DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,209]

Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut;Notice of Revised Determination On Remand

On January 27, 2006, the U.S. Court of International Trade (USCIT) issued a third remand order directing the Department of Labor (Department) to further investigate workers' eligibility to apply for Trade Adjustment Assistance (TAA) in the matter of *Former Employees of Computer Sciences Corporation* v. *United States Secretary of Labor* (Court No. 04–00149).

The initial determination for the workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut (''CSC'') was issued on October 24, 2003 and published in the **Federal Register** on November 28, 2003 (68 FR 66878). The Department's negative determination was based on the findings that the subject worker group provided business and information consulting, specialized application software, and technology outsourcing support to customers in the financial services industry, and that the workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The Department issued a Notice of Negative Determination on Reconsideration on February 3, 2004 and published the Notice in the **Federal Register** on February 24, 2004 (69 FR 8488). The Department determined that while CSC produced software, the workers were ineligible to apply for TAA because CSC neither shifted software production abroad nor imported software like or directly competitive with that produced at the subject facility.

On July 29, 2004, the Department issued a Negative Determination on Reconsideration on Remand for the workers of the subject firm on the basis that packing functions did not shift to India, that all storing and copying functions remained in the United States, and that CSC did not import software like or directly competitive with software produced at the subject facility. The Department's Notice was published in the **Federal Register** on August 10, 2004 (69 FR 48526).

On August 24, 2005, the Department issued a Notice of Negative Determination on Remand. The Notice of the second remand determination was published in the **Federal Register** on September 1, 2005 (70 FR 52129). The Department determined that the Vantage-One software code produced by CSC, not embodied on a physical medium, is not an article, that CSC did not shift production of an article abroad, and that there were no increased imports of software like or directly competitive with the software produced at the subject facility.

Since the publication of the last remand determination, the Department has revised its policy to acknowledge that, at least in the context of this case, there are tangible and intangible articles and to clarify that the production of intangible articles can be distinguished from the provision of services. Software 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 to be articles regardless of their method of transfer.

The Department stresses that it will continue to implement the longstanding precedent that firms must produce an article to be certified under the Act. This determination is not altered by the fact the provision of a service may result in the incidental creation of an article. For example, accountants provide services for the purposes of the Act even though, in the course of providing those services, they may generate audit reports or similar financial documents that might be articles on the Harmonized Tariff Schedule of the United States. Because the new policy may have ramifications beyond this case of which the Department is not fully cognizant, the new policy will be further developed in rulemaking.

Moreover, because it is the Department's practice to apply current policy instead of the policy which existed during the investigative period if doing so is favorable to the workers, the Department conducted the third remand investigation under the new policy.

After careful review of the facts, the Department has determined that the subject firm produced an intangible article (financial software for Vantage-One) that would have been considered an article if embodied in a physical medium, that employment at the subject facility declined during the relevant period, that CSC shifted production of the such software abroad, and that CSC increased imports of software like or directly competitive with that produced at the subject facility.

Conclusion

After careful review of the facts generated through the immediate remand investigation, I determine that increased imports of software like or directly competitive with that produced by the subject firm contributed importantly to the total or partial separation of a significant number of workers at the subject facility. In accordance with the provisions of the Act, I make the following certification:

All workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut, who became totally or partially separated from employment on or after September 22, 2002, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5278 Filed 4–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,486]

Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Secretary of Labor for further investigation the case of *Former Employees of Electronic Data Systems Corporation* v. *U.S. Secretary of Labor* (Court No. 03–00373).

On January 15, 2003, the Department of Labor (Department) issued a negative determination regarding the eligibility of workers at Electronic Data Systems (EDS) Corporation, I Solutions Center, Fairborn, Ohio to apply for Trade Adjustment Assistance (TAA). The determination was based on the Department's finding that the workers at the subject facility performed information technology services, and did not produce or support the production of an article. Therefore, the workers did not satisfy the eligibility criteria of section 222 of the Trade Act of 1974. 19 U.S.C. 2272. On February 6, 2003, the Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio was published in the **Federal Register** (68 FR 6211).

