Slip Op. 06–145

FORD MOTOR CO., Plaintiff, v. UNITED STATES, Defendant.

Before: Richard W. Goldberg,
Senior Judge
Court No. 99–00394

OPINION AND ORDER

[Plaintiff's motion for reconsideration is denied.]

Dated: September 29, 2006

Stein Shostak Shostak Pollack & O'Hara, LLP (*Stanley Richard Shostak* and *Heather Christi Litman*) for Plaintiff Ford Motor Co.

Peter D. Keisler, Assistant Attorney General; *Barbara S. Williams*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Saul Davis*), for Defendant United States.

GOLDBERG, Senior Judge: On July 21, 2006, Plaintiff Ford Motor Co. (**"Ford"**) filed a motion, under USCIT Rule 59(e), for reconsideration of the Court's June 21, 2006 decision *Ford Motor Co. v. United States*, 30 CIT ___ , 435 F. Supp. 2d 1324 (2006) (**"Ford Motor Co. I"**) and the accompanying judgment order that dismissed Ford's case for lack of subject matter jurisdiction.[1] In that decision, the Court had found that the precondition for the Court's 28 U.S.C. § 1581(a) jurisdiction – i.e., a valid protest under 19 U.S.C. § 1514 –

[1] Ford also invoked USCIT Rule 60 as a ground for the Court to reconsider its June 21, 2006 judgment. However, a motion for reconsideration brought within thirty days of the entry of judgment by the U.S. Court of International Trade will be treated as a motion to alter or amend under USCIT Rule 59(e), and not as a motion for relief under USCIT Rule 60(b). *See* 12 James Wm. Moore et al., *Moore's Federal Practice* § 59.30[7] (3d ed. 2005) (discussing Federal Rules of Civil Procedure 59(e) and 60(b), which are identical to USCIT Rules 59(e) and 60(b) in all relevant aspects except that the Federal Rules allow only ten days for the filing of a Rule 59(e) motion instead of thirty days).

was absent and the Court therefore lacked subject matter jurisdiction. In its motion for reconsideration, Ford cited to several putative legal and factual errors in *Ford Motor Co. I*, and sought reinstatement of its cause of action. Defendant U.S. Bureau of Customs and Border Protection (**"Customs"**) filed a response to Ford's motion for reconsideration on September 5, 2006. Ford filed a reply brief on September 25, 2006, and the motion is ripe for consideration.

The major grounds justifying a grant of a motion to reconsider a judgment are an intervening change in the controlling law, the availability of new evidence, the need to correct a clear factual or legal error, or the need to prevent manifest injustice. *See Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992). However, even a clear legal error will not require a court to grant a motion for reconsideration where that error does not affect the result reached in the first instance. *See* USCIT R. 61.[2] After reviewing Ford's motion and the *Ford Motor Co. I* opinion, the Court is convinced that a clear legal error appears in *Ford Motor Co. I*. However, because that error in no way disturbs the Court's conclusion that it lacks jurisdiction over this action, the Court must deny Ford's motion.

For the sake of clarity, it will nonetheless be helpful to respond to the parties' legitimate concerns relating to that legal error, which appears in footnote 10 and its accompanying text. That footnote reads as follows:

> Nothing in 19 U.S.C. § 1514 prevents an importer from protesting a 19 C.F.R. § 177 Headquarters Ruling, *see supra* note 2, provided the strictures of Article III standing under the U.S. Constitution are met. Though the case law is sparse in this regard, examples of such cases do exist. *See, e.g., Conair Corp. v. United States*, 29 CIT ___, 2005 WL 1941649 (CIT 2005). In that case, the importer first requested and received a letter ruling from the Port of New York regarding the classification of merchandise. *See* N.Y. F83276 (Mar. 15, 2000), *available at* 2000 U.S. Customs N.Y. LEXIS 1803. Then, the importer re-

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[2] USCIT Rule 61 is the U.S. Court of International Trade's (**"CIT"**) "harmless error" rule, and provides as follows:

> No error in either the admission or the exclusion of evidence and *no error or defect in any ruling* or order or in anything done or omitted by the court or by any of the parties *is ground* for granting a new trial or for setting aside a verdict or *for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.*

USCIT R.61 (emphasis added).

