

Slip Op. 17-97

UNITED STATES COURT OF INTERNATIONAL TRADE

**MICRO SYSTEMS ENGINEERING,
INC.,**

Plaintiff,

v.

UNITED STATES,

Defendant.

Before: Jennifer Choe-Groves, Judge

Court No. 13-00317

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, Aug. 28, 2013, ECF No. 1; Compl. ¶ 5, Aug. 9, 2016, ECF No. 13. Plaintiff imported forty entries of the merchandise between January 2011 and June 2011.¹ See Summons. U.S. Customs and Border Protection (“Customs”) classified and liquidated the

¹ This case initially concerned forty-two entries, but Entry Nos. UPS-1492397-9 and UPS-2641343-1 were severed and dismissed from this case on March 2, 2017. See Order, Mar. 2, 2017, ECF No. 23 (granting Plaintiff’s consent motion to sever and dismiss).

merchandise under various provisions of the Harmonized Tariff Schedule of the United States (“HTSUS”). See Compl. ¶ 5; Answer ¶ 5, Feb. 15, 2017, ECF No. 21. 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. 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 n.1, ¶ 7.

Before the court is Plaintiff’s Motion for Judgment on the Pleadings filed pursuant to USCIT Rule 12(c). See Mot. J. Pleadings, Mar. 22, 2017, ECF No. 24. 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 (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:

Micro Systems is correct that the Government admits that the imported substrates, cap sensors, and coils contained in the entries covered by this action are properly afforded secondary classification under subheading 9817.00.96, HTSUS. See Answer ¶ 7. However, the Government does not agree that Micro Systems has established that it is entitled to refunds on “TANT Caps” contained in Entry Nos. UPS-1590276-6 and UPS-2470970-7, “Tabs” contained in Entry Nos. UPS-1283211-5 and UPS-2539341-0, and “AOTs” contained in Entry Nos. UPS-1272304-1 and UPS-1384281-6. “TANT Caps,” “Tabs,” and “AOTs” are not the subject of the Complaint, and “TANT Caps” and “Tabs” are not the subject of the protests covering the entries in which they are contained. See Compl. ¶ 7; see also Entry Papers and Protests.

Def.’s Resp. Pl.’s Mot. J. Pleadings 2, Apr. 17, 2017, ECF No. 27. Plaintiff agrees that “TANT Caps” and “Tabs” are not classifiable under the Nairobi Protocol. See Reply in Supp. Pl.’s Mot. J. Pleadings 1, May 26, 2017, ECF No. 33. Plaintiff maintains, however, that the “AOTs” should be afforded duty-free treatment under the Nairobi Protocol. See id. Plaintiff represents that, after providing Defendant with documents and technical specifications, Defendant agrees that the “AOTs” qualify for duty-free treatment under the Nairobi Protocol. See id. The Parties are in agreement that the imported substrates, cap sensors, coils, and AOTs contained in the entries at issue in this action are classifiable under the Nairobi Protocol. The Parties are also in agreement that “TANT Caps” and “Tabs” are not 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, cap sensors, coils, and AOTs.

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, cap sensors, coils, and AOTs 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, cap sensors, coils, and AOTs; it is further

ORDERED that any refunds payable by reason of this judgment shall be paid with any interest as provided by law; it is further

ORDERED that all claims with respect to “TANT Caps” contained in Entry Nos. UPS-1590276-6 and UPS-2470970-7 are dismissed; and it is further

ORDERED that all claims with respect to “Tabs” contained in Entry Nos. UPS-1283211-5 and UPS-2539341-0 are dismissed.

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

Dated: August 7, 2017
New York, New York

SCHEDULE

Court No. 13-00317
 Port: Cleveland, OH (4101)

<u>Protest No.</u>	<u>Entry No.</u>	<u>Description of Merchandise</u>
4101-12-100417	UPS-1439875-0	Substrate Nos. 358018, 362539
	UPS-1455049-1	Substrate No. 380143
	UPS-1467605-6	Substrate No. 358018
	UPS-1494247-4	Substrate No. 358018
4101-12-100430	UPS-1765499-3	Substrate Nos. 355686, 369164
	UPS-1782685-6	Substrate Nos. 355686, 358018
	UPS-1829299-1	Substrate Nos. 358018, 362539
4101-12-100775	UPS-2622837-5	Substrate Nos. 375850, 358018
	UPS-2648611-4	Substrate No. 358018
	UPS-2695243-8	Substrate No. 375851
	UPS-2726160-7	Substrate
	UPS-2748481-1	Substrate Nos. 375851, 375850
	UPS-2812258-4	Substrate No. 375850
4101-12-100416	UPS-1547077-2	Substrate No. 362539
	UPS-1547087-1	Substrate Nos. 358018, 355686
	UPS-1590276-6	Substrate No. 371594
	UPS-1685871-0	Substrate No. 355686
	UPS-1702034-4	Substrate No. 355686
	UPS-1717033-9	Substrate Nos. 369164, 362539
	UPS-1733939-7	Substrate No. 362539
4101-12-100415	UPS-1209282-7	Substrate Nos. 358018, 355686
	UPS-1202813-6	Substrate No. 362539
	UPS-1184562-1	Substrate Nos. 358018, 362539
	UPS-1178068-7	Substrate Nos. 358018, 380143
	UPS-1154883-7	Substrate Nos. 362539
	UPS-1286564-4	Substrate No. 358018
	UPS-1272304-1	Cap Sensor, AOTs
	UPS-1270044-5	Substrate No. 369164
	UPS-1255860-3	Substrate Nos. 362539, 355686
	UPS-1314435-3	Substrate Nos. 355686, 380695
	UPS-1283211-5	Coil
UPS-1384281-6	Cap Sensor, AOTs	

<u>Protest No.</u>	<u>Entry No.</u>	<u>Description of Merchandise</u>
4101-12-100728	UPS-2461979-9	Substrate Nos. 358018, 362539
	UPS-2470970-7	Cap Sensor
	UPS-2476717-6	Substrate
	UPS-2506937-4	Substrate Nos. 375850, 375851
	UPS-2507255-0	Substrate No. 369164
	UPS-2521936-7	Substrate No. 380143
	UPS-2539341-0	Coil
	UPS-2541579-1	Substrate No. 375851