I hereby certify that the aforementioned determinations were issued during the period of January 16, 2012 through January 20, 2012. These determinations are available on the Department's Web site *tradeact/taa/taa search form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at 888–365–6822.

Dated: January 25, 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–3322 Filed 2–13–12; 8:45 am]

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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 November 22, 2011, the U. S. Court of International Trade (USCIT) granted the Department of Labor's second 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. The worker group covered under this petition (subject worker group) consists of workers engaged in the supply of engineering functions for the development of hard disk drives.

The initial investigation revealed that the subject firm had not shifted abroad the supply of services like or directly competitive with those provided by the subject worker group, that the subject firm had not acquired such services from abroad, and there had not been an increase in imports of articles or services like or directly competitive with those produced or supplied by the subject firm. AR 72–77. Further, the initial investigation revealed that the subject firm could not be considered a Supplier or Downstream Producer to a firm that employed a worker group eligible to apply for TAA. 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.

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.

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.

First Remand Investigation

On April 11, 2011, Plaintiffs filed a complaint with the USCIT in which they 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. Further, 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, Plaintiffs provided additional information

surrounding the layoffs of the workers, including supporting information relating to the allegations made in the complaint to the USCIT. AR 154–182. Plaintiffs provided a list of several engineering positions and functions that allegedly 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 Plaintiffs. AR 154–182.

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.

At the time of the first remand investigation, the subject firm was in the process of transferring the corporate headquarters facility from Lake Forest, California to Irvine, California. AR 213. During the first 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 Plaintiffs' allegations.

The information the Department received during the first remand investigation 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 who supply engineering services like or directly competitive with those supplied by the subject worker group.

The first remand 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 asserted 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 Plaintiffs declared that the subject firm shifted abroad the supply of engineering services which are like or directly competitive with those provided by the subject worker group (AR 154–182), based upon the data collected during the first remand investigation, the Department determined that the engineers employed at foreign facilities of the subject firm and the engineers employed at domestic facilities of the subject firm 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 workers' functions are performed, the work performed by the engineers domestically and the engineers abroad is not interchangeable; hence, the activities of the subject firm at the manufacturing facilities overseas could not have impacted the subject worker group. 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 determined that the work performed overseas did not contribute importantly to worker separations domestically because the services are not like or directly competitive.

Regarding 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. The subject firm also stated that the foreign engineers must be knowledgeable about the new products in order to carry out their work; hence, they visit the domestic facilities of the subject firm in order to train on the new products to oversee the production at the manufacturing facilities. Given the nature of these visits, the training of foreign workers in the U.S. does not show that the roles of the domestic and foreign engineers are interchangeable. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

Plaintiffs submitted a list of job announcements posted by the subject firm in Malaysia. AR 154–182. The subject firm maintained that at the time of the domestic reduction in force (RIF) 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. Based on the findings pertaining to the work performed by the domestic and foreign engineers, the Department did 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 were 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. import data of hard disk drives or articles like or directly competitive showed a decline in the 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 was not met.

Based on careful consideration of all previously submitted information and new facts obtained during the first remand investigation, the Department determined that the subject worker group did not meet the eligibility criteria of the Act and issued a Negative Determination on Remand on September 23, 2011. AR 301. The Notice of Determination was published in the **Federal Register** on October 5, 2011 (76 FR 61746). SAR 1.

Second Remand Investigation

On October 25, 2011, one of the Plaintiffs filed comments with the USCIT regarding the negative remand determination. In the comments, the Plaintiff made new allegations, stating that the Department's determination was erroneous because engineers at the subject firm's foreign facilities provide engineering services like or directly competitive with those of the domestic engineers and that the subject firm manufactures hard disk drives domestically. In particular, the Plaintiffs alleged that the subject worker group

was engaged in activity related to the production of hard disk drives—''white label'' pilot products—and attached seven exhibits.

In response to the Plaintiffs' comments, the Department requested a second voluntary remand to review previously collected information and conduct further investigation to address the new allegations raised by the Plaintiff.

The comments contained statements intended to support the Plaintiff's claim that engineers at the foreign facilities engage in design work and domestic engineers engage in production. The comments included a list of job vacancies at the subject firm's facilities in Asia for engineering positions involving production, design, and development work. In addition, the Plaintiff stated that during his employment with the subject firm, he provided services related to the domestic production of hard disk drives. Further, the Plaintiff claimed that he trained foreign engineers to perform design and development work, and asserted that the employment data collected by the Department during the first remand investigation demonstrated a shift of engineering services abroad. AR 241, 242, 243, 271–285. The comments highlighted that the subject firm manufactures hard disk drives domestically through a pilot, or prototype, hard disk drive production line, which produces hard disk drives for sale to customers and that the hard disk drives imported from Malaysia are like or directly competitive with the ones produced by Western Digital domestically. Lastly, the Plaintiff commented that the Department failed to collect import data of disk drives during the first remand investigation.

