

802.51

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July 10, 2003

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PHONE:  
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**VIA FACSIMILE NO. (202)326-2624  
AND FIRST CLASS MAIL**

Mr. Michael B. Verne  
Federal Trade Commission -  
Pre-Merger Notification Office  
Bureau of Competition, Room 303  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**Re: HSR Rule 802.51(b)**

Dear Mike:

This confirm our conversations earlier today regarding HSR Rule 802.51(b). The issue we discussed is under what circumstances pickups and deliveries of cargo from United States ports by tankers/freighters constitute "sales in or into the United States" for purposes of the \$50 million threshold under the Rule. We discussed two scenarios.

First, we assumed cargo is being picked up in New York City and shipped to London. If the shipper delivering the cargo to the vessel in New York City is paying for the transportation, the revenues are considered "United States sales" of the firm providing the transportation services. This is true even if the shipper's headquarters are located in Stockholm. Alternatively, if the party receiving the cargo in Spain is paying for the transportation services, the revenues are not considered "United States sales" of the transportation firm, even if the paying party is a company headquartered in the United States.

The converse would also be true. Assume the cargo is being picked up in London and shipped to New York. If the shipper in London is paying for the service, the revenues are not "United States sales." If the party receiving the cargo in New York is paying for the service, the revenues are considered "United States sales."

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Second, we assumed that a charterer hires a ship to pick up cargo in Africa and bring it to New York City. For practical purposes, the charterer is **both** the sender and the recipient. In this case, payment for the services will be considered "sales in or into the United States" if the cargo is being brought into the United States, as it would be under our hypothetical. If the converse were the case (i.e., the charterer had arranged for the pick up of goods in New York City for delivery to Africa), payment for the services would not be considered "sales in or into the United States."

Please let me know if I have misunderstood the staff's analysis, or if you need additional information.

Very truly yours,  
[REDACTED]

AGREE -  
B. Michael Verne  
7/10/03