APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 6/9/08 AND 6/13/08

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
63499	Kincaid Furniture Company, Inc. (Comp)	Hudson, NC	06/09/08	06/05/08
63500	Lumberton Dyeing and Finishing (Rep)	Lumberton, NC	06/09/08	06/06/08
63501	Lab Security Systems Corp (State)	Bristol, CT	06/09/08	06/06/08
63502	Onsite International, Inc. (Wkrs)	El Paso, TX	06/09/08	05/20/08
63503	3 Day Blinds (Wkrs)	Anaheim, CA	06/09/08	06/06/08
63504	Kongsberg Automotive, Inc. (Comp)	Willis, TX	06/09/08	06/05/08
63505	Permacel Automotive (UAW)	Kansas City, MO	06/09/08	06/02/08
63506	SAPA Fabricated Products (State)	Magnolia, AR	06/09/08	06/06/08
63507	Sirenza Microdevices, Inc./RF Microdevices (State)	Broomfield, CO	06/09/08	05/20/08
63508	Bedford Logistics, Inc. (Wkrs)	Bedford, IN	06/09/08	06/02/08
63509	Robin Manufacturing USA, Inc. (Wkrs)	Hudson, WI	06/09/08	06/04/08
63510	Plastech Engineered products (Comp)	Kenton, TN	06/09/08	06/06/08
63511	Liz Claiborne/Ellen Tracy (UNITE)	North Bergen, NJ	06/10/08	06/09/08
63512	Dynamic Technology, Inc. (Comp)	Hartland, MI	06/10/08	06/09/08
63513	CIMA Plastics II Corporation (Wkrs)	Elberton, GA	06/11/08	06/02/08
63514	Plastech Engineered Products, Inc. (Wkrs)	Elwood, IN	06/11/08	06/05/08
63515	Aberdeen Fabrics, Inc. (Comp)	Red Springs, NC	06/11/08	06/05/08
63516	Morlite/Vista (Wkrs)	Pittsburgh, PA	06/11/08	06/09/08
63517	Tredegar Film Products (Union)	Marlin, PA	06/11/08	06/05/08
63518	WRR, Inc. D/B/A State Plating (Wkrs)	Elwood, IN	06/11/08	06/03/08
63519	Parlex USA (State)	Methuen, MA	06/11/08	06/06/08
63520	American Dynamics (Wkrs)	San Diego, CA	06/11/08	06/06/08
63521	Dal Tile, Inc. (Wkrs)	Dallas, TX	06/12/08	06/10/08
63522	Brockway Mould, Inc. (USW)	Brockport, PA	06/12/08	06/11/08
63523	Bee Chemical, DBA NB Coatings, Inc. (Wkrs)	Lansing, IL	06/12/08	05/27/08
63524	Tennessee Orthopaedic Alliance (Comp)	Nashville, TN	06/12/08	05/31/08
63525	Overhead Door Corporation (Union)	Lewistown, PA	06/12/08	06/10/08
63526	St. John Knits (State)	Irvine, CA	06/12/08	06/11/08
63527	Union Tank Car Company (Union)	East Chicago, IN	06/12/08	05/29/08
63528	Callaway Golf Ball Operations, Inc. (Comp)	Johnstown, NY	06/12/08	06/06/08
63529	Fisher and Company/Fisher Dynamics (Comp)	St. Clair Shores, MI	06/13/08	06/12/08
63530	McNaughton Apparel Group, Inc. (State)	New York, NY	06/13/08	05/08/08
63531	William Pinchbeck, Inc. dba Pinchbeck Roses (State)	Guilford, CT	06/13/08	06/12/08
63532	Woodward Controls, Inc. (Rep)	Niles, IL	06/13/08	05/19/08
63533	Thomasville Upholstery Plant #9 (Comp)	Hickory, NC	06/13/08	06/12/08
63534	Novtex Div. of Trimtex Company, Inc. (Comp)	Adams, MA	06/13/08	06/12/08
63535	Jefferson Plant of Leviton Manufacturing Company (Comp)	Jefferson, NC	06/13/08	06/12/08
63536	Brazing Concepts South (Comp)	Fairfield, OH	06/13/08	06/12/08
63537	Littelfuse/Account Finance Department (State)	Des Plaines, IL	06/13/08	06/12/08
63538	Plastech Engineered Products (Wkrs)	Gallatin, TN	06/13/08	06/05/08
63539	DMAX, Ltd (IUECWA)	Dayton, OH	06/13/08	06/12/08
63540	Sento Corporation (Wkrs)	Raleigh, NC	06/13/08	06/09/08

