

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-53,209]

**Computer Sciences Corporation,
Financial Services Group, East Hartford,
Connecticut; Notice of Negative
Determination on Reconsideration on
Remand**

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Computer Sciences Corporation v. Elaine Chao, U.S. Secretary of Labor*, No. 04-00149.

The Department's initial negative determination for the workers of Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut (hereafter "CSC") was issued on October 24, 2003 and published in the **Federal Register** on November 28, 2003 (68 FR 66878). The Department's 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. It was determined that the subject worker group were not engaged in the production of an article, but provided business and information consulting, specialized application software, and technology outsourcing support to customers in the financial services industry.

By letter of November 24, 2003, the petitioner requested administrative reconsideration of the Department's negative determination. The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration on January 5, 2004. The determination Notice was published in the **Federal Register** on January 23, 2004 (69 FR 3391).

The Department's Notice of Negative Determination on Reconsideration was issued on February 3, 2004 and published in the **Federal Register** on February 24, 2004 (69 FR 8488). On reconsideration, the Department determined that the workers produced widely marketed software components on CD Rom and tapes but were not eligible to apply for Trade Adjustment Assistance (TAA) because the subject company did not import completed software on physical media that is like or directly competitive with that which was produced at the subject facility and did not shift abroad functions performed at the subject facility.

In his letter to the Court, the petitioner infers that packaging

functions (storing completed software on physical media and making a tape copy of the completed software on physical media) had shifted to India. The Department requested, and was granted, a voluntary remand. On June 2, 2004, the Court ordered that the Department further investigate the matter and determine whether the subject worker group is eligible for certification for worker adjustment assistance benefits.

As part of the remand investigation, the Department reviewed previously submitted information and contacted the subject company officials to determine the process in which software code is fixed onto tangible media, identify which functions were shifted to India, and determine whether the subject worker group meets the statutory criteria for TAA certification.

In response to the Department's inquiries regarding CSC's software delivery processes, the company official stated that the software is copied from a central computer system onto physical media. When the software is ordered by a customer, a copy is made at the subject facility and delivered to the customer. Delivery of the software could be a CSC employee physically bringing the physical media and instruction materials to the customer from the subject facility, a customer physically picking up the physical media and instruction materials from the subject facility, or sending an electronic message to the customer with the software and instruction materials attached.

During the remand investigation, the Department found that no "packaging" functions were shifted to India, as asserted by the petitioner. The investigation revealed that the storing of the completed software onto physical media, the copying of the completed software onto physical media, and the delivery of the software continue to take place at the subject facility.

To determine the workers' TAA eligibility, the Department inquired into CSC's production, sales, and import levels during the relevant time period, determined whether there was a shift of production abroad, and investigated whether increased imports of completed software like or directly competitive with those produced at the subject facility contributed importantly to the workers' separations.

In response to the Department's inquiries, CSC submitted sales and production figures for the software produced at the subject facility during the relevant period (2002 and 2003). An examination of the submission shows increased sales in three lines of software

and declines in a fourth line of software. To clarify this matter, the Department sought an explanation from the subject company. The Department was repeatedly informed that during the period of sales decline, CSC was enhancing that particular line of software and decided not to market it while it was being enhanced; and that while the existing version was available for purchase, most customers decided to wait until the new version was released because any enhancements would have to be separately purchased later to make it perform as well as the newly released version.

As previously discussed, the Department determined that there was no shift of production abroad by the subject company during the relevant period.

According to the company official, CSC does not import any completed software which is like or directly competitive with those produced at the subject facility which experienced sales declines during the relevant time period.

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 Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut.

Signed at Washington, DC this 29th day of July 2004.

Elliott S. Kushner,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

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DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-54,768]

**Crystal Springs Apparel, LLC, Crystal
Springs, MS; Notice of Affirmative
Determination Regarding Application
for Reconsideration**

By letter of July 7, 2004, the company official 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. The determination was signed on June 21, 2004 and will soon be published in the **Federal Register**.

