DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,949]

Western Digital Technologies, Inc.: Hard Drive Development Engineering Group Irvine (Formerly at Lake Forest), CA; Notice of Negative Determination on Remand

On May 26, 2011, 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 Western Digital Technologies, Inc.* v. *United States Secretary of Labor* (Court No. 11–00085).

On November 25, 2009, former workers of Western Digital Technologies, Inc., Hard Drive Development Engineering Group, Lake Forest, California (subject firm) filed a petition for Trade Adjustment Assistance (TAA) on behalf of workers at the subject firm. AR 1. Workers at the subject firm (subject worker group) are engaged in engineering functions for the development of hard disk drives.

The initial investigation revealed that the subject firm had not shifted abroad services like or directly competitive with those provided by the subject worker group, had not acquired such services from abroad, and there had not been an increase in imports of articles like or directly competitive with those produced or services supplied by the subject firm. AR 72–77. Additionally, with respect to Section 222(c) of the Act, the initial investigation revealed that the subject firm could not be considered a Supplier or Downstream Producer to a firm that employed a TAA-certified worker group. AR 72–77. On August 5, 2010, the Department of Labor (Department) issued a Negative Determination regarding eligibility to apply for TAA applicable to workers and former workers of the subject firm. The Department's Notice of negative determination was published in the **Federal Register** on August 23, 2010 (75 FR 51849). AR 82.

By application dated September 14, 2010, the petitioning workers requested administrative reconsideration of the Department's negative determination. AR 83. In the request, the petitioners alleged that increased imports of articles that were produced using the services supplied by the subject worker group contributed importantly to worker separations at the subject firm. AR 83.

To investigate the petitioners' claim, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration on October 7, 2010. AR 84. The Department's Notice of Affirmative Determination was published in the **Federal Register** on October 25, 2010 (75 FR 65517). AR 286.

During the reconsideration investigation, the Department obtained information from the subject firm regarding the petitioners' claims and collected data from the U.S. International Trade Commission regarding imports of articles like or directly competitive with those produced using the services supplied by the subject worker group. AR 89–125, 126, 127.

Based on the findings of the reconsideration investigation, the Department concluded that worker separations at the subject firm were not caused by a shift in services abroad or increased imports of services like or directly competitive with those provided by the subject worker group. AR 89–125. Further, the reconsideration investigation revealed that the subject firm did not import articles like or directly competitive with those produced directly using services supplied by the subject worker group (AR 89–125) and U.S. aggregate imports of articles like or directly competitive with hard disk drives declined in the relevant time period. AR 126, 134–136, 137, 141–142, 143–145. Consequently, the Department issued a Notice of Negative Determination on Reconsideration on February 4, 2011. AR 129–130. The Department's Notice of determination was published in the **Federal Register**, on February 24, 2011 (75 FR 10403). AR 287.

In the complaint filed with the USCIT on April 11, 2011, the Plaintiffs claimed that their separations were directly caused by the subject firm's foreign operations and increased imports of hard disk drives and provided information in support of these claims. The Plaintiffs stated that the subject firm trained foreign engineers at the Lake Forest, California facility, who then returned to their respective countries to perform the same services as the Plaintiffs and provided a list of job announcements for engineers posted by the subject firm in Malaysia at the same time as the domestic layoffs. Additionally, the Plaintiffs provided import statistics pertaining to hard disk drives, specifically pointing to increased imports of these articles from Malaysia.

In a letter submitted to the Department on June 13, 2011, the Plaintiffs provided additional information surrounding the layoffs of the workers, including supporting information relating to the allegations made in the complaint to the USCIT. 154–182. The Plaintiffs provided a list of several engineering positions and functions that shifted to Asia from the Lake Forest, California facility and included statements on how engineering functions were transferred abroad, presenting details regarding the training of foreign workers who returned overseas to perform the same functions as the Plaintiffs. AR 154–182.

The intent of the Department is for a certification to cover all workers of a subject firm, or appropriate subdivision, who were adversely affected by increased imports of articles produced or services supplied by the firm or shifts in production or services, based on facts obtained during the investigation of the TAA petition. Therefore, the Department requested voluntary remand to address the allegations made by the Plaintiffs, to determine whether the subject worker group is eligible to apply for TAA under the Trade Act of 1974, as amended (hereafter referred to as the Act), and to issue an appropriate determination.

The group eligibility requirements for workers of a Firm under Section 222(a) of the Act, 19 U.S.C. 2272(a), can be satisfied if the following criteria are met:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) The sales or production, or both, of such firm have decreased absolutely;

(ii)(I) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(II) Imports of articles like or directly competitive with articles—

(aa) Into which one or more component parts produced by such firm are directly incorporated, or

(bb) Which are produced directly using services supplied by such firm, have increased; or

(III) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased; and

(iii) The increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

(B)(i)(I) There has been a shift by such workers' firm to a foreign country in the production of articles or the supply of services like or directly competitive with articles which are produced or services which are supplied by such firm; or

(II) Such workers' firm has acquired from a foreign country articles or services that are

like or directly competitive with articles which are produced or services which are supplied by such firm; and

(ii) The shift described in clause (i)(I) or the acquisition of articles or services described in clause (i)(II) contributed importantly to such workers' separation or threat of separation.

