Signed at Washington, DC, this 27th day of February, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–6407 Filed 3–17–03; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7647 and NAFTA–7647A]

Cerf Brothers Bag Co., New London, MO, Cerf Brothers Bag Co., Vandalia, MO; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on November 1, 2002, in response to a petition filed by three workers on behalf of workers at Cerf Brothers Bag Company, New London, Missouri (NAFTA–7647) and Cerf Brothers Bag Company, Vandalia, Missouri (NAFTA–7647A).

The petition has been deemed invalid. Three workers may not file on behalf of workers at another location of a firm. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 7th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–6415 Filed 3–17–03; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3584]

Chevron Products Company, Roosevelt, UT; Notice of Negative Determination of Reconsideration On Remand

The United States Court of International Trade (USCIT) remanded for further investigation the Secretary of Labor's negative determination in *Former Employees of Chevron Products Company* v. *U.S. Secretary of Labor* (00–08–00409).

The Department's initial denial of the petition for employees of Chevron Products Company, Roosevelt, Utah, was issued on April 24, 2000 and published in the **Federal Register** on May 11, 2000 (65 FR 30444). The denial was based on the finding that the workers provided a service and did not produce an article within the meaning of section 250(a) of the Trade Act, as amended.

The petitioners requested administrative reconsideration of the Department's denial, citing that the low price of imported crude oil forced U.S. producers to reduce activity, and thus, contributed to the worker separations at Chevron Products Company in Roosevelt, Utah. The petitioners also cited increased company imports of Canadian crude oil. The petitioners also claimed that other trucking and non-producing entities had been certified for Trade Adjustment Assistance (TAA). Furthermore, the petitioners stated that the Department issued the determination prematurely because the State of Utah had not issued its preliminary finding.

On July 21, 2000, the Department issued a Negative Determination on Application for Reconsideration because no new information was presented that the Department had erred or misinterpreted the facts or Trade Act law. The notice was published in the **Federal Register** on August 1, 2000 (65 FR 46988).

The USCIT remanded the case to the Department for further investigation because the USCIT believed that the record did not support the findings as to the nature of the work performed by the workers of Chevron Products Company, nor did it support the finding that the workers did not produce an article but provided a service.

The petitioners described the duties of a gauger as follows: The Plant Operator (gauger) is to go to each location, a well head and or crude oil tanks, for purchase. The gauger has a number of tasks to perform before the crude is purchased—check temperature, gauge the amount of crude in the tank, take samples for gravity test and grind out for BS & W, and check the bottom of the tank for water or impurities. If the samples and all the tests pass, then a crude oil ticket is written for that tank. At that point the crude is ready for transportation to one of three locations. Drivers are dispatched to the location and load the crude oil on their truck and transport it to one of three refineries.

On remand, the Department contacted the subject firm headquarters in San Ramon, California to obtain information about the organization of the company and the work that took place at the Roosevelt, Utah location.

ChevronTexaco submitted information to the Department that in 1998 and 1999, Chevron Products Company was a division of Chevron U.S.A., Inc., a wholly owned subsidiary of Chevron Corporation, now ChevronTexaco Corporation. According to ChevronTexaco, the business purpose of Chevron Products Company was marketing, trading, supply and distribution of crude oil and products derived from petroleum, and the marketing of related technology. ChevronTexaco also established that during the same time period, the Chevron Products Company, Roosevelt, Utah, location was a transportation terminal, involved in picking up crude oil by truck at the well head, primarily at wells owned by non-Chevron producers and delivering to the Chevron Products Company's refinery in Utah or to a pipeline terminal.

The Department obtained from the company the position descriptions for the Roosevelt terminal worker group. A brief summary of the ''Plant Operator'' follows:

(a) Receives and stores bulk products from pipeline tenders. Gauges tanks before and after delivery for product and water, takes temperatures, sets lines and opens valves (where not done by Pipe Line Gauger Switchman), takes samples as prescribed; completes tests to assure product quality.