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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 October 31, 2007, the U.S. Court of International Trade (USCIT) remanded to the U.S. Department of Labor (Department) for further investigation *Former Employees of Joy Technologies, Inc.* v. *U.S. Secretary of Labor*, Court No. 06–00088.

Case History

On August 2, 2005, the International Brotherhood of Boiler-makers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 483, filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) on behalf of workers and former workers of Joy Mining Machinery, Mt. Vernon, Illinois producing underground mining equipment. The petition alleged that the Mt. Vernon facility would close September 23, 2005, due to a shift of production to Canada, China, Mexico and Russia. Administrative Record (AR) 2–3, 20.

Workers of the Mt. Vernon facility were previously denied eligibility to apply for TAA under TA–W–42,234 on the basis that the workers did not produce an article. AR 8, Supplemental Administrative Record (SAR) 127.

During the initial investigation, the petitioners submitted documents in support of the allegation that mining equipment production shifted to Mexico. AR 22–28.

Also, during the initial investigation, Joy officials provided information that the principal functions performed at the Mt. Vernon Illinois facility were building and rebuilding shuttle cars; rebuilding electrical motors used in certain types of mining machinery; and rebuilding gearboxes for armored face conveyors (AFC), AR 12, 14–15, 44. In addition, the Department learned that the Mt. Vernon facility was scheduled to close on September 23, 2005. AR 9, 12, 125.

Joy also provided information that the Mt. Vernon facility's closure was due to the relocation of operations to a new facility in Kentucky. AR 12, 15, 16, 29, 126. The new facility in Kentucky

would ''manufacture shuttle cars, rebuild motors and rebuild AFC gearcases.'' AR 126. Joy Mining Machinery (Joy) already had warehouse facilities in Kentucky. AR 126.

Information received from Joy documents that the Mt. Vernon facility's sales during November 2003 through October 2004 increased from November 2002 through October 2003 levels and that sales during November 2004 through July 2005 decreased from November 2003 through July 2004 levels, and that Joy's domestic sales in fiscal year 2004 increased from fiscal year 2003 levels, and increased during the first three quarters of 2005 when compared to the first three quarters of 2004. AR 14, 29.

The initial negative determination, issued on September 15, 2005, was based on the Department's findings that:

- Workers at Joy Technologies, Inc., Mt. Vernon, Illinois produced underground mining machinery;
- Sales and employment at the Mt. Vernon facility increased from 2003 to 2004;
- Mt. Vernon facility sales remained stable in January through July 2005 when compared to January through July 2004;
- Company-wide sales increased in January through July 2005 when compared to January through July 2004;
- Joy did not shift production to a foreign country; and
- Joy did not import articles like or directly competitive with those produced by the Mt. Vernon facility. AR 132–135.

By letter dated November 3, 2005, the former employees requested administrative reconsideration, stating that the workers were engaged in fabrication of mining equipment components and that these components are being produced in a foreign country. The request further alleged that the worker separations were due to Joy's shift of production to a foreign country (Mexico). AR 145–148

The negative reconsideration determination, issued on January 19, 2006, was based on the Department's findings that:

- There was no shift of production to Mexico;
- the work at issue was temporary work re-assigned to several domestic Joy facilities, including the Mt. Vernon facility;
- The workers' separations were due to a shift of operations to an affiliated domestic facility in Kentucky; and
- The subject workers were not eligible to apply for TAA as workers of either a primary company or a secondarily-affected company. AR 180–183.

By letter dated March 15, 2006, Plaintiffs sought judicial review by the USCIT. Plaintiffs' counsel's August 24, 2006 letter stated that the Department failed to identify the manufacturing functions of the Mt. Vernon facility and to adequately investigate, and subsequently determine, whether the petitioning workers are eligible to apply for worker adjustment assistance under the Trade Act of 1974, as amended, due to either increased imports of articles like or directly competitive with those produced by the Mt. Vernon facility or a shift of production to a foreign country, specifically Mexico. SAR 193–198.

