

DEPARTMENT OF LABOR

Employment and Training
Administration

[TA-W-52,050]

Merrill Corporation, St. Paul, MN;
Notice of Negative Determination on
Reconsideration on Remand

The United States Court of International Trade (USCIT) remanded to the Department of Labor for further investigation *Former Employees of Merrill Corporation v. Elaine Chao, U.S. Secretary of Labor*, Court No. 03-00662 (issued July 28, 2005).

The Department's initial negative determination for the workers of Merrill Corporation (hereafter "Merrill") was issued on July 22, 2003. The Notice was published in the **Federal Register** on July 10, 2003 (68 FR 43373). The determination was based on the finding that workers did not produce an article within the meaning of section 222 of the Trade Act of 1974. The Department determined that the subject worker group was not engaged in the production of an article, but rather engaged in activities related to document management services.

The plaintiffs did not seek administrative reconsideration by the Department but sought judicial review by the USCIT on September 9, 2003, asserting that Merrill produces an article (documents) and that the workers are engaged in this production.

On April 2, 2004, the Department issued a Notice of Negative Determination on Remand for workers of the subject facility. The determination was based on the finding that the subject company does not produce an "article" within the meaning of the Trade Act of 1974. The Notice was published in the **Federal Register** on April 16, 2004 (69 FR 20645).

On July 28, 2005, the USCIT remanded the matter to the Department, directing the Department to determine whether

(1) Plaintiffs were engaged in "production" of printed matter or other articles; (2) the volume of articles produced by Plaintiffs; (3) Merrill's customers contracted for the production of printed matter; (4) sales or production (or both) have decreased; (5) there has been or is likely to be an increase in imports of articles like or directly competitive with Merrill's articles; (6) any increase in imports contributed importantly to Plaintiffs' separation from Merrill and to its decline in sales or production; and (7) there was a shift in production to a foreign country of

articles like or directly competitive with Merrill's articles, and if so, to what country.

For purposes of determining workers' eligibility to apply for Trade Adjustment Assistance (TAA), the relevant period is the complete twelve-month period prior to the petition date. Because the petition date is June 10, 2003, the scope of the investigation is confined to June 2002 through May 2003.

During the second remand investigation, the Department contacted the company to request information about the subject facility and affiliated domestic print facilities and requested information from the plaintiffs. Further, the Department provided the Plaintiff an opportunity to respond to the Department's preliminary findings. Supp. AR at 59-63.

According to Merrill, the company derives revenue from document management services and commercial and business forms printing. A company official also stated that the financial documents are customized and owned by the client, that composed documents are printed pursuant to clients' requests, that the printing is done at an off-site facility, and that print jobs are transmitted electronically from the subject facility to the off-site printing facilities. Supp. AR at 10-11, 36.

In a September 2, 2005 letter, the plaintiffs confirmed the unique and customized nature of the documents but contradicted Merrill's assertion that printing was not done at the subject facility. Supp. AR at 15-17.

The Department sought clarification from the subject company and was informed that the printing facility at Merrill, St. Paul, Minnesota had closed by May 2001 and that Merrill had several domestic printing facilities during the relevant period. Supp AR at 36, 50-51.

Since no production took place at the subject facility during the relevant period, the Department investigated whether the subject workers supported production at an affiliated, domestic production facility during June 2002 through May 2003, whether sales and/or production declined at that production facility, and whether increased imports during the relevant period contributed importantly to those declines.

As previously stated, composed documents were transmitted electronically from the subject facility to off-site printing facilities when customers requested physical copies of their financial documents. Supp AR at 11, 17 The expanded investigation revealed that production at all five printing facilities decreased during June

2002 through May 2003 from June 2001 through May 2002 levels. Supp. AR at 58.

After completing its investigation, the Department concludes that the workers should not be certified for TAA benefits. The plaintiffs claim they are eligible for benefits because Merrill shifted production to India. The Department has determined that the workers created electronic documents for printing and filing with the Securities and Exchange Commission (SEC). It is undisputed that Merrill sent that responsibility to India. The Department has consistently determined, however, that electronic creations are not "articles" for the purposes of the Trade Act unless they are embodied in a physical medium. See, e.g., *Former Employees of Dendrite International*, 70 FR 212247-3 (April 25, 2005); *Former Employees of Gale Group, Inc.*, 70 FR 6732-1 (February 8, 2005). Therefore, the workers do not produce an article themselves.

In its letter of November 7, 2005, the plaintiffs argue that the important issue is whether Merrill, not the workers themselves, creates an article. Supp. AR at 61. In order for the Department to certify in a case where the workers allege a shift of production, however, there must be a shift of production of an article. In the present case, the only job shifted was the creation of electronic files, which, as discussed above, is not the production of an article.