In a letter dated March 4, 2003, the petitioner requested administrative reconsideration of the Department's

negative determination, and included additional information indicating that all usage and copyrights of the computer programs, job control language, documentation, etc. produced at the Fairborn facility were transferred to the client upon sale. The Department determined that the information submitted did not constitute an adequate basis for reconsideration and affirmed its finding that the workers of Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio were not eligible to apply for TAA, because they did not produce an article within the meaning of Section 222 of the Trade Act. Accordingly, the Department issued a Notice of Negative Determination Regarding Application for Reconsideration on April 15, 2003. The Notice was published in the **Federal Register** on April 24, 2003 (68 FR 20180).

After the petitioner sought review by the USCIT, the Court remanded the case to the Department. On January 31, 2005, the Department issued a Negative Determination on Remand based on the finding that workers of the subject facility did not produce an article, nor did they support, either directly or through an appropriate subdivision of EDS, the production of an article within the meaning of the Trade Act. The investigation revealed that the products designed and/or developed at the Fairborn facility were not mass-replicated to any physical carrier medium.

After another review, on November 14, 2005, the USCIT remanded the case to the Department, giving rise to the current investigation and determination.

Since the publication of the last remand determination, the Department has revised its policy to acknowledge that, at least in the context of this case, there are tangible and intangible articles and to clarify that the production of intangible articles can be distinguished from the provision of services. Software 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 to be articles regardless of their method of transfer.

The Department stresses that it will continue to implement the longstanding precedent that firms must produce an article to be certified under the Act. This determination is not altered by the fact the provision of a service may result in the incidental creation of an article. For example, accountants provide services for the purposes of the Act even though, in the course of providing those services, they may produce audit reports or similar financial documents that may be articles on the Harmonized Tariff Schedule of the United States. Because the new policy may have ramifications beyond this case of which the Department is not fully cognizant, the new policy will be further developed in rulemaking.

Because it is the Department's practice to apply current policy instead of the policy which existed during the investigative period if doing so is favorable to the workers, the Department conducted the second remand investigation under the new policy.

The second remand investigation revealed that the financial applications software work performed at the subject facility was divided into three categories: maintenance, enhancements, and service agreements.

Maintenance comprised approximately [business confidential] percent of the work performed at the subject facility and, as the term ''maintenance'' implies, was a service-oriented activity. The maintenance services performed at the subject facility generally involved ''minor updates to tables, defect fixes to programs or data, monitoring operating performance, and other activities that do not materially affect the original functional specifications for existing software.''

Software enhancements accounted for approximately [business confidential] percent of the subject facility's total work load, and generally involved ''modifications to (usually small) portions of a program or system that is meant to incorporate new functional specifications but does not significantly alter the fundamental intent, architecture, or structure of the application.'' These modifications involved both modifying existing code and writing new code modules to be added to the program's existing code.

Some enhancements, particularly those that make very minor alterations to existing code, do appear to be services. However, a significant portion of the enhancements developed at the subject facility involves the development of new code that adds new functionality and represents the essence of what constitutes software. Therefore, the Department has determined that a significant portion of the software enhancements developed by the subject worker group are articles for the purposes of the Trade Act.

This does not mean that any activity which added functionality to an article would be considered production of an article. For example, the installation of a car radio is clearly a service, even though the radio is clearly an article. In the case at hand, the subject firm performs a service by installing software enhancements, but they also produce an article in that they write the code for (produce) the significant enhancements themselves.

While most software maintenance and enhancement activities were provided for under the general contract between EDS and General Motors Acceptance Corporation (GMAC), the development of wholly new software (the most clear cut production activity taking place at the subject facility) only took place as the result of ''Service Agreements'' or supplementary contracts between EDS and GMAC. Service agreements covered all three categories of work (maintenance, enhancements, and new software), and comprised the remaining percent of work performed at the subject facility. EDS estimates that somewhere between [business confidential] percent of the service agreements carried out at the subject facility involved the development of completely new software, thus [business confidential] percent of the total work performed at the subject facility involved the development of completely new software.

Based on findings that the former employees spent a considerable amount of their work time on the development of significant enhancements that include new code, and the development of totally new software, the Department has determined that a significant portion of the workers of the subject facility were engaged in the production of an article (financial applications software). Given that those workers were not differentiated as to whether they worked on maintenance, enhancement or new software, the Department will consider all workers within the facility as a part of the petitioning worker group.