During the remand investigation, the Department confirmed all previously collected information, obtained additional information from the subject firm regarding domestic and foreign operations, solicited input from the Plaintiffs, and addressed all of the Plaintiffs' allegations. At the time of the remand investigation, the subject firm was in the process of transferring the corporate headquarters facility from Lake Forest, California to Irvine, California. AR 213.

The information the Department received on remand contained more detail regarding the operations of the subject firm domestically and abroad. In order to determine whether there was a shift abroad of the engineering services provided by the subject worker group, the Department had to first determine whether the subject firm employs engineers at its facilities in Asia that supply engineering services like or directly competitive with those supplied by the subject worker group at the Lake Forest, California facility.

The investigation revealed that the business model of the subject firm is to develop new products domestically and carry out the manufacturing at its facilities overseas. AR 152, 212–218, 228–231, 244, 245–246, 271–279. After the design and development of the products is provided by the subject worker group, the production takes place at the foreign facilities, a process that the subject firm did not change during the relevant time period for the investigation of this petition. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

Although the Plaintiffs declare that the subject firm shifted out of the country engineering services like or directly competitive with those provided by the subject worker group (AR 154–182), based upon the data collected during the remand investigation, the Department determines that engineers employed at foreign facilities of the subject firm and the engineers employed by the subject firm domestically do not perform like or directly competitive functions. AR 152, 212–218, 228–231, 244, 245–246, 271–279. Because of the stage of production at which the functions are performed, the work performed by the engineers domestically and the engineers abroad is not interchangeable. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

The findings confirmed that the workers were not impacted by a shift in services or foreign acquisition of services as the work supplied by the worker group abroad cannot be interchanged with the work provided by the domestic engineers. AR 152, 212–218, 228–231, 244, 245–246, 271–279. According to the subject firm, the engineering work performed abroad not only requires the engineers to be present at the manufacturing location, but is also different and less complex than the development work performed by the domestic engineers. AR 152, 212–218, 228–231, 244, 245–246, 271–279. Therefore, the Department determines that the work performed overseas did not contribute importantly to worker separations domestically because the services are not like or directly competitive.

Regarding the Plaintiffs' allegation that the subject firm brought foreign workers to be trained at the Lake Forest, California facility, the subject firm asserted that the firm's business model calls for the development of products domestically and for manufacturing at foreign facilities. AR 152, 212–218, 228–231, 244, 245–246, 271–279. However, the firm states that the foreign engineers still must be knowledgeable about the new products in order to carry out their work, so foreign engineers visit the United States to train on the new products to oversee the production at the manufacturing facilities. Consequently, the training of foreign workers in the U.S. does not show that the roles of the domestic and engineers abroad are interchangeable. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

The Plaintiffs submitted a list of job announcements posted by the subject firm in Malaysia. AR 154–182. The subject firm maintains that at the time of the domestic reduction in force in late 2008 and early 2009, hiring efforts on a global level were suspended. AR 208–218. The Department collected employment numbers of engineers at Lake Forest, California, Malaysia, and Thailand. AR 271–285. The numbers revealed that employment of engineers decreased from December 2008 to June 2009, but started to increase at all three locations in late 2009. AR 241, 242, 243, 271–285. Nonetheless, the Department does not consider the services of the domestic engineers like or directly competitive with those provided by the engineers at the production facilities overseas. Therefore, the employment levels in these groups are not pertinent to the outcome of the investigation.

Plaintiffs also alleged that increased imports of hard disk drives contributed to worker separations. AR 154–182. Aggregate U.S. imports of hard disk drives or articles like or directly competitive declined in period under investigation. Nonetheless, the Department determined that increased imports of articles could not have contributed to worker separations because the subject firm develops hard disk drives domestically and manufactures them at the facilities in Asia. Therefore, an increase in imports of articles could not have contributed to a decline in the engineering services supplied by the subject worker group.

For Section 222(a)(A)(ii)(II)(bb) of the Act to be met, imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, must have increased. Because the subject firm does not produce articles like or directly competitive with hard disk drives domestically, this criterion is not met.

Based on a careful review of previously submitted information and new information obtained during the remand investigation, the Department reaffirms that the petitioning workers have not met the eligibility criteria of Section 222(a) of the Trade Act of 1974, as amended.

Conclusion

After careful reconsideration of the administrative record, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance applicable to workers and former workers of Western Digital Technologies, Inc., Hard Drive Development Engineering Group, Irvine (formerly at Lake Forest), California.

Signed at Washington, DC, this 23rd day of September 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

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U.S. DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,152]

CompONE Services, LTD, Ithaca, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application received September 6, 2011, a worker requested administrative reconsideration of the negative