

802.2(c)
802.2(g)

June 4, 2003

By Fax: 202-326-2624

Patrick Sharp
Pre-Merger Office
Federal Trade Commission
Washington, DC

Re: Exemption 802.2(g)

Dear Patrick:

This letter is to confirm the factual situation I described to you by phone earlier today, and in which you agreed that no HSR filings would be due as a result of the applicability of the exemption for agricultural property in Rule 802.2(g).

802.2(g) expressly exempts "*activities within NAICS Sector 11*". Sector 11 is entitled "Agriculture, Forestry, Fishing and Hunting". The first sentence states "The Agriculture, Forestry, Fishing and Hunting sector comprises establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitats." Logging itself is covered by 1133 contained within Sector 11.

Our client is acquiring timberlands in the U.S. for a purchase price in excess of \$50 million and we are assuming that all conditions for filing are met except that the transaction is exempt under 802.2(g).¹

The FTC Rule has historically exempted certain agriculture property as defined in materials produced by the Executive Office of the President, Office of Management and Budget. A prior version of the exemption referred to "activities within SIC Major Groups 01 and 02. This included two of the five Major Groups within Division A (Agriculture, Forestry and Fishing). Forestry was at that time classified as Major Group 08 within that Division and thus was not at

¹ It is possible that the transaction may *also* be exempt under 802.2(c) (Unproductive Real Estate), but we cannot obtain from the Seller the necessary data to make that determination prior to signing the Purchase and Sale Agreement (which we need to do for business reasons). In any event, that determination is not required in view of 802.2(g).

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that time included in the exemption. The current version of the exemption expressly includes all of Sector 11 (which was, in ways not here relevant, itself slightly reformulated), and therefore includes forestry as noted above.

The slight expansion of the scope of the exemption is consistent with other changes made in federal law such as the federal tax law which for various purposes treats tree farming as regular farming and reflects general society views which include tree farming and fish farming, to take two major examples, as agricultural-type activities along with "traditional" food farming. The examples which follow the end of all the clauses of 802.2 include one which deals with copper deposits, wilderness land and timber reserves. This example is, however, directed only to 802.2(c), does not deal with 802.2(g) and was also not updated to cover 802.2(g) when amended Rule 802.2(g) was adopted. However, it is absolutely clear that the exemption itself in 802.2(g) does cover forestry (and this is not the only place where the same transaction may be exempt under one or more clauses of the Rule). As an antitrust policy matter, there are large tracts of farm land and forest land in the country and, of course, assets that are not incidental to the ownership of such property are not exempt under 802.2(g). One of the examples makes this latter point clear.

I believe the foregoing correctly states the substances of our phone conversation of earlier today, and I would appreciate your giving me a call (or voice mail) at [redacted] to confirm your view that there is no HSR filing required in this instance.

Thank you for your prompt attention to this matter.

Sincerely,

[redacted]
[redacted]
[redacted]

Disagree with letter, You can only use § 802.2(c) and not 802.2(g) for the exemption for timberland.

called [redacted] (PS) 6/5/2003

[redacted]