

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA-W-60,542; GreatBatch Hittman, Inc., Columbia, MD.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA-W-59,863; Delphi Corporation, Automotive Holdings Group, Moraine, OH.*

*TA-W-60,399; Customized*

*Manufacturing, Inc., McKenzie, TN.*

*TA-W-60,454; Forest City Technologies, Wixom Division, Wixom, MI.*

*TA-W-60,508; Enhanced Presentations, Inc., Wilmington, NC.*

*TA-W-60,464; Key Technology, Inc., Medford Office Division, Medford, OR.*

*TA-W-60,480; Emcor Facilities Services, Inc., On-Site Contracted Workers at Hewlett-Packard Co., Corvallis, OR.*

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C.) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

*None.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA-W-60,507; Washington Mutual Bank, Florence, SC.*

*TA-W-60,517; CDI Corporation, IT Solutions Division, Lexington, KY.*

*TA-W-60,567; Accordis, Inc., Chicago Service Center, A Subsidiary of Zavata, Chicago, IL.*

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

*None.*

I hereby certify that the aforementioned determinations were issued during the period of December 18 through December 29, 2006. Copies of these determinations are available for inspection in Room C-5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 8, 2007.

**Ralph DiBattista,**

*Director, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-57,700]

#### Joy Technologies, Inc.; DBA Joy Mining Machinery; MT. Vernon Plant, MT. Vernon, IL; Notice of Negative Determination on Remand

On September 25, 2006, the U.S. Court of International Trade (USCIT) granted the U.S. Department of Labor's motion for a voluntary remand in *Former Employees of Joy Technologies, Inc. v. U.S. Secretary of Labor*, Court No. 06-00088. SAR 240.

#### Case History

On August 9, 2005, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 483, ("Union") filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of Joy Technologies, Inc., DBA Joy Mining Machinery, Mt. Vernon Plant, Mt. Vernon, Illinois (the subject facility) producing underground mining machinery (the subject worker group). AR 2.

The Department's negative determination, issued on September 15, 2005, was based on findings that sales and employment at the subject facility increased in 2004 from 2003 levels, that sales remained stable in January through July 2005 over the corresponding 2004 period, and that employment increased during January through July 2005 over the corresponding 2004 period. The denial was also based on the findings of no shift of underground mining machinery production abroad and no increased imports of underground mining machinery during the relevant period. AR 130-135. The Notice of the Department's determination was published in the **Federal Register** on October 31, 2005 (70 FR 62345). AR 142.

On November 3, 2005, workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. In the request for

reconsideration, the workers asserted that the Department's interpretation of the reasons for the plant closure and the activities of the subject workers was erroneous. According to the workers, production and employment increased at the subject facility from 2003 to 2004 due to a "Contract Agreement" between the subject firm and the Union and that "the worker group at Joy, Mt. Vernon, IL has been an upstream supplier to the Joy Mining Machinery facility located in Franklin, PA. [p]roducing various components used in the final assembly of the firms products" and that in "2004, the worker group \* \* \* resumed being an upstream supplier of component parts \* \* \* to be used in final production or to be sold as new replacement components to Joy Mining Machinery customers." The workers allege that "[t]hese components are being produced in a foreign country (Mexico)." AR 145-147.

In support of the allegation, the workers provided the Department with a copy of a November 17, 2005 electronic message from a Joy official to the Union which confirmed that the Joy, Mt. Vernon, Illinois facility supplied components for Joy, Franklin, Pennsylvania, AR 159, and stated that "three sets of track frames that were fabricated in Mexico were finished in the Mt. Vernon machine and weld shops." AR 160.

On November 16, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Notice of affirmative determination was published in the **Federal Register** on December 15, 2005 (70 FR 74373). During the reconsideration investigation, the Union informed the Department that it is not involved with the request for reconsideration and directed the Department to speak with the workers. AR 149.

According to workers Jerome Tobin and John Moore, the subject facility is an upstream supplier to the Joy plant in Franklin, Pennsylvania; the Franklin, Pennsylvania facility outsourced production to Mexico; the component parts made at the subject facility were outsourced to Mexico, and the components were sent to Joy, Eagle Pass, Texas. *Id.* During a conference call, the workers also stated that they would file a new petition as secondarily-affected workers. *Id.* In a later conference call, Jerome Tobin, John Moore, and Steve Lisenbey, stated that Joy had outsourced production to Extreme Machine. *Id.*

During the reconsideration investigation, the Department found that

during the relevant period, the subject facility produced shuttle cars, rebuilt electrical motors and armored face conveyors (AFC), assembled gearboxes, and produced components used in the final assembly of mining machinery produced at other Joy facility, including the Franklin, Pennsylvania facility. AR 146. According to the Joy Mining Machinery "Global Caplight" article, dated July 29, 2005, the subject firm opened a new, larger production facility in Lebanon, Kentucky that is "scheduled to open in the fall of 2005" and will "manufacture shuttle cars, rebuild motors and rebuild AFC gearcases." AR 126.