> quested and received reconsideration from Customs Headquarters, which affirmed NY F83276. *See* HQ 964361 (Aug. 6, 2001). Thereafter, the importer protested, and Customs denied the protest. Finally, the importer commenced a case in the CIT, which asserted its 28 U.S.C. § 1581(a) jurisdiction. *See Conair*, 29 CIT at ___ , 2005 WL 1941649 at **3–4.

Ford Motor Co. I., 30 CIT at ___ n.10, 435 F. Supp. 2d at 1331. Footnote 10 supported the Court's statement that the ninety-day protest period under 19 U.S.C. § 1514(c)(3)(B) (2000) started running from Customs' decision, in a prior internal advice ruling, to consider prototype engine costs part of the "price paid or payable" for production engines. Because the Court operated under the assumption that an internal advice ruling could be protested under 19 U.S.C. § 1514(a), the expiration of the protest period was, in conjunction with the Court's finding that Ford's protest was unrelated to the L.A. Entry,[3] the reason for the Court's lack of jurisdiction.

However, the parties have brought to the Court's attention that challenges to internal advice rulings arising under 19 C.F.R. § 177 are not protestable under 19 U.S.C. § 1514(a), and therefore can never be the basis of 28 U.S.C. § 1581(a) jurisdiction. The Court's discussion in footnote 10 incorrectly suggested otherwise.[4] Instead, an internal advice ruling is not subject to judicial review until it is subsumed into the liquidation of imported merchandise, which may then properly be protested. *See United States v. Utex Int'l, Inc.*, 857 F.2d 1408, 1409–10 (Fed. Cir. 1988) (" 'All findings involved in a district director's decision merge in the liquidation. It is the liquidation which is final and subject to protest, not the preliminary findings or decisions of customs officers.' ") (*quoting* R. Sturm, *Customs Law & Administration* § 8.3 at 32 (3d ed. 1982)); *see also United States v. B. Holman, Inc.*, 29 CCPA 3, 14, C.A.D. 164 (1941) ("[A]ll decisions of the collector involved in the ascertaining and fixing of the rate and amount of duties chargeable against imported merchandise entered for consumption are merged in and become a part of a legal liquidation, and it is a legal liquidation only . . . against which a protest will lie."); *Dal-Tile Corp. v. United States*, 24 CIT 939, 945 n.12, 116 F. Supp. 2d 1309, 1315 (2000); *Commonwealth Oil Ref. Co. v. United States*, 67 Cust. Ct. 155, 163, C.D. 4267, 332 F. Supp. 203, 209

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[3] The "L.A. Entry" refers to the entry on which Ford attempted to include all the unpaid duties owed on its 3.4 L Prototype Engine program. The entry identification was Entry CE 231–5174793–0. *See Ford Motor Co. I*, 30 CIT at ____ , 435 F. Supp. 2d at 1326.

[4] Moreover, the *Conair* case cited in footnote 10 did not involve a direct protest of a ruling; instead, the protested decision contained in the letter ruling was subsumed in the liquidation of the merchandise at issue.

(1971). Only at the moment of liquidation does an internal advice ruling become a protestable "decision of the Customs Service" as contemplated by 19 U.S.C. § 1514(a). Prior to liquidation, such a decision is not ripe for adjudication.[5]

The only reason it was necessary for the Court to examine the timeliness of the protest in *Ford Motor Co. I* was that the Court considered the possibility that Ford's protest could be directed to the earlier internal advice ruling as a "decision of the Customs Service" under 19 U.S.C. § 1514(a). It is now clear that any such protest was not legally cognizable. As Ford was not able to protest the internal advice ruling, the only way it could have brought a valid protest action under 19 U.S.C. § 1514 would have been to challenge the actual assessment of duties on the prototype engines as subsumed in the liquidation of the L.A. Entry. However, for the reasons already discussed at length in *Ford Motor Co. I*, *see* 30 CIT at ___ , 435 F. Supp. 2d at 1332–34, the liquidation of the L.A. Entry lacked any substantial nexus to the $226,458 in duties tendered by Ford. Thus, Ford's action brought under 28 U.S.C. § 1581(a) must still fail for the same reason as stated in *Ford Motor Co. I*: Ford's protest was invalid because the liquidation of the L.A. Entry was not materially affected by the substance of the protested decision.