The Department's motion for voluntary remand to further investigate the Plaintiffs' allegations and to issue a re-determination of subject workers' eligibility to apply TAA and ATAA was granted by the USCIT on September 25, 2006. SAR 240.

During the first remand investigation, the Department contacted Plaintiffs' counsel for information, SAR 200–234, 242–392, 409–411, reviewed submissions from Plaintiffs, SAR 200–201, 407–408, 416–419, 422–423, and reviewed information provided by Joy. SAR 200–201, 235, 412–415, 420–421.

During the first remand investigation, the Department received 12 affidavits from Plaintiffs. A summary of relevant facts of each affidavit follows:

Ten affiants 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 were Joy facilities throughout the United States, including Utah, Virginia, and West Virginia; and a ''substantial part'' of the subject facility's work is performed as ''an upstream supplier'' for the Franklin, Pennsylvania facility. The same ten affiants stated that the subject facility imported mining machinery components from Mexico, ''did the final machining on completed crawler track frames that originated in Mexico,'' or some close variation thereof. Nine affiants referenced parts or components stamped ''hecho en Mexico.''

Gary Coles further stated that the subject facility had sold completed components ''directly to customers.'' Steve Lisenbey further stated that 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''; 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 further stated that the subject facility ''took sales orders directly from customers''; 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.

Jerome Tobin further stated that 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 further stated that 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.

Steven Kirkpatrick further stated that in 2003, ''DMUs came into the Mt. Vernon plant from Mexico.'' SAR 366–370.

Darrell Cockrum stated 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 stated 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.

In the course of the first remand, the Department determined that the subject workers produced mining machinery and finished mining machinery components, and rebuilt mining machinery components. Because the workers who produced finished mining machinery and mining machinery components were not separately

identifiable by product line, AR 12, the Department determined that the subject worker group was engaged in the production of mining machinery and mining machinery components. Since rebuilding machinery is a repair activity, it was considered a service and was not an issue in the first remand investigation.

On January 8, 2007, the Department issued a negative determination on remand. The Department based its determination on the following findings:

- There was no shift of production of either finished mining machinery or components from the Mt. Vernon facility to a foreign country;
- Production shifted from the Mt. Vernon facility to Joy's Lebanon, Kentucky facility;
- Neither the Mt. Vernon facility nor Joy (overall) increased imports of articles like or directly competitive with those produced at the Mt. Vernon facility; and
- Increased imports, if any, could not have contributed importantly to workers' separations because sales increased during the relevant period. SAR 429–448.

The USCIT, in its October 31, 2007 decision, concluded that the denial of benefits was not supported by substantial evidence. Further, the Court found that the Department misstated the Trade Adjustment Assistance requirements, where the Department determined that there was not a shift of production to Equimin, a sometime Mexican supplier, based on the Department's finding that Equimin was not owned by Joy.

Accordingly, the Court ordered a second remand investigation, in order for the Department to determine whether the subject workers were eligible to apply for TAA and ATAA. The Department carefully reviewed USCIT decision for guidance in designing the remand investigation, so that the Department could:

- Review the work performed by the subject workers, regardless of whether the work was ''core'' or ''non-core'' functions of the Mt. Vernon facility;
- Determine whether increases (absolute or relative) in imports of articles like or directly competitive with those produced by the Mt. Vernon facility contributed importantly to worker separations (total or partial), or threat thereof, and to declines in Mt. Vernon facility sales and/or production;
- Determine whether there has been a shift in production by Joy of articles like or directly competitive with those produced by the Mt. Vernon facility to a qualified country (a foreign country, such as Mexico, that is either a party to a free trade agreement with the United States or a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act);
- Determine whether there has been a shift of production by Joy of articles like or directly competitive with those produced by the Mt. Vernon facility to a foreign country followed by an actual or likely increase in imports of articles like or directly competitive with articles which are or were produced by the Mt. Vernon facility; and
- Issue a re-determination whether the subject workers are eligible to apply for TAA and ATAA.