The Department has reviewed the request for reconsideration and will

conduct further investigation to determine whether the subject worker group meets the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of July, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-55,104]

Geschmay Corporation, a Division of Albany International, Greenville, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 12, 2004, applicable to workers of Geschmay Corporation, a division of Albany International, Greenville, South Carolina. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of press fabrics which are used in the production of paper and are separately identifiable by product line.

New findings show that there was a previous certification, TA-W-40,951, issued on July 23, 2002, for workers of Albany International Corporation, Geschmay Plant, Greenville, South Carolina who were engaged in employment related to the production of press fabrics. That certification expired July 23, 2004. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from June 8, 2003 to July 24, 2004, for workers of the subject firm.

The amended notice applicable to TA-W-55,104 is hereby issued as follows:

All workers of Geschmay Corporation, a division of Albany International, Greenville, South Carolina, engaged in employment related to the production of press fabrics, who became totally or partially separated from employment on or after July 24, 2004, through July 12, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade act of 1974.

Signed at Washington, DC, this 30th day of July 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-53,648]

International Business Machines Corporation, Tulsa, Oklahoma; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of International Business Machines Corporation v. Elaine Chao, U.S. Secretary of Labor*, No. 04-00079.

The Department's initial negative determination regarding International Business Machines Corporation (hereafter "IBM") was issued on December 2, 2003 and published in the **Federal Register** on January 16, 2004 (69 FR 2622). The determination was based on the finding that the workers did not produce an article within the meaning of Section 222 of the Trade Act of 1974. The workers provided accounting and application services.

By letter of February 6, 2004, the petitioner requested administrative reconsideration for Trade Adjustment Assistance (TAA). The negative reconsideration determination was issued on March 31, 2004. The notice of determination was published in the **Federal Register** on April 16, 2003 (67 FR 20644). The determination was based on the findings that the workers did not produce an article within the meaning of Section 222 of the Trade Act and that the workers did not provide services in direct support of a TAA certified firm.

In their submissions to the Department, Plaintiffs made the following assertions: (1) Workers of

IBM, Tulsa, Oklahoma are under the control of British Petroleum (BP) and should be treated as BP employees; (2) Workers of IBM, Tulsa, Oklahoma are engaged in production of a trade impacted article (crude oil and natural gas), based on a previous certification issued in February 1999 by the Department for workers of AMOCO Exploration and Production in the State of Oklahoma; and (3) IBM workers in Tulsa, Oklahoma are BP-controlled workers engaged in production and because BP could be certified for TAA, the workers of IBM, Tulsa, Oklahoma should be eligible for TAA benefits.

On remand, the Department conducted a careful investigation in response to the plaintiff's allegations and will address each assertion in turn.

Workers of IBM, Tulsa, Oklahoma Are Under the Control of BP

In order to determine the scope of control by BP over the workers of IBM, Tulsa, Oklahoma, the Department requested additional information from IBM regarding the business relationship of IBM and BP, the functions of the subject worker group and the operations of IBM.

The information obtained during the remand investigation revealed that the relationship between IBM and BP is based on a contractual agreement documenting the commercial terms of service between two independent companies and that BP had no legal control over IBM employees. According to an IBM official, IBM is an independent company with its headquarters in Armonk, New York and there is no affiliation between IBM and BP. The IBM employees in Tulsa, Oklahoma provide finance, accounting and information technology services to multiple clients, including BP. These employees were subject to IBM's terms and conditions of employment, reported to IBM managers and were located at an IBM facility in Tulsa, Oklahoma. IBM provides services to numerous BP facilities located in the United States. These functions include general accounting, capital asset accounting, oil and gas revenue accounting, and accounts payable and receivable. Further, according to the IBM official, workers of IBM were not employed at any BP facility during the relevant time period. Therefore, the Department determines that IBM workers were not under the control of BP during the relevant time period.

Workers of IBM, Tulsa, Oklahoma Are Engaged in Production

Plaintiffs allege that members of the subject worker group are engaged in