

ITEM 5

From: Berg, Karen E. [mailto:KBERG@ftc.gov]
Sent: Friday, August 19, 2011 10:18 AM
To: [REDACTED]
Subject: RE: Questions on Item 5 Reporting

Hi [REDACTED] answers below in bold

From: [REDACTED]
Sent: Thursday, August 18, 2011 2:05 PM
To: Berg, Karen E.
Subject: Questions on Item 5 Reporting

Karen,

I have a few questions about Item 5 reporting for a filing we are working on. Could you please advise how the following should be handled?

.Sales of manufactured products by a U.S. entity to foreign entities within the same person who then resold those products to customers outside the U.S. Use the transfer price?

.Use transfer if it's available, otherwise, sale price.

.Sales of manufactured products by a foreign controlled entity to a "broker" located in the U.S., where the products were shipped directly from foreign controlled entity to the broker's customer in a different foreign country. The products never entered the U.S., but it was the U.S. broker that paid our foreign controlled entity for the goods. Title and risk of loss transferred outside the U.S. No reporting of this revenue?

.Right, no reporting of this because the product never made it here.

.Sales of manufactured goods by a foreign controlled entity direct to a third-party customer in the U.S. The tip sheet says this should be reported at the wholesale/retail price. What if the manufacturer doesn't know the price the customer is selling it at? Or, as is likely in this instance, the customer uses the product as a component of a product it is manufacturing, and does not sell this component separately at all?

.What we mean by this is the purchase price the (your) customer paid, not what your customer then resold the product for.

Thank you,

[REDACTED]