The Court's *Ford Motor Co. I* opinion was in clear error, but only to the limited extent that the Court suggested that internal advice rulings may be protested under 19 U.S.C. § 1514(a). As described above, such error was harmless. A motion under USCIT Rule 59(e) seeks vacature or alteration of a court's judgment. Because the Court's judgment was correct, Ford's motion for reconsideration must be denied. The remaining arguments made by Ford either lack merit or have been waived.

In light of the foregoing, it is hereby

ORDERED that Ford's motion for reconsideration under USCIT Rule 59(e) is denied.

IT IS SO ORDERED.

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[5] 28 U.S.C. § 1581(h) allows an importer to challenge certain Customs rulings prior to liquidation, upon a showing of irreparable harm. *See* 28 U.S.C. § 1581(h) (2000). However, subsection (h) is addressed only to rulings relating to *prospective* transactions. An internal advice ruling deals with a current transaction involving already-imported goods. *See* 19 C.F.R. § 177.11(b) (2005).

Slip Op. 06–146

FORMER EMPLOYEES OF IBM CORPORATION, GLOBAL SERVICES DIVISION, Plaintiffs, v. UNITED STATES SECRETARY OF LABOR, Defendant.

Before: Judith M. Barzilay, Judge
Court No. 03–00656

MEMORANDUM ORDER

[Plaintiffs' application for attorney fees and other expenses pursuant to the Equal Access to Justice Act is denied.]

Decided: October 3, 2006

Ivey, Smith & Ramirez, Michael G. Smith, (*Jean-Claude Andre*) for Plaintiffs.

Peter D. Keisler, Assistant Attorney General, *David M. Cohen,* Director, (*Patricia M. McCarthy*), Assistant Director, (*Michael D. Panzera*), Trial Attorney, *Michael F. Bahler*, Trial Attorney, U.S. Department of Justice, Commercial Litigation Branch, Civil Division; *Stephen Jones,* Office of the Solicitor, U.S. Department of Labor, of counsel, for Defendant.

BARZILAY, Judge: Plaintiffs, Former Employees of IBM Corporation, Global Services Division, have applied for attorney fees and other expenses pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, following this court's affirmation of the Department of Labor's ("Labor" or "Agency") remand results in *Former Employees of IMB Corp., Global Servs. Div. v. U.S. Sec'y of Labor,* 30 CIT ___ , 435 F. Supp. 2d 1335 (2006) ("*IBM II*"). *See also IBM Corporation, Global Services Division, Piscataway, N.J.; Middletown, N.J.; Notice of Revised Determination on Remand*, 71 Fed. Reg. 29,183–01 (Labor May 19, 2006) ("*Final Determination*"). Although the court acknowledges and appreciates the high quality of counsel's pro bono representation in this case, the law does not permit the award of attorney's fees. Therefore, for the reasons stated below, Plaintiffs' EAJA application is denied.

I. Procedural History

On March 23, 2003, Labor denied Plaintiffs' petitions for trade adjustment assistance ("TAA") benefits because the facilities where Plaintiffs worked did not produce "an article" within the meaning of 19 U.S.C. § 2272(a) (2000). *See Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance*, 68 Fed. Reg. 16,833–01 (Labor Apr. 7, 2003). In the subsequent administrative redetermination, Labor affirmed its decision. *See IBM Corporation, Global Services Division, Piscataway, N.J., and IBM Corporation, Global Services Division, Middletown, N.J.; Notice of Negative Determination Regarding Application for Reconsideration*, 68 Fed. Reg. 41,845–02 (Labor July

15, 2003) ("*Reconsideration Determination*"). The Agency concluded that "software and associated information technology services are not listed in the HTSUS" and that the products Plaintiffs produced "are not the type of employment work products that Customs officials inspect and that the TAA program was generally designed to address," as software and information system development and testing constituted services rather than production of an article. *Id.* at 41,845–46. Plaintiffs then brought their case before this Court.