(b) Performs truck loading activities including cleanliness, loading of exchange shipments, and verification (visual or meter) of products loaded.

(c) Periodically inventories product additives and chemicals. Balances inventories and receipts.

(d) Maintains driver records, regarding miles driven, gallons delivered.

The job description for the ''Product Delivery Truck Driver'' is briefly summarized as follows:

(a) Operates motor vehicle engaged in the delivery of bulk liquid or packaged products to customers, company terminals or warehouses.

(b) Operates a variety of makes, models, sizes, capacities and types of automotive equipment, and all appurtenant metering, pumping and other mechanical devices related or incidental to transporting, loading and unloading products.

The Department also examined the job description for a gauger as defined in the Dictionary of Occupational Titles (DOT). The gauger is included in the group of occupations concerned with conveying materials, such as oil, gas, water, etc., ''Pumping and Pipeline

Transportation Occupations.'' The DOT summarizes a gauger's duties as follows: a gauger gauges and tests the amount of oil in storage tanks and regulates flow of oil and other petroleum products into pipelines. More specifically, according to the DOT, gaugers gauge the quantity of oil in storage tanks before and after delivery, using calibrated steel tape and conversion tables, including lowering a thermometer into tanks to obtain a temperature reading.

The document sources reviewed by the Department agree as to the nature of the work performed by the gauger. An official of Chevron Products Company initially described the duties performed by the worker group as ''lifting and transporting crude oil.'' That description, although true, was incomplete. Gaugers ''gauge tanks before and after delivery for product and water.''

The petitioners believe that as gaugers they should be considered directly involved in the production process for crude oil because they test and determine the quality of crude oil to be purchased and transported before the drivers arrived to transport the oil for refining. The Department disagrees.

The documents provided by the petitioners, the company's job description for the workers, and the definition of gauger from the DOT, confirms that the duties performed by the worker group subject of this petition investigation are related to the transportation of crude oil after the oil has been produced: *i.e.*, the crude oil was already out of the ground by the time the Roosevelt facility gaugers tested it. In order for the petitioning worker group to be considered producing crude oil, they must engage in the exploration or drilling of the crude oil. Therefore, the Chevron Products workers cannot be certified as production workers.

Furthermore, the Roosevelt terminal workers could only be certified as service workers if their separation was caused importantly by a reduced demand for their services by an affiliated production facility whose workers could have been certified eligible to apply for NAFTA-TAA.

One theory is that the ''production facility'' that the subject workers served was the oil wells where the crude oil was pumped out. This theory fails in one respect because the subject workers were not ''serving'' the oil wells: they were ''serving'' the adjacent oil tanks. The oil tanks cannot be considered ''production facilities'' because nothing is produced at a crude oil tank: the crude oil has already been ''produced'' by the time it is placed in a tank.

However, even if one were to consider an oil tank a production facility, the subject workers would not be considered ''service workers'' of the oil tanks for purposes of certification under the Trade Act because the tanks are not affiliated with their employer. On remand, the Department obtained the contracts from ChevronTexaco for the Chevron Products Company regarding the locations at which the Roosevelt, Utah workers gauged in 1998 and 1999. The contracts in place at that time and a statement by ChevronTexaco supports the Department's decision that the tanks that the Roosevelt terminal workers gauged the oil were not affiliated with Chevron Products Company.

Another theory is that the subject workers serviced the refinery or refineries where the oil they gauged was delivered for ''production'' as refined oil. The USCIT remand questioned that the Department relied on information supplied by the company official that the workers transported crude oil to a Chevron refinery, and failed to investigate the workers' statement that the oil that they tested was destined for one of three locations for refining. The Department obtained information that the petitioners were uncertain as to the ownership of the refineries, pumping or mixing stations for one of the three locations. The unavailability of this information, however, is not critical to the investigation.