Trade Adjustment Assistance Criteria

To apply for TAA, the group eligibility requirements under section 222(a) of the Trade Act of 1974, as amended, must be met. The requirements can be satisfied in either of two ways:

I. Section 222(a)(2)(A)—

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

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section 222(a)(2)(B)—

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

B. 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

C. One of the following must be satisfied:

1. 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; or

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles like or directly competitive with articles which are or were produced by such firm or subdivision.

Applicable Regulations

Under the definition of ''increased imports'' presented in 29 CFR 90.2, imports must have increased, absolutely or relative to domestic production, compared to a representative base period. The regulation establishes what the Department refers to as the ''relevant period,'' i.e., the twelve-month period prior to the date of the petition, and the ''representative base period,'' the one-year period preceding the relevant period.

Further, pursuant to 29 CFR 90.2, like articles are ''those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which the articles are made, appearance, quality, texture, etc.)'' and directly competitive articles are ''those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefore).''

Second Remand Investigation Glossary

To more easily understand the terms used in this determination, the Department will use the following definitions:

- ''*Continuous miner*'' and ''*Miner*'' are terms that are used interchangeably and refer to a type of heavy underground mining equipment used to remove earth during the mining process;
- ''*Crawler Track Frames*'' and ''*CAT Frames*'' are bare steel Structures that serve as the framework for the construction of a continuous miner;
- ''*Haulage*'' refers to a type of heavy equipment that is used to transport coal and earth during the mining process, and includes shuttle cars;
- ''*Joy*'' refers to Joy Technologies, Inc., doing business as (DBA) Joy Mining Machinery (corporate entity);
- ''*Rebuild*'' refers to repair;
- ''*Relevant Period*'' refers to the 12-month period prior to the petition date, which is August 2004 through July 2005;
- ''*Subject Workers*'' refers to workers and former workers at Joy Technologies, Inc., DBA Joy Mining Machinery, Mt. Vernon, Illinois.

Mt. Vernon Facility Operations

THIS SECTION CONTAINS BUSINESS CONFIDENTIAL INFORMATION

AND PORTION BETWEEN
BRACKETS MUST BE REDACTED
FROM PUBLIC VERSION
[ ]

Joy's Relationship With EQUIMIN

THIS SECTION CONTAINS BUSINESS
CONFIDENTIAL INFORMATION
AND PORTION BETWEEN
BRACKETS MUST BE REDACTED
FROM PUBLIC VERSION
[ ]

Scope of Second Remand Investigation

The Department recognizes the remedial nature of the TAA program, and therefore reviews facts in the light most favorable to the separated workers seeking benefits. However, the Department has a statutory obligation to determine whether the petitioning workers have met the group eligibility criteria of the Trade Act of 1974, as amended. In an effort to effectuate the remedial purposes of the Trade Act, the Department generally incorporated, verbatim, Plaintiff's proposed questions for Joy into the second remand investigation (SAR 496, 507–508) and carefully considered Plaintiffs' relevant input.

In order to determine whether a petitioning worker group has met the statutory criteria, the Department first determines what article(s) the subject workers produced during the relevant period. Second, the Department determines whether, during the relevant period, there were significant worker separations.

After making those determinations, the Department determines whether there were declines (absolute or relative) in Mt. Vernon facility sales and/or production. If so, the Department determines whether increased imports, as described in 29 CFR 90.2, of articles like or directly competitive with those produced by the Mt. Vernon facility contributed importantly to the worker separations and sales and/or production declines.

The Department must also determine whether, in addition to significant worker separations, there has been a shift of production from the Mt. Vernon facility of articles like or directly competitive with those produced by the Mt. Vernon facility to a qualifying country or if there have been, or are likely to be, increased imports of articles like or directly competitive with those produced by the Mt. Vernon facility following Joy's shift of production to a non-qualifying country.

While the Plaintiffs did not allege secondary-impact (the situation where, during the relevant period, the Mt. Vernon facility either supplied component parts to or assembled/finished for a company with a worker group certified eligible to apply for TAA), it is the Department's practice to consider secondary-impact should a petitioning worker group not meet the statutory criteria.

Where the separated workers meet the group eligibility requirement (significant separations or threat of separation) of the Trade Act, as amended, the Department conducts an investigation to determine if the subject workers are eligible to apply for ATAA.