The reconsideration investigation also found that from May 2004 through September 2005, when the subject facility closed, the subject worker group produced "69 conveyors, 72 conveyor supports and 86 crawler track frames (43 sets)." AR 148. The Department also found that "three sets of track frames that were fabricated in Mexico" were sent to the subject facility for finishing. AR 160.

A careful review of the administrative record revealed that the subject firm had cooperated with the investigation in good faith and had no incentive to prevent the subject workers from receiving TAA benefits, AR 29–30. Further, the subject firm decided "to bring products \* \* \* into Mount Vernon for a period of time to maintain work for employees who would ultimately lose their jobs with the plant closure." AR 160. Indeed, the subject firm stated that it wants employees "to receive all of the benefits to which they are legally entitled." *Id.*

On January 19, 2006, the Department issued a Negative Determination on Reconsideration. AR 180. The Department found that there was no shift of production to Mexico, that the work at issue was "temporary work" which was assigned to several Joy Mining Machinery (Joy) facilities (including the Mt. Vernon, Illinois facility), that the workers' separations were due to a shift of operations to an affiliated, domestic facility in Kentucky, and that the subject workers are not eligible to apply for TAA as workers of a secondarily-affected company. AR 180.

The Department's Notice of determination on reconsideration was published in the **Federal Register** on January 20, 2006 (71 FR 4937). AR 185–186. A corrected Notice of determination was issued on February 6, 2006, AR 187, and was published in the **Federal Register** on February 22, 2006 (71 FR 9162). AR 191.

On March 15, 2006, the Plaintiffs appealed the negative reconsideration determination to the USCIT.

In an August 24, 2006 letter, Plaintiffs' counsel stated that a voluntary remand is appropriate because the Department failed to (1) Identify the manufacturing functions at the subject facility; (2) investigate the allegation of imports, particularly from Mexico; (3) investigate about the shift of production to Kentucky; and (4) investigate imports by Joy's customers, and because the administrative record is incomplete. SAR 193–198.

In order to address the issues raised above, the Department sought, and was granted, a voluntary remand. SAR 240.

#### Plaintiffs' Allegations

In the complaint, Plaintiffs asserted "we were an upstream supplier to the Joy Mining Machinery facility at Franklin, PA. \* \* \* Joy Mining Machinery outsources the components to \* \* \* Mexico \* \* \* these Mexican facilities \* \* \* produce the component work that was formerly done \* \* \* at Joy Mining Machinery Mt. Vernon, Illinois" and the work done by Plaintiffs "is not being done at the new Joy Mining Machinery facility in Lebanon, Kentucky." SAR 238–239. In subsequent submissions, Plaintiffs asserted that they manufactured components for Joy's Franklin, Pennsylvania facility, SAR 194, 204–205, and may have produced components for other Joy domestic facilities. SAR 205. Plaintiffs also asserted that component production shifted to Mexico, that Joy increased imports of components. SAR 204–205, and that components were stamped "hecho en Mexico." SAR 260.

#### Remand Investigation

While conducting the remand investigation, the Department contacted Plaintiffs' counsel, SAR 200–201, 202–234, 242–392, 409–411, Joy corporate counsel, SAR 200–201, 235, 412–415, 420–421, and individuals identified by the Plaintiffs as having relevant information, SAR 200–201, 407–408, 416–419, 422–423.

During the remand investigation, the Department received several affidavits from Plaintiffs. A summary of relevant facts of each affidavit follows:

Robin Buckingham states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an

upstream supplier" for the Franklin, Pennsylvania; between 2002 and 2004, the subject facility imported mining machinery components from Mexico; and that a former Joy supervisor had spoken to him about the parts stamped "hecho en Mexico." SAR 257–262.

Gary Coles states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania; the subject facility had sold completed components "directly to customers"; from 2002 and through 2004, the subject facility imported mining machinery components from Mexico; and that a Joy sales manager had spoken to him about the parts stamped "hecho en Mexico." SAR 268–273.

Steve Lisenbey states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania; in January 2002, a subject facility manager stated that "Joy had formed a partnership with a Mexican supplier to outsource the fabrication of continuous miner components" and "components fabricated in Mexico did not meet the International Organization for Standardization ("ISO") standards," so "the completed components Joy outsourced to Mexico had to be brought to Mt. Vernon for the final machining"; in 2004, the subject facility imported crawler track frames from Mexico; and the Joy, Lebanon, Kentucky facility "does not have the same manufacturing functions and duties" as the subject facility because it does not fabricate components. SAR 280–283.