The second remand investigation revealed that a significant portion of the production of software enhancements was shifted to Mexico during the period under investigation. Moreover, while no production of wholly new software occurred in Mexico during the period under investigation, the Mexican workers were being trained in the production of new software during the relevant period and the production of such software now occurs in Mexico. Thus, a shift of new software production to Mexico was also already underway. Based on a review of the record developed on remand, the Department determines that the software produced in Mexico is like or directly competitive to that produced at the subject facility. Moreover, previous investigation established that the requisite declines in

employment occurred at the subject facility during the relevant period.

Conclusion

After careful review of the facts generated through the remand investigation, I determine that a shift in production of financial applications software like or directly competitive to that produced at the subject facility to Mexico contributed importantly to the total or partial separation of a significant number of workers at the subject facility. In accordance with the provisions of the Act, I make the following certification:

''All workers of Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio, who became totally or partially separated from employment on or after December 27, 2001, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–5279 Filed 4–10–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,688]

Lands'End, A Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin; Notice of Revised Determination on Remand

In an Order issued on December 7, 2005, the United States Court of International Trade (USCIT) granted the motion filed by the Department of Labor (Department) for voluntary remand in *Former Employees of Lands' End Business Outfitters* v. *United States Secretary of Labor,* Court No. 05–00517.

The Department denied Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) to workers of Lands' End, a Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin, (Lands' End) because the workers' separations were due to the subject company's decision to move computer assisted design operations abroad. The subject worker group is engaged in computerizing embroidery and logo designs which are utilized by the production division of Lands' End, also located in Dodgeville, Wisconsin. The Notice of determination was issued on March 25, 2005, and published in the **Federal Register** on May 2, 2005 (70 FR 22710).

On June 6, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Notice of determination was published in the **Federal Register** on June 20, 2005 (70 FR 35456). In the request for reconsideration, the petitioners alleged that workers produce digitized embroidery designs, that production shifted overseas, and that imports had increased following the shift of production abroad.

A negative determination on reconsideration was issued on July 28, 2005. The Notice of determination was published in the **Federal Register** on August 9, 2005 (70 FR 46190). During the reconsideration investigation, the Department was informed that the workers create digitized embroidery designs from customers' logos. The designs are owned by the customers. The digitized designs are readable by the embroidery machines at Dodgeville, Wisconsin, and are embroidered onto clothing and luggage produced by Lands' End. Alternatively, the customer may give the design to another apparel manufacturer for the production of the logo design on clothing and luggage. The Department found that the production of digitized embroidery designs shifted overseas, and that the designs are electronically returned to Dodgeville, Wisconsin. Because the Department's policy required that articles be tangible for purposes of the Trade Act, it was determined that the workers did not produce an article and were not covered by the Trade Act.

Since the issuance of the voluntary remand order, the Department has revised its policy to acknowledge that, at least in the context of this case, there are tangible and intangible articles and to clarify that the production of intangible articles can be distinguished from the provision of services. Software 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 to be articles regardless of their method of transfer.

The Department stresses that it will continue to implement the longstanding precedent that firms must produce an article to be certified under the Act. This determination is not altered by the fact the provision of a service may result in the incidental creation of an article. For example, accountants provide services for the purposes of the Act even though, in the course of providing those services, they may generate audit reports or similar financial documents that might be articles on the Harmonized Tariff Schedule of the United States. Because the new policy may have ramifications beyond this case of which the Department is not fully cognizant, the new policy will be further developed in rulemaking.

Moreover, because it is the Department's practice to apply current policy instead of the policy which existed during the investigative period if doing so is favorable to the workers, the Department conducted the remand investigation under the new policy.

After careful review of the facts, the Department has determined that: the petitioners are former employees of Land's End Business Outfitters CAD operations of Dodgeville, Wisconsin; that the workers' firm produced an intangible article (digitized embroidery designs) that would have been considered an article if embodied in a physical medium; that employment at the subject facility declined during the relevant period; that the workers' firm shifted digitized embroidery design production abroad; and that the workers' firm increased imports of articles like or directly competitive with the digitized embroidery designs produced at the subject facility.

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

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts generated through the remand investigation, I determine that increased imports of digitized embroidery designs like or directly competitive with those produced by the subject firm contributed importantly to the total or partial separation of a significant number of workers at the subject facility. In accordance with the