

Verne, B. Michael

802.51

From: [REDACTED]
Sent: Thursday, January 07, 2010 10:18 AM
To: Verne, B. Michael
Subject: 802.51

Hello Mike, and happy new year to you. I hope you had a nice holiday.

A quick and basic question, please.

In the proposed transaction, the target company is non-US but has a US sub that will be acquired indirectly. For purposes of examining whether the exemption under 802.51(a) might be available, would sales that are made by the US sub, and booked on the US sub's books, but sold to customers located outside the US be considered sales "in" the US?

Many thanks,

[REDACTED]
[CC]Office[/CC]

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No – export sales are not counted. See the following excerpt from 42 FR 39045 for the original proposed rules.

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, any 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.

Also see Informal Interpretation # 0501007

BN
1/7/10