John Moore states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania; that the subject facility "took sales orders directly from

customers"; in 2003 and 2004, the subject facility "did the final machining on completed crawler track frames that originated in Mexico"; the subject facility "retrofitted gathering pans" were marked "hecho en Mexico"; and in "approximately October or November 2005, a sales manager for Joy "told me that Joy was outsourcing manufacture and assembly of mining equipment to Mexico." SAR 292–296.

Robert Patterson stated that the subject facility manufactured finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania facility; in 2003 and 2004, the subject facility "machined completed crawler track frames that originated in Mexico"; and the subject facility received components stamped "hecho en Mexico." SAR 304–307.

Jerome Tobin stated that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania facility; in 2004, the subject facility "machined completed crawler track frames that originated in Mexico"; the subject facility received track frames and components stamped "hecho en Mexico"; and on "October 17, 2006," Merlin Orser, the President of the Union's local at Franklin, Pennsylvania, "confirmed for me that the Lebanon facility does only assembly work \* \* \* does not perform the manufacturing functions that the Mt. Vernon facility performed when it was open." SAR 316–320.

David Vaughn states that the subject facility manufactured finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania facility; in 2004, the subject facility "did the final machining on completed crawler track frames originated in Mexico"; the subject facility received components stamped "hecho en Mexico"; and a former Joy

supervisor "told me that at Coal Age he is outsourcing the manufacture of continuous miner frames to a company in Mexico \* \* \* the same Mexican company for outsourcing that Joy used to fabricate the continuous miner components." SAR 328–332.

Ronald Wilkey states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania facility; in 2004, the subject facility "did the final machining on completed crawler track frames originated in Mexico"; the subject facility received components stamped "hecho en Mexico"; that "in approximately August 2005, I was one of the laborers who helped to unload a truck full of crawler track frames that had originated in Mexico"; and that the subject facility had received component parts stamped "hecho en Mexico." SAR 340–343.

Jesse Russell Hamilton states that subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania facility; in 2004, the subject facility "machined crawler track frames that originated in Mexico"; and the subject facility received components stamped "hecho en Mexico." SAR 356–359.

Steven Kirkpatrick states that the subject facility always manufactured both finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania facility; in 2004, the subject facility "machined crawler track frames that originated in Mexico"; the subject facility received mining machinery component parts marked "hecho en Mexico"; and in 2003, "DMUs came into the Mt. Vernon plant from Mexico." SAR 366–370.

Robert Baxley stated that the subject facility always manufactured both

finished products and components of mining machinery; Joy's main production facility is in Franklin, Pennsylvania but there are facilities throughout the United States, including Utah, Virginia, and West Virginia; a "substantial part" of the subject facility's work is performed as "an upstream supplier" for the Franklin, Pennsylvania facility; in 2004, the subject facility "did the final machining on completed crawler track frames that originated in Mexico"; the subject facility received crawler track frames and other component parts stamped "hecho en Mexico"; and "in November 2005, I took pictures of the Mexican crawler track frames that had been brought into the Joy Mt. Vernon facility earlier in the year." SAR 378–381.

Darrell Cockrum states that in August 2005, Mr. Peircey from Engles Trucking told him that he had picked up a shipment of crawler track frames at Extreme Machine, Youngstown, Ohio; that the shipment had originated in Mexico; that Extreme Machine "had a large number of crawler track frames that Joy had fabricated in Mexico"; Joy had shipped the frames from Mexico to Extreme Machine for final machining; and that the frames in the August 2005 shipments were from Mexico and sent to the subject facility for final machining. SAR 394–395.

William Perkins states that in 2004 and 2005, he photographed and inspected conveyor supports, discharge tails, and crawler track frames that had originated in Mexico and were stamped "hecho en Mexico." SAR 410–411.

While the Department has carefully reviewed the Plaintiffs' submissions, the Department has not received any information to support the allegation of a shift of production abroad. Further, on December 28, 2006, the Department contacted Plaintiffs' counsel to request any information not already in the record. SAR 201. No additional information was received.

According to current and former Joy officials, the subject facility produced finished mining machinery and finished components. AR 146, SAR 247–250, 414. Joy confirmed that the subject facility closed in September 2005, that production of finished mining machinery shifted to a Joy facility in Lebanon, Kentucky, and that the subject firm does not have an affiliated production facility in Mexico. SAR 248.