To determine the subject workers' eligibility to apply for TAA and ATAA, the Department reviewed previously-submitted information, as well as information submitted during the second remand investigation, regardless of whether the work performed by the subject workers could be characterized as ''core'' functions of the Mt. Vernon facility.

Further, the Department has been consistently mindful during the second remand investigation of the need to base its determination on competent, credible evidence. The plaintiffs have disputed Joy's credibility, observing that a particular Joy official had provided ''less than credible information,'' in a separate proceeding. SAR 862. In response, the Department has taken particular care to seek information from Joy officials [REDACTED IN PUBLIC VERSION] who were qualified to respond based on their familiarity with the Mt. Vernon facility's operations, during the Court-ordered remand investigation. SAR 895, 975. Further, all information received from Joy was provided to Plaintiffs' counsel for review and comment, so that there was full opportunity for exposure of any inaccuracy. Indeed, plaintiffs did respond to Joy's submissions, characterizing them as non-responsive, incomprehensible and insufficient basis for negative determination. SAR 870–872, 910–914, 939–940, 982–983, 985–986. Plaintiffs focus particular attention on Joy's apparent effort to minimize the significance of the crawler track frame work performed at the Mt. Vernon facility and in Mexico. SAR 912, 985. In addition, two of the plaintiffs submitted affidavits that were intended to rebut Joy's information. SAR 915–921, 941–942, 987–988. The plaintiffs raised no issues as to the truthfulness of Joy's informants.

A careful review of previously submitted information revealed that Joy was aware that TAA and ATAA would be paid at no cost to them (AR 19) and, therefore, had no incentive to prevent the subject workers from receiving TAA benefits, AR 29–30. In addition, a Joy official stated that Joy wanted former workers ''to receive all of the benefits to which they are legally entitled.'' AR 160.

After having given every reasonable consideration to plaintiffs' critiques of Joy's submissions, the Department has determined that the ostensible gaps or flaws in the record developed for the second remand investigation reflect areas of inquiry where either there was no responsive information (SAR 975–976) or there was no responsive information that was relevant to the Department's deliberations. SAR 973. The company officials and Joy counsel have demonstrated that they are knowledgeable of the matters on which they provided information, which included hundreds of pages of company records to substantiate their responses.

Further, while both the plaintiffs and the former firm have directed considerable effort to expounding their views as to whether the fabrication of crawler track frames was a ''core'' activity at the Mt. Vernon facility, the Department has determined that the distinction between ''core'' and ''non-core'' is irrelevant to the Department's decision on remand. Indeed, the application of the statutory criteria for certification requires no such finding.

Based on careful consideration of all relevant factors, the Department has found that the information provided by Joy is competent and credible.

Given the remedial purposes of the Trade Act, the Department carefully scrutinized all information received from the plaintiffs, giving them the benefit of every doubt. However, based on plaintiffs' failure to substantiate their allegations or to rebut information provided by Joy, the Department has determined that the information submitted by the plaintiffs is insufficient to overcome the conclusions drawn from the statements and voluminous documentary evidence by Joy. Further, to the extent that the plaintiffs' information is credible, the facts they have adduced would not have satisfied the statutory criteria for certification. In particular, even when viewed in the light most favorable to the plaintiffs, the plaintiffs' information about [REDACTED IN PUBLIC VERSION] does not support conclusion that there was a shift of production from the Mt. Vernon facility to a foreign source.

In order to ensure that the second remand determination is based on substantial evidence, the Department has made every reasonable effort to obtain pertinent information. To that end, the Department requested Plaintiffs' counsel to provide the

Department with questions that could be sent to Joy. SAR 449–455, 498–500. In response to the Department's requests, Plaintiffs' counsel submitted several questions, including questions regarding imports of mining equipment and components; the outsourcing of mining components; work orders for mining equipment and components; and employee time records for activities related to the production of mining equipment and components. SAR 496, 499, 507.

During the second remand investigation, the Department requested that Joy identify the types of mining equipment and components produced at the Mt. Vernon facility and provide the quantity of each type of mining equipment and component produced at the Mt. Vernon facility. SAR 506–507. In efforts to seek clarification of the initial responses, the Department conducted a conference call with Joy officials to discuss previously-submitted information, SAR 904–908, and requested that Joy submit marketing material that illustrated the mining equipment. SAR 948–966.

