

-----Original Message-----

From: Berg, Karen E. [mailto:KBERG@ftc.gov]

Sent: Tuesday, September 06, 2011 11:16 AM

To: [REDACTED] Walsh, Kathryn

Subject: RE: item 5 revenues

ITEM 5

[REDACTED] we agree.

-----Original Message-----

From: [REDACTED]

Sent: Monday, September 05, 2011 7:55 PM

To: Walsh, Kathryn

Cc: Berg, Karen E.

Subject: RE: item 5 revenues

A follow up with a few more details that, in my view, do not change the conclusion.

All products exported to the US by the foreign manufacturer are sold to non-US trading companies outside the US on an FOB basis and title and risk of loss pass to the trading company at the same time. The manufacturer, in some cases, knows the identity of the end-user when the trading company places an order with the manufacturer but the manufacturer has no information concerning the contractual terms of sale(including the price) between the trading company and the end user. The manufacturer has no direct contractual relationship on price or quantity with an end user or distributor in the US. And, the manufacturer has no control over the sales by the foreign trading company and is not advised of the actual delivered price at which the trading company sells the product to the end user or distributor in the US.

At times, the manufacturer may engage in discussions with the end user concerning a "reference" price--which refers to the price at which the manufacturer may sell to the trading company-- but the price at which the trading company sells to the end user is determined solely by the trading company and the end user without any involvement by the manufacturer.

Under these expanded facts, it appears to me that these sales should not be reported in Item 5 of the Form by the foreign manufacturer.

[REDACTED]