

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