In support of the allegations, the Plaintiff provided seven exhibits. The first exhibit was a statement, which included the Plaintiff's position description at the subject firm and information intended to establish that the Department had based its negative determinations on erroneous findings that (1) the work of the subject firm's foreign and domestic engineers was not interchangeable and that (2) the subject firm did not produce hard disk drives, domestically.

In the first exhibit, the Plaintiff pointed to the list of positions, submitted with the initial complaint to the USCIT, of engineering services that appear to relate to production and design work and one position advertised by Western Digital in Malaysia that called for co-development of new product ''with U.S. counterpart''. The Plaintiff compared his job duties to those advertised in Malaysia in an effort to show that the duties overlapped. The Plaintiff added that he was engaged in New Product Integration (NPI) work, which was considered production work. The Plaintiff also stated that he trained foreign engineers to perform the same development functions that he performed during his employment with the subject firm, noting that he worked directly with a foreign engineer who returned to the subject firm's Malaysian facility to perform the same work. In addition, the Plaintiff claimed that the subject firm produces hard disk drives domestically for sale to customers and that much of its pilot hard disk drive production was transferred to Asia, along with the associated engineering services.

In addition, the Plaintiff stated that the majority of the job vacancies identified in the complaint to the USCIT involved production and development work. However, according to the position descriptions, none of the vacant positions involved the design or development of hard disk drives. Further, careful examination of the duties listed for each position establishes that the work of these engineers relates to manufacturing. For example, positions include duties such as ''Willing to travel to Asia QC Manufacturing-Drive'' and ''Communicate with US counterpart to resolve factory issues.'' The subject firm confirmed that the engineering teams in Asia have never performed new product design and their duties extend to sustaining production. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

Exhibit 1 also contained additional Asian job postings. However, those vacancies were posted in October 2011, which is almost three years after the reduction in force from which this proceeding arose. Since that time, employment at the subject firm has increased, both domestically and abroad. AR 241, 242, 243, 271–285. Therefore, the posting of these positions, almost three years after worker separations occurred, could not have contributed to the layoffs.

The Plaintiff stated that during his employment with Western Digital he engaged in work related to domestic production of hard disk drives. Based on the Plaintiff's position description in Exhibit 1, the Plaintiff had no work duties related to production, other than program management support, which did not specify location. Additionally, the Plaintiff was employed at the headquarters facility of the subject firm, where no production lines are operated. (Domestic manufacturing and the role of the subject worker group in that production are discussed below.)

The Plaintiff also stated that the Department had ignored employment data which demonstrated a shift in engineering services abroad. Because, as determined during the initial remand investigation, the functions of the subject worker group were not like or directly competitive with those of the engineers at Western Digital's foreign facilities, the employment data in question could not demonstrate that a relative increase in employment abroad contributed to layoffs at the subject facility. AR 292–300. During the second remand investigation, the subject firm provided information which confirmed that domestic engineers are solely responsible for the development and design of hard disk drives. SAR 20.

The Plaintiff also claimed that the Department failed to collect import data of hard disk drives. As explained in the first remand determination, above, because there is no domestic production of these products (see below for more information on domestic production), any increases in imports of hard disk drives would not have contributed to layoffs in the subject worker group. As such, import statistics of hard disk drives were irrelevant to the determination.

During the second remand investigation, the Department contacted the subject firm to obtain more information regarding the Plaintiff's involvement in any domestic pilot hard disk drive production. SAR 6. In response to the claim that the Plaintiff was part of the New Product Integration team (NPI) and provided work related to domestic production, the subject firm responded that the NPI team handles the initial design work before mass production takes place in Asia. SAR 8, 20, 26. The NPI team also administers the pilot hard disk drive production at the San Jose, California facility of the subject firm (see below for more information on domestic production). As this team plays a role in validating the design of a product before production, this part of the process is considered part of the design and development work. SAR 8, 20, 26. Therefore, the Department has concluded that Exhibit 1 does not support a finding that the plaintiffs have met the criteria for TAA eligibility.

The second exhibit consisted of a list of 17 positions posted by Western Digital in Malaysia. The listings are dated October 19, 2011, which is almost three years after the separations in the subject worker group were announced in December 2008. Close examination of the listings showed that only one

position called for ''co-develop new product and channel feature with U.S. counterpart''. In any event, the position description does not specify that the ''co-development'' refers to hard disk drives. None of the other positions listed call for development work of hard disk drives or any other products. Also, out of the 17 listings, only three contain the words ''develop'' or ''design'' and these three positions call for the development and design of software and code applications, not hard disk drives, which the subject firm has ascertained is the function of the domestic engineers. AR 152, 212–218, 228–231, 244, 245–246, 271–279 and SAR 8, 20, 26. Also, none of the positions provided by the Plaintiffs with the complaint contained the words ''develop'' or ''design''.