Because the workers who produce finished mining machinery and mining components at the subject facility are not separately identifiable by product line, the Department determines that the subject workers were engaged in the

production of finished mining machinery and components.

To be certified as eligible to apply for TAA, the following criteria must be met:

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

(2) Sales or production, or both, of such firm or subdivision have decreased absolutely; and

(3) Increases (absolute or relative) of imports of articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production, or

(4) 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 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, is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act or 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.

Because the subject facility closed on September 23, 2005, the Department determines that criteria (1) and (2) have been met.

Pursuant to 29 CFR 90.2, "increased imports" means that imports have increased, absolutely or relative to domestic production, compared to a representative base period. The regulation also establishes the representative base period as the one-year period preceding the relevant period (the twelve-month period prior to the date of the petition).

Because the petition date is August 9, 2005, the relevant period for the case at hand is July 2004 through August 2005 and the representative base period is July 2003 through August 2004.

Because Plaintiffs allege increased imports of mining machinery components and it is undisputed that Joy did not import finished mining machinery, AR 13-14, 170, and that Joy shifted finished mining machinery production to an affiliated facility in Lebanon, Kentucky, SAR 280-283, 316-320, the scope of the Department's remand investigation is limited to mining machinery components like or directly competitive with those produced at the subject facility during the relevant period.

In order for TAA criteria (3) to be satisfied, it must be shown that increased imports of mining machinery components during the relevant period

"contributed importantly" to workers' separations and the decline in sales or production. Therefore, the presence of increased imports is established if the import level during July 2004 through August 2005 is greater than the import level during July 2003 through August 2004.

Per the Plaintiffs' request, the Department contacted two individuals who were identified as having information relevant to increased imports of mining machinery components by the subject firm. SAR 407, 416-417, 419, 422.

One of the individuals, a former Joy manager, who was identified by several Plaintiffs, had left Joy prior to the relevant period and was therefore unable to speak about events during July 2004 through September 2005. SAR 407, 419. The other individual, a vendor with whom Joy currently conducts business, stated that the mining machinery components did not come from Mexico but were shipped from, and back to, the subject firm's Franklin, Pennsylvania facility. SAR 416-417.

Data previously provided by the subject firm reflect that there were no imports during the relevant period. AR 13-14. Rather, the subject firm has indicated that it had brought in extra work from Mexico in order to create work for the workers. AR 160. Because the subject firm has repeatedly expressed its concern for the subject worker group, AR 29-30, 160 and SAR 428, the Department has no reason to believe that the subject firm is being less than forthcoming during the remand investigation.

Even if there were increased subject firm imports during the relevant period, the increased imports could not have "contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production" (emphasis added) because sales for Joy increased during the relevant period. AR 29-30. In the event that there were company-wide sale declines, the Department may interpret a closure of an affiliated plant as an effort by the company to adjust to increased foreign competition. However, this is not the case at hand.

Plaintiffs also allege that the Department failed to inquire into Joy's customers' import activities. SAR 193-198. Again, because sales for Joy increased during the relevant period, there were no declining customers for the Department to survey about their decreased purchases. AR 29-30.

As such, having given full consideration to all information submitted by the Plaintiffs, the

Department determines that TAA criterion (3) has not been met.

Plaintiffs allege that the subject firm shifted mining machinery component production to Mexico. SAR 204. As stated before, Joy does not have an affiliated production facility in Mexico. AR 170, SAR 204, 251. Therefore, there is no facility to which Joy can shift production. Further, the record further substantiates that the subject firm had shifted production to other Joy domestic facilities, rather than to a foreign supplier. AR 9, 20, 29-30, 130-131, 159-160, 169-170, SAR 248, 251, 415, 425. While several Plaintiffs have asserted that all activities did not shift to Joy's Lebanon, Kentucky facility, the evidence supports the conclusion that any shift of production was to other Joy domestic facilities, and not to a foreign production facility. As such, having given full consideration to all information submitted by the Plaintiffs, the Department determines that TAA criterion (4) has not been met.

After careful review of the administrative record and the submissions of the remand investigation, the Department has inquired into the various allegations of the Plaintiffs and has determined that they are without merit.

In addition, in accordance with Section 246 of the Trade Act of 1974, as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA.

In order to apply 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 workers are denied eligibility to apply for TAA, they cannot be certified eligible to apply for ATAA.

## Conclusion

After careful review of the findings of the remand investigation, I affirm the notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Joy Technologies, Inc., DBA Joy Mining Machinery, Mt. Vernon Plant, Mt. Vernon, Illinois.

Signed at Washington, DC, this 8th day of January 2007.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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