Plaintiffs' only submissions during the second remand investigation consist of three affidavits from two former workers of the Mt. Vernon facility. While both former employees asserted that they rebuilt continuous mining equipment and mining component parts, neither former worker alleged increased imports of continuous mining equipment and/or mining component parts or a shift of production abroad. SAR 930, 941.

John P. Moore, a former worker of the Mt. Vernon facility who submitted an affidavit during the first remand investigation, stated in his April 18, 2008 affidavit that:

- In 2001, the Mt. Vernon facility became a ''center of excellence for haulage'' with haulage being shuttle cars, armored face conveyors, and battery cars;
- Following the change, the Mt. Vernon facility manufactured shuttle cars as well as ''miner components, both for its own use, and as overflow work from other Joy facilities'';
- ''Joy, Mt. Vernon manufactured many different continuous miner components, not just crawler track frames'';
- ''Joy, Mt. Vernon also manufactured and/or serviced other continuous miner components * * * Joy, Mt. Vernon manufactured these * * * for use in rebuilding and also to sell directly to customers'';
- ''In May 2004, Joy began producing sixty-nine (69) conveyors and seventy-two (72) conveyor supports as overflow work for the Franklin, Pennsylvania plant''; and
- ''The rebuilding of continuous miners often required manufacturing new continuous miner components to replace old components.'' SAR 930–933.

Steven Kirkpatrick, another former worker of the Mt. Vernon facility who also provided an affidavit during the first remand investigation, described in his April 24, 2008 affidavit the fabrication of crawler track frames. SAR 941–942.

John P. Moore, in his May 22, 2008 affidavit, described several continuous miner components and repeated his earlier statement that ''In May 2004, Joy began producing sixty-nine (69) conveyors and seventy-two (72) conveyor supports as overflow work for the Franklin, Pennsylvania plant.'' SAR 987.

During the second remand investigation, the Department received from Joy data regarding:

- Production and service orders of mining equipment and components at the Mt. Vernon facility during June 2003 through July 2004, SAR 667–727;
- Production orders of mining equipment and components at the Mt. Vernon facility during August 2003 through September 2004, SAR 773–785, 832–844, 882–891;
- Production and service orders of mining equipment and components at the Mt. Vernon facility during August 2004 through September 2005, SAR 728–768;
- Production orders of mining equipment and components at the Mt. Vernon facility during October 2004 through November 2005, SAR 781–798, SAR 821–831;
- Employment figures at the Mt. Vernon facility during June 2003 through August 2005, including the types of workers and the staff level of each worker category, SAR 535–666;
- Mining equipment repair data for 2003, 2004, and 2005, SAR 769; and
- Data regarding labor costs and production costs for various Joy facilities, including Mt. Vernon, Illinois, and Lebanon, Kentucky. SAR 770.

All information obtained from Joy during the second remand investigation was submitted to Plaintiffs' counsel (subject to the USCIT protective order) for review and comment prior to the filing of the second remand determination. Indeed, the Department requested an extension of the time to file the remand determination, in order to provide Plaintiffs' counsel with adequate time to review the materials and submit comments, as well as to allow time for the Department to consider the Plaintiffs' concerns about Joy's submissions.

Issue #1: Articles Produced by the Mt. Vernon Facility During the Relevant Period

The Department determined in the first remand determination that the subject workers were engaged in the production of mining machinery and mining machinery components.

During the second remand investigation, the Department received information from Joy which clarified that the Mt. Vernon facility produced haulage equipment, SAR 849–856, 905, 908, and rebuilt mining component parts. SAR 728–768, 882–891, 905, 978–979. Joy also provided information which indicated that the subject workers produced a significant quantity of brakes and clutches for after-market sale to customers, SAR 907–908. Joy also provided information which indicated the Mt. Vernon facility produced some crawler track frames, on an ''overflow'' basis, during the representative base period and the relevant period. SAR 854–855. [REDACTED IN PUBLIC VERSION]