On August 1, 2005, the court found Labor's *Reconsideration Determination* "not supported by substantial evidence" and remanded it for further review. *Former Employees of IBM Corp., Global Servs. Div. v. U.S. Sec'y of Labor*, 29 CIT ___ , ___ , 387 F. Supp. 2d 1346, 1348 (2005) ("*IBM I*"). Specifically, the court ordered Labor to supplement its inadequate record "by further investigating the nature of the software produced by Plaintiffs" and to "explain the differences between the activities performed by Plaintiffs in this case and the activities performed by other petitioners involved in developing computer software who received TAA benefits in the past." *Id.* at 1353. On remand, Labor again denied Plaintiffs certification because Plaintiffs' work product did not constitute "an article" since it did not consist of a "tangible commodity." *IBM Corporation, Global Services Division, Piscataway, N.J.; IBM Corporation, Global Services Division, Middletown, N.J.; Notice of Negative Determination on Remand*, 70 Fed. Reg. 75,837–02, 75,839 (Labor Dec. 21, 2005) ("*Second Remand Determination*").

Soon after Plaintiffs filed their remand comments, Labor issued three administrative decisions that announced a change in the Agency's policy – namely that "there are tangible and intangible articles," that intangible articles can be distinguished from services, and that "[s]oftware and similar intangible goods that would have been considered articles for the purposes of the Trade Act if embodied in a physical medium [would] now be considered to be articles regardless of their method of transfer." *Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut; Notice of Revised Determination on Remand*, 71 Fed. Reg. 18,355–01, 18,355 (Labor Apr. 11, 2006); *accord Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio; Notice of Revised Determination on Remand*, 71 Fed. Reg. 18,355–02, 18,356 (Labor Apr. 11, 2006); *Lands' End, A Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin; Notice of Determination on Remand*, 71 Fed. Reg. 18,357–01, 18,357 (Labor Apr. 11, 2006).

In conjunction with this change in policy, Labor moved for, and this court granted, a voluntary remand so that the Agency could reconcile its decision with these changes in TAA policy. In its revised remand results, Labor "determined that . . . [Plaintiffs] produce[d] an article (computer software)" and that "a significant portion of workers" lost their employment because "production shifted to an affili-

ated facility located in Canada." *Final Determination*, 71 Fed. Reg. at 29,183. Consequently, Labor certified Plaintiffs as eligible for trade adjustment assistance. *See id.* This court then affirmed these results. *See IMB II*, 435 F. Supp. 2d 1335.

Within thirty days of that judgment, Plaintiffs filed this application for attorney fees under the EAJA. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 2412.

II. Standard of Review

The Equal Access to Justice Act mandates that

> a court shall award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action . . . brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A). Thus, to obtain attorney's fees under the Act, a moving party must fulfill four criteria: "(i) the claimant [must be] a 'prevailing party'; (ii) the government's position [must] not [have been] substantially justified; (iii) no 'special circumstances [must] make an award unjust'; and (iv) the fee application [must be] timely submitted and supported by an itemized statement." *Libas, Ltd. v. United States*, 314 F.3d 1362, 1365 (Fed. Cir. 2003) (quoting 28 U.S.C. § 2412(d)(1)(A)–(B)). If the movant cannot satisfy each criterion, its application must fail.

III. Discussion

A. "Prevailing Parties" Under the EAJA

According to the Supreme Court, a "prevailing party" for the purposes of fee-shifting statutes, such as the EAJA, must have obtained sought-after relief through either a "judgment[ ] on the merits" of its case or a "settlement agreement[ ] enforced through a consent decree," because an award of attorney fees requires a "material alteration of the legal relationship of the parties." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & H.R.*, 532 U.S. 598, 604 (2001) ("*Buckhannon*") (quotations & citations omitted); *accord Akers v. Nicholson*, 409 F.3d 1356, 1359 (Fed. Cir. 2005). Conversely, a party does not qualify as a prevailing party if it bases its claims for attorney fees on the "catalyst theory," *see Buckhannon*, 532 U.S. at 605, which contends that "a party 'prevails' because the lawsuit brought about a *voluntary* change in [the government's] conduct," *Akers*, 409 F.3d at 1358 (emphasis added). A "voluntary change in conduct, although perhaps accomplishing what the [moving party] sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change." *Buckhannon*, 532 U.S. at 605; *accord Pierce v.*

