

802.50
802.51

January 25, 2005

B. Michael Verne
Premerger Notification Office
Federal Trade Commission
Room H-314
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

Dear Mike:

Our client is contemplating purchasing the voting securities of a foreign issuer that conducts operations both inside and outside the United States. The gross amount of the issuer's sales into the United States, plus its sales from a plant in the United States to customers outside the United States, plus intracompany transfers from a plant in the United States to an affiliate located outside the United States, exceeds \$50 million.

I understand that the Premerger Office has long taken the position that for purposes of 16 C.F.R. §§ 802.50 and 51, sales in or into the United States include all sales and intracompany transfers that originate from the United States, including exports. In our conversations yesterday, I pointed out that in 1976 the Commission issued proposed rules that included § 802.35, an exemption titled, "Insufficient involvement in United States commerce." That proposed rule would have exempted acquisitions of securities of an issuer where the issuer's "sales in, imports to or exports from the United States" were less than an aggregate annual average of \$10 million over the past three years. 41 Fed. Reg. 55,488, 55,493 (Dec. 20, 1976). In 1977 the rules were revised to include three exemptions related to foreign commerce; § 802.50, acquisitions of foreign assets or of voting securities of a foreign issuer by United States persons; § 802.51, acquisitions by foreign persons; and § 802.52, acquisitions by or from foreign governmental corporations.

The 1977 proposed rules eliminated the phrase, "exports from the United States" and instead use "sales in or into the United States". See §§ 802.50, 802.51, 42 Fed. Reg. 39,040, 39,053 (August 1, 1977).

Indeed, the Commission explained that,

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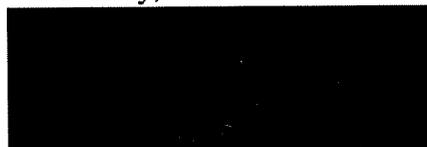
For purposes of testing whether any foreign assets or foreign issuer, or any foreign purchaser or seller, is responsible for generating significant sales in U.S. commerce, all three of these revised rules look to sales made in or into the United States, but not to export sales made outside the United States.

42 Fed. Reg. 39,045 (August 1, 1977) (emphasis added).

Based on this analysis, you advised me that for purposes of determining the amount of the foreign issuer's sales in or into the United States pursuant to 16 C.F.R. § 802.51(a)(1), sales from the foreign issuer's U.S. plant to customers outside the United States, as well as intracompany transfers from the foreign issuer's U.S. plant to an affiliate located outside the United States, may be excluded.

Please contact me at your earliest convenience if your understanding of our conversations varies from mine.

Sincerely,



AGREE - N.O. VUKA CONCURS
B. Michael Verne
1/26/05