The third exhibit consisted of a job announcement and position description of ''Western Digital Senior Engineer/Staff Engineer—Asia R&D—Advance Read Channel Engineering''. The description of this position does not mention new product design or any related duties. The description, however, mentions ''failure analysis'', which is a duty that the subject firm has explained that occurs both domestically and in Asia, depending on the life stage of a product. AR 208, 292 and SAR 8, 20, 26. Additionally, this position was posted in August 2011, more than two and a half years after the RIF was announced at the subject firm.

The fourth exhibit consisted of a position description of a Product Engineer. This position announcement mentions that the position may include failure analysis and research and development but it does not include a specific description of duties. The work duties listed in this announcement are consistent with those described by the subject firm. In particular, the subject firm has stated that the work of the engineers overseas is designed to carry out the manufacturing process and sustain the work performed on existing hard disk drives. AR 152, 212–218, 228–231, 244, 245–246, 271–279.

The fifth exhibit consisted of the profile, as listed on an online social network, of an engineer employed at one of the subject firm's facilities in Asia. Although the profile shows that the engineer was employed at the Lake Forest, California facility and then transferred to Malaysia, the profile does not include a description of job duties performed at either location.

The sixth exhibit consisted of Western Digital's career opportunities page from the subject firm's Web site which shows that there are manufacturing facilities in California. As the findings of the first remand investigation showed, the subject firm operates two domestic manufacturing sites in California. The articles produced at the domestic locations are component parts used for internal purposes. The second remand investigation found that one of the domestic facilities also manufactures pilot hard disk drives (see below).

The last exhibit consisted of the subject firm's company profile from an employment Web site. The profile does not list any specifics related to positions domestically or abroad but mentions that the subject firm operates manufacturing facilities in California. The domestic manufacturing operations of the subject firm are addressed above.

The second remand investigation produced further explanation of the process by which the subject firm produces hard disk drives. As discussed above, the subject worker group designs the hard disk drives domestically. Before the design is sent overseas for mass production, the subject firm manufactures prototype hard disk drives to ensure that the new designs are functional. SAR 8, 20, 26. The subject firm stated that prototype creation is part of the design of hard drives because a prototype must be created, tested, and validated before sending the product for mass production. SAR 8, 20, 26.

Although the pilot hard disk drives produced are used mainly for development purposes, the subject firm operates a White Label program via which it sells a portion of the pilot hard disk drives externally. SAR 8, 20, 26. The subject firm has three prototype production lines located in San Jose, California, Malaysia, and Thailand. SAR 20, 26. In response to Plaintiff's allegation that prototype production has shifted abroad, the subject firm substantiated that no domestic production of the pilot drives has shifted overseas in the period under investigation. SAR 20, 26.

The Department collected information from the subject firm related to the size of each operation and the number of prototypes that are sold. The numbers revealed that the domestic production of the pilot drives constitutes a small number of the prototypes sold under the White Label program and a negligible portion of overall hard disk drive production. SAR 8, 20, 26.

It is well-established that a negligible shift of production to a foreign country cannot be a basis for TAA certification. In Barry Callebaut USA, Inc., Van Leer Division, Jersey City, New Jersey (TA–W–37,000; USCIT No. 03–1113; February 10, 2004), the Department determined that a three percent shift of production was not sufficient basis to satisfy the criteria for certification. Appling the same analysis in the present case, the Department has determined that because the pilot hard disk drive production at the subject firm is not significant relative to overall hard disk drive production, any trade impact on the pilot hard disk drive production line could not have contributed to separations in the subject worker group.

Upon review of the facts collected during the earlier investigations and the additional information procured through the second remand investigation, the Department has determined that the services provided by engineers at the subject firm's Asian facilities are not like or directly competitive with the services of the engineers located at the subject facility. Additionally, the domestic production of hard disk drives is de minimus relative to the subject firm's overall operations, such that any trade impact could not have contributed to worker separations at the subject firm. Accordingly, the Department reaffirms that the petitioning workers have not met the eligibility criteria of section 222(a) of the Act.

Conclusion

After careful consideration of the 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 January, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–3324 Filed 2–13–12; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,041]

Quad/Graphics, a Subdivision of Quad Graphics, Inc., Including On-Site Leased Workers From SPS Temporaries, Depew, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on March 15, 2011, on behalf of workers of Quad/Graphics, a Subdivision of Quad Graphics, Inc., Depew, New York. The negative