Because the data entry function formerly done by the workers was the only function transferred to India, and because the financial reports were delivered to the United States via electronic transmission only, then there was no shift of production of an article, as required by the Trade Act. See *Former Employees of Murray Engineering v. Chao*, 358 F. Supp.2d 1269, 1272 n.7 ("the language of the Act clearly indicates that the HTSUS governs the definition of articles, as it repeatedly refers to "articles" as items subject to a duty"); HTS, General Note 3(I) (exempting "telecommunications transmissions" from "goods subject to the provisions of the [HTSUS]").

Furthermore, under the Department's interpretation of "like or directly competitive," (29 CFR 90.2) "like" articles are those articles which are substantially identical in inherent or intrinsic characteristics and "directly competitive" articles are those articles which are substantially equivalent for commercial purposes (essentially interchangeable and adapted to the same uses), even though the articles may not be substantially identical in their inherent or intrinsic characteristics.

During the remand investigation, the Department confirmed that the material created by the workers and produced at the Merrill printing facilities is unique to each order. Supp. AR at 10–11, 36. No two orders for one customer are alike because the material captures legal and financial information which is unique unto itself. Similarly, one customer's order cannot be intrinsically similar to another customer's. Accordingly, there are no articles which are "like" or "directly competitive" to any single "article" created by Merrill because each electronic file is a unique document which is created for the sole purpose of satisfying a specific customer's particular need at a particular point in time. Thus, there are no articles which are essentially interchangeable or can be adapted to the same use as a Merrill document, and there are no articles "like or directly competitive" with any Merrill "article." See *Former Employees of Murray Engineering, Inc. v. Chao*, 2005 WL 1527642 (CIT 2005) (articles that are "neither interchangeable with nor substitutable" for the petitioner's designs are not considered directly competitive.) (citing *Machine Printers & Engravers Ass'n v. Marshall*, 595 F.2d 860, 862 (DC Cir. 1979)). Since there are no articles which are like or directly competitive with those produced by the subject company, there cannot be any imports, much less increased imports. Therefore, neither section 222(a)(2)(A) nor section 222(a)(2)(B) of the Trade Act, as amended, has been satisfied.

The plaintiffs argue that the Department's interpretation ignores the fact that the workers' jobs were shifted to India. Supp. AR at 62. In fact, the Department recognizes that the workers' jobs were shifted overseas. The Trade Act, however, does not provide benefits to every person whose job was shifted overseas. First, there must be the shift of production of an "article," which did not occur here. Supp. AR at 65. Second, the Trade Act requires, in a case such as this one, that there be an increase of imports of articles "like or directly competitive" to the articles whose production was shifted overseas. The plaintiffs argue that the "process" shifted overseas was identical to the "process" that had been done in the United States. Supp. AR at 62. However, it is not enough for the *process* to be "like or directly competitive." As discussed above, each individual electronic document transmitted to the United States is inherently *unlike* and *not* competitive with any other electronic transmission.

The Department's investigation has demonstrated that some of Merrill's

customers ask that the SEC filings be placed on a physical medium. For those customers, Merrill delivered the electronic creations of the plaintiffs to an in-house printer who puts the SEC filing in book form. Therefore, the plaintiffs could be viewed as supporting production of an article. The Department has determined, however, that no printing was transferred to another country. Supp. AR at 65. Therefore, there was no shift of production of an article.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Merrill Corporation, St. Paul, Minnesota.

Signed at Washington, DC this 17th day of November 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6991 Filed 12–6–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,960]

Solectron Corporation a Subsidiary of Solectron USA, Inc., Lumberton, NJ; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance issued by the Department on October 24, 2005, applicable to all workers of the subject firm. The notice will soon be published in the **Federal Register**.

The Department, at the request of the State agency, reviewed the certification for workers of Solectron Corporation, a Subsidiary of Solectron USA, Inc., Lumberton, New Jersey. The workers produce computer storage equipment.

In response to the petition filed by a company official, the certification was issued based on the investigation finding that there were worker separations and the production of computer storage equipment was shifted from the Lumberton, New Jersey plant to Mexico.

New information provided by an official of Solectron Corporation to the State agency reveals that the subject firm has not shifted production of computer storage equipment to Mexico. The company official confirmed with

the Department that the plant is closing and the production is being shifted to another domestic location.

Since the production at the Lumberton, New Jersey location has not been shifted to Mexico, this certification has been terminated.

Signed at Washington, DC, this 14th day of November, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–6998 Filed 12–6–05; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[05–160]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to the Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, Reports Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street SW., Mail Suite JA00, Washington, DC 20546, 202–358–1350, walter.kit-1@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by