The information is not critical because even if one assumes that the refining facilities are affiliated with Chevron Products Company, there is no possibility that the production workers of the refinery (or refineries) could have been certified for NAFTA-TAA at the relevant time period. Historically, workers at refineries are not certified eligible to apply for NAFTA-TAA or TAA because U.S. imports of refined petroleum products are low. The Department examined a statistical table regarding refined petroleum products for the time period relevant to the investigation. From 1998 to 1999, aggregate U.S. imports of refined petroleum products from Mexico and Canada decreased absolutely. The U.S. import/shipment ratio was about two percent in 1998 and about one percent in 1999. DOL considers this a negligible amount. The Department had no certification in effect for workers of Chevron Products Company, its parent company, or any other producer of refined petroleum products during the relevant time period.

The USCIT added that the Department failed to rule out the possibility that workers at one of the refineries may have independently met the statutory criteria for certification. As with this, or any petition investigation, the investigation is conducted for the appropriate division or subdivision of the firm at which the worker group was employed. In this case, the petitioners were employees of the Chevron Products Company, Roosevelt, Utah terminal, not the refineries. Moreover, the crude oil transported to a refinery is a raw material used in the output of refined petroleum products. Consequently, crude oil cannot be considered like or directly competitive with refined petroleum products.

The State of Utah, Department of Workforce Services, Rapid Response Dislocated Worker Unit, issued an affirmative preliminary finding regarding the NAFTA-TAA petition investigation conducted for the Roosevelt, Utah workers. The State's affirmative finding was based on a Trade Adjustment Assistance (TAA) certification issued for workers of Chevron U.S.A. producing crude oil at various locations in Utah, as well as information obtained from the petitioners, and a statement by the Chevron Pipeline Company in Houston, Texas, that Chevron imports crude products from Canada.

The Department's review of the State's finding, however, does not alter the Department's negative determination regarding eligibility for this worker group to apply for NAFTA-TAA. Upon the State's receipt of a NAFTA-TAA petition, the State is required to conduct an investigation collecting information about the subject firm's sales, production, employment, imports, or a shift in production to Mexico or Canada, and issue a preliminary finding. The Department is required to issue the final determination as to whether there was a shift in production from the workers' firm to Mexico or Canada, or if increased imports from those countries of articles like or directly competitive with those produced at the workers' firm occurred and contributed importantly to worker separations and to the declines in sales or production at that firm.

The State's finding that workers that produced crude oil and natural gas for Chevron Production U.S.A. during the relevant time period were certified as eligible to apply for TAA does not warrant a NAFTA-TAA certification for workers of Chevron Products Company because the worker group eligibility requirements for the TAA and NAFTA-TAA programs are different.

A NAFTA–TAA petition investigation is limited to import impact from Mexico or Canada. A NAFTA–TAA certification for the worker group may be issued if

increases in imports from Mexico or Canada of articles like or directly competitive with those produced at the workers' firm ''contributed importantly'' to the decline in sales or production and to the total or partial separation of the workers at that firm. The NAFTA–TAA also has a provision to certify a group of workers when worker separations have occurred and there has been a shift in production from the workers' firm to Mexico or Canada.

A TAA petition certification requires that increases in imports from anywhere of articles like or directly competitive with those produced at the workers' firm ''contributed importantly'' to the declines in sales or production and to the total or partial separation of the workers at that firm. (The petitioners also filed a petition for the TAA program, and, on February 17, 2000, were denied eligibility for the same reason as the NAFTA–TAA denial: the workers provided a service and did not produce an article. The petitioners filed a request for administrative reconsideration that resulted in a dismissal on March 29, 2000. To the Department's knowledge, the petitioners did not request judicial review of this decision.)

Therefore, Utah was in error when it issued an affirmative preliminary finding that was based in part on a TAA certification. The Chevron Production U.S.A. workers were certified eligible to apply for TAA using total U.S. imports of crude oil. From 1998 to 1999, aggregate U.S. imports of crude oil increased, while U.S. imports from Mexico and Canada decreased. The Chevron Products Company, Roosevelt, Utah worker group applied for NAFTA–TAA benefits and the NAFTA–TAA investigation should have focused solely on imports from Canada and Mexico or shifts in production to Canada and Mexico.