Underwood, 487 U.S. 552, 568 (1988) (inferring that because voluntary settlement by government may stem from "change in substantive policy," it does not render movant a "prevailing party"); *Akers*, 409 F.3d at 1359; *Vaughn v. Principi*, 336 F.3d 1351, 135556 (Fed. Cir. 2003).

In cases arising from an administrative action, such as the one at bar, "where [the] administrative proceedings are intimately tied to the resolution of the judicial action and necessary to the attainment of the results Congress sought to promote by providing for fees, they should be considered part and parcel of the action for which fees may be awarded." *Sullivan v. Hudson*, 490 U.S. 877, 888 (1989). Importantly, though, a court remand to an agency for further administrative proceedings does not necessarily confer a party with prevailing party status. *See id.* at 886; *Akers*, 409 F.3d at 1359 (holding that remand alone does not qualify movant as "prevailing party" because remand "provides only the opportunity for further adjudication") (quotations omitted); *Former Employees of Motorola Ceramic Prods. v. United States*, 336 F.3d 1360, 1364 (Fed. Cir. 2003) ("*Motorola*"). Instead,

> [w]hen there is a remand to the agency which remand grants relief on the merits sought by the plaintiff, and the trial court does not retain jurisdiction, the securing of the remand order is itself success on the merits. When there is such a remand, and the trial court retains jurisdiction, the claimant is a prevailing party only if it succeeds before the agency.

Motorola, 336 F.3d at 1366.

B. Plaintiffs Do Not Meet the Definition of "Prevailing Parties"

Plaintiffs assert that this court's two remands to Labor for further administrative action, *see generally IMB II*, 435 F. Supp. 2d 1335; *IBM I*, 387 F. Supp. 2d 1346, in conjunction with "this Court's favorable decisions in *IBM I*, *EDS II*,[1] and *CSC II*,[2] in which the very arguments that Plaintiffs offered . . . were embraced," qualify them as prevailing parties. Pl.'s Mem. 19. Together, these events purportedly "alter[ed] the legal relationship of the parties" and made Plaintiffs "ultimately successful in obtaining the precise relief they sought." Pl.'s Mem. 19 (quotations omitted); *see* Pl.'s Mem. 18–20.

Plaintiffs' argument fails. First, this court's initial remand in *IBM I* did not bestow prevailing party status upon Plaintiffs since it neither "dictate[d] the receipt of benefits" for Plaintiffs nor resulted in a

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[1] *Former Employees of Elec. Data Sys. Corp. v. U.S. Sec'y of Labor*, 29 CIT ____ , 408 F. Supp. 2d 1338 (2005).

[2] *Former Employees of Computer Scis. Corp. v. U.S. Sec'y of Labor*, 30 CIT ____ , 414 F. Supp. 2d 1334 (2006).