The Department also received three affidavits (two, dated April 18, 2008 and May 22, 2008, from one plaintiff and one dated April 24, 2008 from another). The April 21 affidavit described work performed at the Mt. Vernon facility and estimated that work on crawler track frames constituted at least 30 percent of the Mt. Vernon facility's work in the last year it was open. SAR 917. The April 24 affidavit addressed the production of crawler track frames, estimating that the fabrication, alone, of the frames required 72 man hours. SAR 941. The May 22 affidavit described certain components of continuous miners and stated that the Mt. Vernon facility manufactured components for mining machinery between 2003 and the time the plant closed. SAR 987–988. Joy responded to the plaintiffs' affidavits, questioning the accuracy of the 30 percent estimate and the overall relevance of the affiants' statements.

Based on careful review of the record, the Department has determined that the subject workers were engaged in the production of haulage equipment and mining equipment component parts, including crawler track frames, and that the workers were not separately identifiable by product line.

Issue #2: Significant Worker Separations at the Mt. Vernon Facility During the Relevant Period

The Mt. Vernon facility closed on September 23, 2005. AR 2, 12. As such, the Department determines that, during

the relevant period, a significant number or proportion of workers at the Mt. Vernon facility were totally or partially separated, or threatened to become totally or partially separated.

Issue #3: Sales and/or Production Declines at the Mt. Vernon Facility During the Relevant Period

The Mt. Vernon facility experienced sales and production declines during the period extending from January 2005 through July 2005, as compared to the comparable period the previous year. AR 14. Accordingly, the Department determines that, during the relevant period, sales and production declined absolutely.

Issue #4: Increased Imports Did Not Contribute Importantly to Mt. Vernon Facility Declines or Worker Separations

Pursuant to 29 CFR 90.2, imports must have increased, absolutely or relative to domestic production, during the relevant period when compared to a representative base period. The regulation establishes the representative base period as the one-year period preceding the relevant period.

Plaintiffs have alleged that ''continuous miner components like or directly competitive with those manufactured at Joy Mt. Vernon, were being imported to the plant from Mexico,'' SAR 456, and provided printed material from the Web site of Equimin that states ''Equimin is actually exporting steel structures for underground shielded and belt conveyor to the Joy Mining Machinery in U.S.A.'' SAR 458–469.

Plaintiffs do not dispute that Joy does not import finished mining machinery. AR 13–14, 170. Accordingly, the scope of the second remand investigation is limited to mining equipment component parts.

According to Joy, [REDACTED IN PUBLIC VERSION] SAR 970.

Because the imports occurred during the relevant period (August 2004 through July 2005), the Department finds that there were imports of mining equipment component parts like or directly competitive with those produced by the Mt. Vernon facility.[1] However, the Department has determined, given that production of crawler track frames at the Mt. Vernon facility increased during the relevant period (SAR 854) and the imports ceased before the Mt. Vernon facility closed (SAR 970), that imports of crawler track frames did not contribute importantly to Mt. Vernon facility sales and/or volume declines and worker separations. If anything, the import of frames created work for the Mt. Vernon facility, which might otherwise have closed even sooner. SAR 907.

If the Department were to consider imports from Mexico as a possible basis for certification, the Department would need to determine if such imports were ''like or directly competitive with'' articles produced at the Mt. Vernon facility. Joy has stated that it imported crawler track frames, while averring that it did not import any article like or directly competitive with the component parts produced at the Mt. Vernon facility. This can best be understood by discussing the application of the terms ''like'' and ''directly competitive'' within the context of the Trade Act.

Pursuant to 29 CFR 90.2, like articles are ''those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which the articles are made, appearance, quality, texture, etc.)'' and directly competitive articles are ''those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes (i.e., adapted to the same uses and essentially interchangeable therefore).''

Under this definition, prescription glasses are like non-prescription glasses and are directly competitive with contact lenses, but are not directly competitive with non-prescription sunglasses and are not like contact lenses. As illustrated, two articles may be like each other without being directly competitive with each other, and two articles may be directly competitive with each other without being like each other.

