

Slip Op. 17-98

UNITED STATES COURT OF INTERNATIONAL TRADE

**MICRO SYSTEMS ENGINEERING,
INC.,**

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Jennifer Choe-Groves, Judge

Court No. 13-00376

JUDGMENT

[Granting Plaintiff's USCIT Rule 12(c) motion for judgment on the pleadings.]

Dated: August 7, 2017

Elon A. Pollack, Stein Shostak Shostak Pollack & O'Hara, LLP, of Los Angeles, CA, for plaintiff.

Alexander Vanderweide, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Dept. of Justice, of New York, NY, for defendant. With him on brief were Chad A. Readler, Acting Assistant Attorney General, Amy M. Rubin, Assistant Director.

Choe-Groves, Judge: This case involves the classification of certain parts used to manufacture subassemblies for pacemakers imported by Micro Systems Engineering, Inc. ("Plaintiff"). See Summons, Nov. 8, 2013, ECF No. 1; Compl. ¶ 5, Feb. 13, 2017, ECF No. 15. Plaintiff imported twenty-four entries of the merchandise between June 2011 and February 2012.¹ See Summons. U.S. Customs and Border Protection ("Customs") classified and

¹ This case initially concerned forty-three entries. See Summons. The nineteen entries covered in Protest Nos. 4196-13-100098, 4196-13-100058, 4196-13-100210, 4196-13-100065, 4196-13-100059, 4196-13-100140, and 4101-13-100192 were severed and dismissed from this case on

(footnote continued)

liquidated the merchandise under various provisions of the Harmonized Tariff Schedule of the United States (“HTSUS”). See Compl. ¶ 5; Answer ¶ 5, Mar. 23, 2017, ECF No. 16. Plaintiff’s complaint alleges that Customs misclassified the imported merchandise because the parts are specially designed or adapted for use in heart pacemakers and are classifiable under the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials (“Nairobi Protocol”). See Compl. ¶¶ 7–9. The HTSUS implemented the Nairobi Protocol under subheading 9817.00.96, which is a duty free provision that exempts payment of certain merchandise processing fees. See 19 C.F.R. § 24.23(c)(1)(i). Defendant agrees that the imported pacemaker components contained in the entries at issue are classifiable under HTSUS subheading 9817.00.96. See Answer ¶¶ 7–9.

Before the court is Plaintiff’s Motion for Judgment on the Pleadings filed pursuant to USCIT Rule 12(c). See Mot. J. Pleadings, May 9, 2017, ECF No. 23. USCIT Rule 12(c) permits a party to move for judgment on the pleadings “after the pleadings are closed and if it would not delay trial.” Forest Labs., Inc. v. United States, 29 CIT 1401, 1402, 403 F. Supp. 2d 1348, 1349 (2005), aff’d, 476 F.3d 877 (Fed. Cir. 2007). A judgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. See New Zealand Lamb Co., Inc. v. United States, 40 F.3d 377, 380 (Fed. Cir. 1994) (citing Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th Cir. 1989), cert. denied, 493 U.S. 1079

May 10, 2017 and August 1, 2017. See Order, May 10, 2017, ECF No. 25 (granting Plaintiff’s consent motion to sever and dismiss); Order, Aug. 1, 2017, ECF No. 29 (granting Plaintiff’s consent motion to sever and dismiss).

(1990)). Plaintiff asserts that there are no factual or legal disputes for the court to review and the court should enter judgment in Plaintiff's favor because Defendant admits that the imported goods are classifiable under the Nairobi Protocol. See Mot. J. Pleadings 3. Defendant responds as follows:

[W]e agree with Micro Systems that the substrates, coils, diodes and integrated circuits in the remaining . . . entries before the Court "are properly classified under HTSUS 9817.00.96 (Nairobi Protocol), which carries 0% duties *ad valorem* and are excepted from payment of merchandise processing fees." Pl. Motion at 2-3.

Def.'s Resp. Pl.'s Mot. J. Pleadings 2, May 15, 2017, ECF No. 26. The Parties are in agreement that the imported substrates, coils, diodes, and integrated circuits contained in the entries at issue in this action are classifiable under the Nairobi Protocol. Judgment on the pleadings is appropriate here because the pleadings do not raise any triable material issue of fact and Plaintiff is entitled to judgment as a matter of law regarding the classification of the imported substrates, coils, diodes, and integrated circuits.

Therefore, upon consideration of Plaintiff's Motion for Judgment on the Pleadings, and all other papers and proceedings in this action, and upon due deliberation, it is hereby

ORDERED that judgment is granted in favor of Plaintiff; it is further

ORDERED that the imported substrates, coils, diodes, and integrated circuits contained in the entries set forth on the attached Schedule are classifiable under HTSUS subheading 9817.00.96, which is a duty free provision that exempts payment of merchandise processing fees; it is further

ORDERED that, in accordance with this judgment, U.S. Customs and Border Protection shall reliquidate and issue refunds for those entries on the attached Schedule containing substrates, coils, diodes, and integrated circuits; and it is further

ORDERED that any refunds payable by reason of this judgment shall be paid with any interest as provided by law.

/s/ Jennifer Choe-Groves
Jennifer Choe-Groves, Judge

Dated: August 7, 2017
New York, New York

SCHEDULE

Court No. 13-00376

Port: Cleveland, OH (4101)

<u>Protest No.</u>	<u>Entry No.</u>	<u>Description of Merchandise</u>
4101-12-100774	UPS-2820507-4	Substrate No. 382159
	UPS-2853368-1	Substrate No. 375851
	UPS-2935425-1	Substrate Nos. 358018, 375850
	UPS-2974236-4	Substrate No. 369164
	UPS-2983617-4	Substrate Nos. 380143, 375850
4101-13-100366	UPS-5249407-3	Substrate No. 369164
	UPS-5322143-4	Substrate No. 381978
	UPS-5216520-2	Substrate No. 358018
	UPS-5295260-9	Substrate No. 358018
	UPS-5181551-8	Integrated Circuits
4101-13-100397	UPS-5267472-4	Substrate Nos. 375850, 375851, 388143
	UPS-5558872-3	Substrate Nos. 375850, 380143
	UPS-5322139-2	Substrate No. 380143
	UPS-5399461-8	Substrate No. 375851
	UPS-5434839-2	Substrate No. 365754
4101-13-100398	UPS-5251974-7	Diodes
	UPS-5481026-8	Diodes

Port: Los Angeles International Airport (2720)

<u>Protest No.</u>	<u>Entry No.</u>	<u>Description of Merchandise</u>
2720-13-100071	UPS-3938534-5	Coil (Frame, Shield)
2720-13-100147	UPS-4502677-6	Coil Circuit
	UPS-4542473-2	Coil Frame
2720-13-100170	UPS-4632367-7	Coil Frame, Shield
	UPS-4696268-0	Coil Frame
	UPS-4764926-0	Coil Shield
	UPS-4953780-2	Coil (Frame, Circuit, Shield)