remand determination in their favor. *Sullivan*, 490 U.S. at 886; *see Motorola*, 336 F.3d at 1366; *Vaughn*, 336 F.3d at 1356; *Second Remand Determination*, 70 Fed. Reg. 75,837–02. Moreover, Plaintiffs' reasoning ignores the Courts' long-standing prohibition on awarding attorney fees based on the catalyst theory. *See Buckhannon*, 532 U.S. at 605; *Pierce*, 487 U.S. at 568; *Akers*, 409 F.3d at 1359; *Vaughn*, 336 F.3d at 1355–56. On voluntary remand, Labor on its own accord, without any direction from this court, changed its policy toward intangible articles, such as those produced by Plaintiffs, and consequently granted Plaintiffs TAA benefits as a result of this new policy.[3] *See, e.g., Computer Sciences Corporation, Financial Services Group, East Hartford, Connecticut; Notice of Revised Determination on Remand*, 71 Fed. Reg. at 18,355; *Electronic Data Systems Corporation, I Solutions Center, Fairborn, Ohio; Notice of Revised Determination on Remand*, 71 Fed. Reg. at 18,356; *Lands' End, A Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin; Notice of Revised Determination on Remand*, 71 Fed. Reg. at 18,357; *see Final Determination*, 71 Fed. Reg. at 29,183; *Former Employees of IBM Corp., Global Servs. Div. v. U.S. Sec'y of Labor*, No. 03–00656 (CIT Apr. 10, 2006) (order granting partial voluntary remand). Although the *Final Determination* provided Plaintiffs with their desired relief, the favorable result did not constitute a success on the case's merits or a "material alteration of [Plaintiffs'] legal relationship" with the Agency, even if Plaintiffs' arguments may have played a role in reshaping Labor's policy. *Buckhannon*, 532 U.S. at 604; *see Perez-Arellano v. Smith*, 279 F.3d 791, 795 (9th Cir. 2002) (denying EAJA applicant prevailing party status because favorable decision resulted from agency's voluntary decision); Pl.'s Mem. 22–23. Finally, this court's affirmation of the *Final Determination* in *IBM II* did not confer prevailing party status upon Plaintiffs since that decision merely held that Labor's decision was "supported by substantial evidence and . . . otherwise in accordance with law," and did not stem from an evaluation of Plaintiffs' claims. *See IBM II*, 435 F. Supp. 2d at 1336. Plaintiffs, therefore, do not qualify as prevailing parties under the EAJA, and so their motion is denied.

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[3] Tellingly, the Agency did not contest the outcomes of *CSC II* or *IBM II*, even though it could have appealed these cases to the Federal Circuit.

ABSTRACTED CLASSIFICATION DECISIONS

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY & MERCHANDISE
C06/33 8/9/06 Eaton, J.	A.F. Pharma LLC	03–00521	3913.90.20 5.8%	3001.90.00 Free of duty	Agreed statement of facts	Newark Chondroitin sulfate
C06/34 8/9/06 Eaton, J.	Inabata Specialty Chems. Corp.	03–00869	3913.90.20 5.8%	3001.90.00 Free of duty	Agreed statement of facts	Newark Chondroitin sulfate
C06/35 8/9/06 Eaton, J.	Inabata Specialty Chems. Corp.	04–00258	3913.90.20 5.8%	3001.90.00 Free of duty	Agreed statement of facts	Los Angeles Chondroitin sulfate
C06/36 8/16/06 Restani, C.J.	Cooltech Corp.	05–00532	6307.90.99 7%	3924.10.50 3.4%	Agreed statement of facts	Los Angeles Coolers, etc.
C06/37 8/16/06 Restani, C.J.	E.T.I.C., Inc.	00–00032	2002.10.00 100% pursuant to 9903.23.17	2103.90.60 or 2103.90.90 7.5%, 7.3%, 7.1%, 7% or 6.8%	Agreed statement of facts	Newark Canned tomato sauce preparation
C06/38 8/17/06 Eaton, J.	California Innovations, Inc.	01–00023	6307.90.99 7%	3924.10.50 3.4%	Agreed statement of facts	Los Angeles Coolers, etc.
C06/39 8/17/06 Eaton, J.	California Innovations, Inc.	02–00262	6307.90.99 7% 4202.92.45 20%	3924.10.50 3.4%	Agreed statement of facts	Los Angeles Coolers, etc.
C06/40 8/18/06 Eaton, J.	California Innovations, Inc.	02–00525	6307.90.99 7% 4202.92.45 6%	3924.10.50 3.4%	Agreed statement of facts	Los Angeles Golf gear bags, etc.
C06/41 8/29/06 Restani, C.J.	California Innovations, Inc.	03–00677	6307.90.99 7% 4202.92.45 6%	3924.10.50 3.4%	Agreed statement of facts	Los Angeles Trunk Smart