According to information provided by both Joy and the plaintiffs the crawler track frame work performed in Mexico produced ''just grids—metal frames with nothing on them.'' SAR 907. The finishing process required substantial additional work. SAR 854, 916. Therefore, frames imported from Mexico were components of a finished product, rather than the product itself. Accordingly, the crawler track frames fabricated in Mexico and imported to the United States for finishing were not like or directly competitive with the frames that were fully manufactured at the Mt. Vernon facility and elsewhere in the United States.

Issue #5: Joy Did Not Shift Production to a Foreign Country

The plaintiffs have asserted that production of crawler track frames shifted from the Mt. Vernon facility to Mexico. SAR 293–296. Based on the information the Department obtained during previous investigations and confirmed during the second remand investigation, the Department has determined that there was no shift of production to a foreign country. Rather, production shifted from the Mt. Vernon facility to other domestic facilities. AR 9, 20, 29–30, 130–131, 159–160, 169–170, SAR 248, 251, 415, 425.

Joy has presented credible and competent evidence that the work previously performed at the Mt. Vernon facility has been shifted to other Joy facilities or to vendors in the United States, because of cost considerations. SAR 971, 975. In particular, Joy noted that the number of employees at the Kentucky plant to which some of the work previously performed by the Mt. Vernon facility had been shifted is roughly equivalent to the number of employees at the Mt. Vernon facility. SAR 973. The plaintiffs have not produced evidence that calls into question Joy's statement that foreign production sources have done no work for Joy since 2005. Therefore, the Department has determined that the subject workers are not eligible to apply for TAA based on a shift of production to a foreign country. The mere fact that the Mt. Vernon facility did work on some products produced in Mexico is not, in itself, evidence that production shifted to Mexico when the facility closed. Joy's explanation of where the Mt. Vernon facility's work went and the reasons for its closure are consistent and well supported in the record.

Issue #6: The Mt. Vernon Facility Did Not Supply Component Parts to a Company With a Worker Group Certified Eligible To Apply for TAA

Plaintiffs have asserted that the subject workers manufactured components for Joy's Franklin, Pennsylvania facility, SAR 194, 204–205, and may have produced components for Joy's Duffield, Virginia plant, Bluefield, West Virginia plant, and the Price, Utah plant. SAR 205.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance based on secondary impact, the following group eligibility requirements under section 222(b) must be met:

(1) A significant number or proportion of the workers in the workers' firm or

[1] The record is not clear about the volume of imports, so it cannot be determined whether imports increased during the relevant period. For the purposes of this finding, the Department will assume that imports increased.

an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

The Department has reviewed the record and has determined that section 222(b)(2) has not been met, because (1) the Mt. Vernon facility was a supplier for other Joy facilities, not for another firm, and (2) there is no certified worker group with which the plaintiffs could be associated. Therefore, the Department determines that the subject workers are not eligible to apply for TAA as secondarily-affected workers.

Issue #7: The Worker Group Cannot Be Certified as Eligible To Apply for ATAA

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 for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified as 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 12th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–14298 Filed 6–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,451]

Columbia Falls Aluminum Company, LLC, Columbia Falls, MT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 30, 2008 in response to a petition filed by a company official on behalf of workers of Columbia Falls Aluminum Company, LLC, Columbia Falls, Montana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–14304 Filed 6–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,542]

Home Depot, Store Number 0379, Opelousas, LA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 16, 2008 in response to a worker petition filed by a state agency representative on behalf of workers of Home Depot, Store Number 0379, Opelousas, Louisiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 18th day of June 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–14295 Filed 6–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,360]

Motorola, Inc., Fort Worth, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 9, 2008 in response to a petition filed on behalf of workers of Motorola, Inc., Fort Worth, Texas.

The workers are covered under an existing certification (TA–W–62,897) issued for all workers of Motorola, Inc., Integrated Supply Chain Division, Fort Worth, Texas, which expires on April 2, 2010. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 17th day of June, 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–14303 Filed 6–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,519]

Parlex USA, Methuen, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 11, 2008 in response to a worker petition filed by a state agency representative on behalf of workers of Parlex USA, Methuen, Massachusetts.

The petitioning group of workers is covered by an active certification (TA–W–62,771) which expires on April 28, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of June 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–14305 Filed 6–24–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO); Notice of Open Meeting

The Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO) was established pursuant to Title II of the Veterans' Housing Opportunity and Benefits