their method of transfer." *Remand Determination*, 71 Fed. Reg. at

18355. Labor further determined that as a result of CSC shifting production of software abroad and an increase in imports of software like or directly competitive with that produced at the subject facility, employment at the subject facility declined. Labor therefore certified Plaintiffs as being eligible for TAA benefits.

Upon consideration of Labor's *Remand Determination*, Plaintiff's Comments, and other papers and proceedings filed herein; it is hereby

ORDERED that Labor's decision to certify Plaintiffs as eligible to receive TAA benefits is supported by substantial evidence and is otherwise in accordance with law; and it is further

ORDERED that Labor's *Remand Determination* filed on March 24, 2006, is affirmed; and it is further

ORDERED that this case is dismissed.

Slip Op. 06–63

JOHN LUU, *Plaintiff*, v. U.S. SECRETARY OF AGRICULTURE, *Defendant*.

Court No. 05–00430

[Action challenging denial of Agricultural Trade Adjustment Assistance dismissed for want of prosecution.]

Decided: May 2, 2006

John Luu, Plaintiff *Pro Se*.

Peter D. Keisler, Assistant Attorney General; *David M. Cohen*, Director, and *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Delfa Castillo*); *Jeffrey Kahn*, Office of the General Counsel, U.S. Department of Agriculture, Of Counsel; for Defendant.

MEMORANDUM OPINION

RIDGWAY, Judge:

Plaintiff shrimper brought this action against the U.S. Department of Agriculture to challenge the agency's denial of his application for benefits under the Trade Adjustment Assistance ("TAA") for Farmers program. The matter is before the Court following Plaintiff's failure to respond to an Order to Show Cause why the action should not be dismissed. Jurisdiction lies under 19 U.S.C. § 2395(c) (Supp. II 2002).

Based on Plaintiff's failure to respond to the Order to Show Cause, and in light of the chronology of events in the case to date (detailed more fully below), the Court has little choice but to dismiss this action.

I. *Analysis*

Plaintiff, a shrimper from Georgia, filed this action in mid-July 2005 contesting the decision of the Department of Agriculture denying his TAA application for the year 2003. Plaintiff candidly conceded that his fishing income for 2003 exceeded his fishing income for 2001. But, according to Plaintiff, his income for 2001 was artificially low due to extensive repairs to both the boat's engine and the shrimping boat itself during the course of that year. Plaintiff contended that his application for TAA should therefore be granted. *See* Letter from Plaintiff to Court (undated, filed July 13, 2005); *see also* Letter from U.S. Dep't of Agriculture to Plaintiff (June 21, 2005) (denying TAA application because Plaintiff's "2003 net fishing income was not lower than [his] 2001 net fishing income").[1]

Within a matter of mere days after the action was commenced, the Office of the Clerk of the Court wrote to Plaintiff, encouraging him to retain a lawyer to represent him, and explaining the procedure for seeking court-appointed counsel if (like many TAA applicants) he is a man of limited financial means. *See* Letter from Office of the Clerk to Plaintiff (July 21, 2005). Unfortunately, no response was forthcoming.

The Government filed its Answer in late September 2005, and the case was assigned to these chambers on October 18, 2005. Later that day, one of the Court's law clerks called Plaintiff to verify his contact information, which Plaintiff confirmed. In the same phone conversation, Plaintiff also confirmed that he had received the July 21, 2005 letter from the Office of the Clerk. Plaintiff has not been heard from since.

The following day, the Court wrote to Plaintiff, asking him to advise no later than November 28, 2005 whether he had engaged counsel, planned to represent himself, or wished to request court-appointed counsel to represent him free of charge. The necessary forms for seeking court-appointed counsel were enclosed, for Plaintiff's convenience. *See* Letter from Court to Plaintiff (Oct. 19, 2005). The November 28 deadline came and went. Still, Plaintiff failed to respond.

Notwithstanding Plaintiff's default, the Office of the Clerk called Plaintiff, at the request of the Court, on at least seven different occasions in the weeks that followed – twice on December 13, 2005; twice on December 14, 2005; once on December 15, 2005; once on December 16, 2005; and once on December 19, 2005. Calls were placed to Plaintiff's main phone number, as well as his mobile phone; and messages were left on both numbers. But Plaintiff never returned those calls.

---

[1] *See* Administrative Record at 52.

Further, on December 14, 2005, the Office of the Clerk left a message with an individual who answered Plaintiff's main phone number, explaining that the Court wished to assist Plaintiff in obtaining counsel to represent him in his court case on a *pro bono* basis. Although the message left by the Office of the Clerk asked Plaintiff to return the call, Plaintiff did not do so.

Undeterred, the Court wrote to Plaintiff yet again on January 5, 2006, documenting the chronology of phone calls and correspondence from the Court to Plaintiff, and outlining Plaintiff's options – either to voluntarily dismiss the action, or to actively prosecute it (and, if he wished to proceed, inquiring whether he intended to represent himself, to retain counsel, or to seek court-appointed counsel). Copies of the forms to request appointment of counsel were once again enclosed, for the sake of convenience. Although he was directed to respond no later than January 20, 2006, Plaintiff never did so.

By letter dated February 21, 2006, the Court instructed Plaintiff to advise no later than March 3, 2006 whether he wished to continue to pursue this action. Enclosed with that letter were both the necessary forms for seeking appointment of counsel and a standard form Stipulation of Dismissal. Plaintiff also was warned that, absent a timely response to the Court's letter, an Order to Show Cause would issue.

More than a month after the March 3 deadline, Plaintiff still had not responded to any of the Court's numerous calls and letters. Accordingly, on April 7, 2006, the Court entered an Order to Show Cause, chronicling the Court's repeated, unsuccessful attempts to engage Plaintiff, and mandating that – no later than April 28, 2006 – Plaintiff "show cause, if any, why this action should not be dismissed for lack of prosecution." *See* Order to Show Cause (April 7, 2006). The same day, the Court sent a letter to Plaintiff, explaining that he had one "last chance to avoid the dismissal of [his] court case." The letter further urged Plaintiff to contact the Court's law clerk if he had any questions "about what he need[ed] to do" to proceed with his case. Alas, Plaintiff's continued silence is deafening.

Pursuant to Rule 41(b)(3) of the Rules of this Court:

> Whenever it appears that there is a failure of the plaintiff to prosecute, the court may upon its own initiative after notice . . . order the action . . . dismissed for lack of prosecution.

USCIT Rule 41(b)(3). With the exception of a single brief phone conversation in mid-October 2005 (which was, in any event, initiated by the Court), Plaintiff here has consistently failed to respond to the Court's numerous letters and phone calls over the course of the nine-month history of the case.

Under the circumstances, there is nothing left to do but to dismiss this action for lack of prosecution, in accordance with the above-quoted Rule. *See, e.g.*, *Ebert v. U.S. Sec'y of Agriculture*, 30 CIT ___ ,

2006 WL 871263 (2006); *Grunert v. U.S. Sec'y of Agriculture*, 30 CIT ___ , 2006 WL 217989, *dismissed for lack of prosecution*, 30 CIT ___ , 2006 WL 626070 (2006); *M/V Cheri H. Inc. v. U.S. Sec'y of Agriculture*, 29 CIT ___ , 400 F. Supp. 2d 1382 (2005); *Burton v. U.S. Sec'y of Agriculture*, 29 CIT ___ , 2005 WL 2249859 (2005).

II. *Conclusion*

For all the reasons set forth above, this action challenging the U.S. Department of Agriculture's decision denying Plaintiff's application for Trade Adjustment Assistance must be dismissed for want of prosecution. Judgment will enter accordingly.