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY & MERCHANDISE
C06/42 9/21/06 Pogue, J.	ABB Flexible Automation, Inc.	00–00530	8479.50.00 2.5% or 2.7% (robots) 8537.10.90 2.7% or 3.2% (controllers)	8515.31.00 1.7% (robots & controllers) 8515.21.00 Free of duty (robots & controllers) 8428.90.00 8428.90.80 0.4% or free of duty (robots & controllers)	Agreed statement of facts	Milwaukee Robot systems
C06/43 9/21/06 Pogue, J.	ABB Flexible Automation, Inc.	01–000410	8479.50.00 2.5% or 2.7% (robots) 8537.10.90 2.7% or 3.2% (controllers)	8515.31.00 1.7% (robots & controllers) 8515.21.00 Free of duty (robots & controllers) 8428.90.00 8428.90.80 0.4% or free of duty (robots & controllers)	Agreed statement of facts	Milwaukee Robot systems
C06/44 9/21/06 Aquilino, J.	Berwick Indus., Inc.	96–00263	3926.90.98 5.3% 6307.90.99 7%	4601.99.90 4602.90.00 Various rates	Agreed statement of facts	New York Various bows
C06/45 9/21/06 Aquilino, J.	Berwick Indus., Inc.	98–03189	3926.40.00 3926.90.98 53% 6307.90.99 7%	4601.99.90 4602.90.00 9505.10.25 Various rates	Agreed statement of facts	New York Polypropylene or textile bows
C06/46 9/21/06 Pogue, J.	Motoman, Inc.	01–00048	8479.50.00 3% or 2.7%	8428.90.80 0.8% or 0.4%	Agreed statement of facts	Seattle Material handling & general purpose robots
C06/47 9/21/06 Pogue, J.	Motoman, Inc.	01–00100	8479.50.00 2.7%	8428.90.80 0.4% (SV3 or NY170) 8515.31.00 1.7% (SK16, SK6)	Agreed statement of facts	Los Angeles Material handling, arc welding & general purpose robots

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY & MERCHANDISE
C06/48 9/21/06 Pogue, J.	Motoman, Inc.	01–00101	8479.50.00 2.7% or 2.5%	8428.90.80 or 8428.90.00 0.4% or Free of duty (material handling robots) 8515.31.00 1.7% or 1.6% (arc welding robots) 8515.21.00 Free of duty (spot welding robots)	Agreed statement of facts	Chicago Material handling, arc welding & spot welding robots
C06/49 9/21/06 Pogue, J.	Motoman, Inc.	01–00904	8479.50.00 2.7% or 2.5%	8428.90.80 or 8428.90.00 0.4% or Free of duty (material handling robots) 8515.31.00 1.7% or 1.6% (arc welding robots) 8515.21.00 Free of duty (spot welding robots)	Agreed statement of facts	Seattle Material handling, arc welding & spot welding robots
C06/50 9/21/06 Pogue, J.	Motoman, Inc.	02–00157	8479.50.00 2.5%	8428.90.00 Free of duty (material handling robots) 8515.31.00 1.6% (arc welding robots)	Agreed statement of facts	Chicago Material handling & arc welding robots
C06/51 9/21/06 Pogue, J.	Motoman, Inc.	02–00458	8479.50.00 2.5% 8537.10.90 2.7%	8428.90.00 Free of duty (material handling robots) 8515.31.00 1.6% (arc welding robots) 8515.21.00 Free of duty (spot welding robots)	Agreed statement of facts	Chicago Material handling, arc welding & spot welding robots

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY & MERCHANDISE
C06/52 9/21/06 Pogue, J.	Motoman, Inc.	02–00640	8479.50.00 2.5%	8428.90.80 Free of duty (material handling robots) 8515.21.00 Free of duty (spot welding robots) 8424.89.70 1.8% (painting robot)	Agreed statement of facts	Chicago Material handling, spot welding & painting robots
C06/53 9/22/06 Pogue J.	Motoman, Inc.	01–00500 01–01080 02–00156	8479.50.00 2.5%	8428.90.80 Free of duty (material handling robots) 8515.31.00 1.6% (arc welding robots) 8515.21.00 Free of duty (spot welding robots) 8424.89.70 1.8% (painting robot)	Agreed statement of facts	Chicago Material handling, arc welding, spot welding & painting robots