Furthermore, it was inappropriate for the State to contact Chevron Pipeline Company in Houston, Texas to obtain information about Chevron Products Company. The Chevron Pipeline Company did not employ the Roosevelt terminal workers and it is unlikely it could provide relevant information regarding the employment of Chevron Products Company's employees. Perhaps that is why the State of Utah reported that there was a lack of cooperation and that the contact person was ''very hostile.'' During the conduct of this investigation the Department found the contact person for Chevron Products to be extremely helpful, cooperative and complied with Departmental requests within the due dates requested.

The Department confirmed that Chevron Products Company did import crude oil from Canada during the time period in which the petitioners were separated from employment, but that is irrelevant due to the nature of the work being conducted by the Roosevelt facility worker group. Part of the worker group, the gaugers, tested the crude oil in tanks before the other part of the worker group, the drivers, would lift and transport the crude oil. To the extent they were service workers, they were servicing oil tanks, which are not properly considered ''production'' facilities. And, even if an oil tank qualifies as a ''production facility'', the tanks were not affiliated with their employer.

In addition, even if the subject workers were considered service workers to the refineries where the crude oil was delivered, the refineries were ''producing'' refined petroleum products, not crude oil. Crude oil cannot be considered like or directly competitive with refined petroleum products. And, as discussed previously, the importation of refined petroleum products during the relevant time period from Mexico and Canada was merely negligible. Therefore, the refinery workers could not have been certified for NAFTA–TAA benefits. Because the refinery workers could not have been certified, a worker ''servicing'' the facility (or facilities) could not be certified.

The USCIT also remanded to the Department the finding regarding the workers' status as members of a Secondarily Affected Worker Group. The USCIT does not have jurisdiction to evaluate the Department's finding on this issue because the entitlement is based on a Presidential Statement of Administrative Action rather than NAFTA or the Trade Act. Certification as a member of a Secondarily Affected Worker Group entitles an individual to benefits through the Workforce Investment Act of 1998 (which replaced the Job Training Partnership Act) rather than the Trade Act.

Regardless, the subject workers are not qualified as members of a Secondarily Affected Worker Group. In order for an affirmative finding to be made, the following requirements must be met:

(1) The subject firm must be a supplier—such as of components, unfinished or semifinished goods—to a firm that is directly affected by imports from Mexico or Canada or shifts in production to those countries; or

(2) The subject firm must assemble or finish products made by a directly-impacted firm; and

(3) The loss of business with the directly-affected firm must have contributed importantly to worker separations at the subject firm.

The Chevron Products Company worker group in Roosevelt, Utah, gauged and transported crude oil to Chevron refineries to produce refined petroleum products. Although the crude oil can be considered a component of refined petroleum product, criteria (1) and (3) are not satisfied because the crude oil gauged and transported to a refinery is not directly affected by imports from Mexico or Canada.

Criterion (2) is not satisfied because the workers of Chevron Products Company, Roosevelt, Utah, did not assemble or finish products for a directly impacted firm.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for NAFTA–TAA for workers and former workers of Chevron Products Company, Roosevelt, Utah. My reconsideration includes review of the February 26, 2003 letter sent by the petitioner's counsel. I find the letter did not provide additional facts to consider.

Signed at Washington, DC, this 7th day of March, 2003.

Edward A. Tomchick,

Certifying Officer, Division of Trade Adjustment Assistance.

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,585]

Kennametal Inc., Greenfield Tap Plant, Greefield, MA; Notice of Revised Determination on Reconsideration

By letter of October 21, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on October 10, 2002, based on the finding that imports of high speed steel taps did not contribute importantly to worker separations at the Greenfield plant. The denial notice was published in the **Federal Register** on November 5, 2002 (67 FR 67421).