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[REDACTED]

April 23, 1996

is subject to the
provisions of Section
of the Clayton Act which pertains
to the "Freedom of Information"

VIA FACSIMILE

Alice Villavincencio
Compliance Officer
Federal Trade Commission
Premerger Notification Office
Federal Trade Commission
Washington, D.C. 20580

APR 23 1996
PREFERRED MAIL

Re: Formation of Foreign Joint Venture Corporation

Dear Ms. Villavincencio:

Per our telephone conversation earlier today, enclosed is a flow chart of the proposed transaction for which I am trying to determine whether my client, a U.S. corporation, is required to file an HSR Notification and Report Form, and if a filing is required to be made, how to complete various portions of the Report Form.

These are the basic terms of the proposed transaction: My client, the U.S. corporation ("USCorp.") and a corporation organized under the laws of Germany ("GerCorp.") will agree to form a new German corporation ("NewGerCorp."), of which USCorp. will own 80% of the voting securities and GerCorp. will own 20% of the voting securities. GerCorp. will also agree to contribute all of the stock of its subsidiary, ("GerSubCorp."), to NewGerCorp., so that after the transaction is completed, GerSubCorp. will be a wholly-owned subsidiary of NewGerCorp. GerCorp. further agrees to contribute up to 100 million deutchemarks (approximately \$65 million) to NewGerCorp. to be used by NewGerCorp. to fund cash shortfalls of GerSubCorp.

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These are the basic characteristics of the parties:
U.S. Corp. has annual net sales in excess of \$100 million. Once the cash contribution described above is made by GerCorp., NewGerCorp will have total assets of \$10 million or more. GerCorp. has annual net sales of \$10 million or more. Therefore, it appears to me that NewGerCorp. meets the "size of person" tests set forth in Section 801.40(b)(1) of the rules.

The first question I have, however, is whether USCorp is exempt from filing under Section 802.50(b), despite the fact that the size of person tests are met under Section 801.40(b)(1). As I read Section 802.50(b), a transaction is exempt if a U.S. person (here, USCorp.) is acquiring voting securities of a foreign issuer (here, NewGerCorp.) and the foreign issuer (NewGerCorp) either (1) has assets in the U.S. of less than \$15 million or (2) made aggregate sales into the U.S. of less than \$25 million in its most recent fiscal year. Neither NewGerCorp. nor GerSubCorp. have assets in the U.S. in excess of \$15 million. NewGerCorp. also has not had and will not have sales into the U.S., although GerSubCorp. has had sales into the U.S. in excess of \$25 million in its most recent fiscal year. Should the sales of GerSubCorp. be attributed to NewGerCorp. in determining whether the exemption in Section 802.50(b) applies? *yes*

My second question is whether GerCorp. is exempt from filing under Section 802.51(b). Section 802.51(b) states that an acquisition by a foreign person (GerCorp.) is exempt if the acquisition is of voting securities of a foreign issuer (NewGerCorp.) and will not confer control of (1) an issuer who holds assets in the U.S. with a value of \$15 million or more, or (2) a U.S. issuer with annual net sales or total assets of \$25 million or more. Since GerCorp. will acquire only a 20% interest in NewGerCorp., the transaction will not confer control. Moreover, it appears that even if GerCorp. did acquire a controlling interest in NewGerCorp, the transaction would still be exempt under Section 802.51(b) because U.S. based assets are below \$15 million and neither NewGerCorp. or GerSubCorp are "U.S. issuers." *yes*

I would appreciate further guidance from you on the above mentioned questions. If a filing is required by USCorp., I may have additional questions on particular parts of the report form. However, I will hold these questions aside until it has been determined that a filing is required.

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: 4-23-86 :12:28PM :

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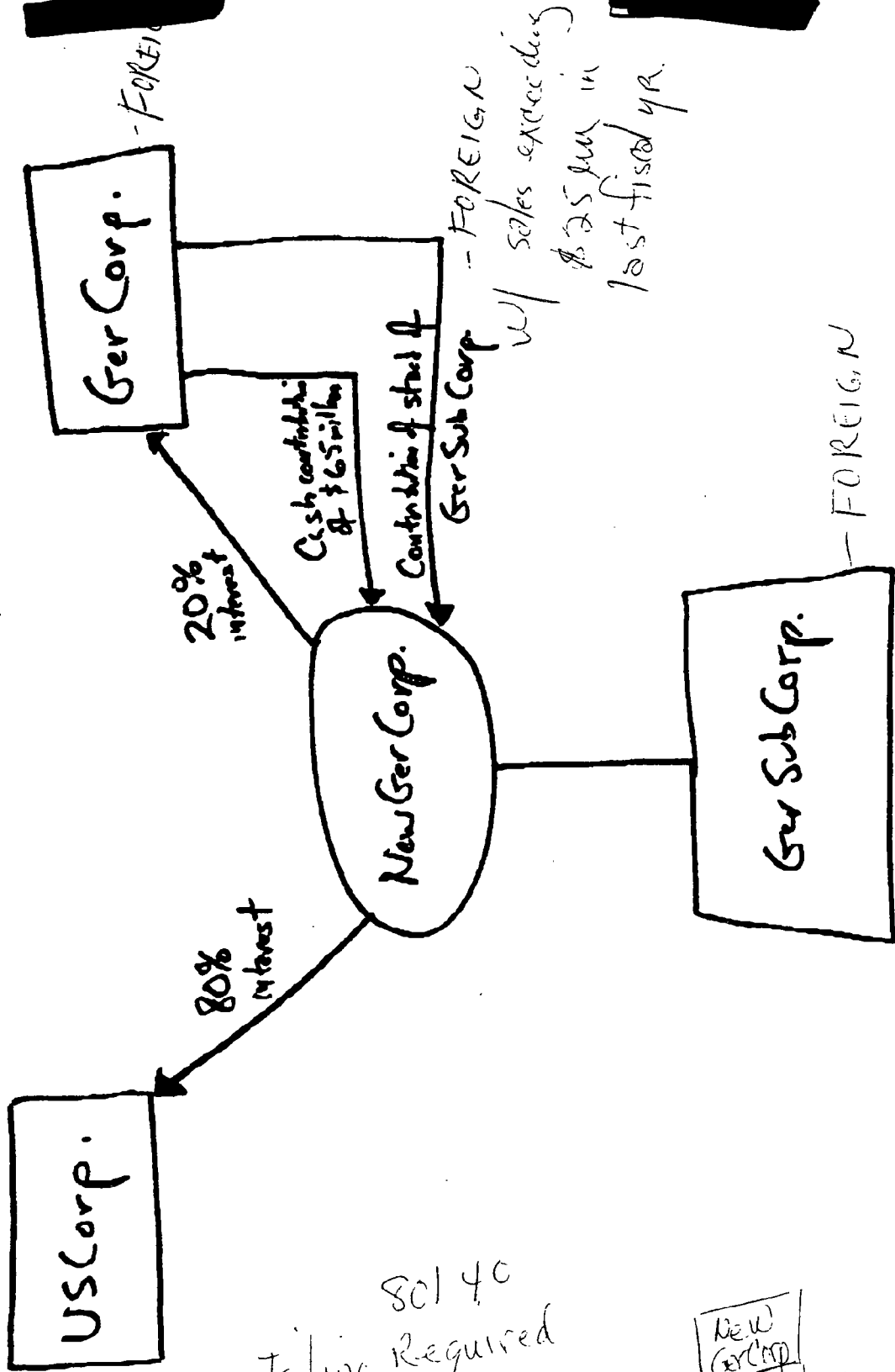
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*US Corp. is
required to file.
Am*

I thank you in advance for your assistance on these issues. I look forward to discussing the foregoing with you at your earliest convenience. Please call me at [REDACTED] after you have completed your review of the enclosed flow chart.

Ve [REDACTED]



- FOREIGN

- FOREIGN

- FOREIGN

W/ sales exceeding \$25mm in last fiscal yr.

Filing Required from US Corp

New Ger Corp
New Ger Corp of US

from filing for 20% of vs. from New Ger Corp.
 (over Corp. Exempt under 802.51(b))