

CBP Proposes to Eliminate “First Sale” Valuation Rule; May Result in Higher Duties

U.S. Customs and Border Protection published a notice in the January 24, 2008 *Federal Register* in which it proposes to change the way it interprets certain language with respect to the valuation law that would have the effect of eliminating what is known as the “first sale” valuation rule. The proposal, if implemented, could have a significant effect on values declared by parties who enter goods in scenarios involving multiple transactions, and could lead to increased duty amounts based on those values.

The “first sale” rule is used where import transactions involve multiple parties and multiple sales for determining which transaction value may be declared to CBP at the time of importation. For example, if a U.S. buyer orders goods from a foreign supplier, and the supplier in turn orders the goods from a manufacturer, and the manufacturer ships the goods directly to the U.S. buyer, the “first sale” rule can allow the price from the transaction between the manufacturer and the supplier—as opposed to the typically higher price between the supplier and the U.S. buyer—to be declared to CBP at the time of entry so long as certain requirements are satisfied. A well-known 1992 U.S. court case applying the first sale rule was *Nissho Iwai America Corp v. United States*. The rule has benefitted importers by allowing them to pay duties based on the typically lower value of the “first sale” as opposed to the typically higher value of the “last sale.”

CBP is now proposing to do away with the “first sale” rule. Specifically, CBP is proposing that in a scenario involving multiple sales, the transaction value to be declared to CBP “is the price paid in the last sale occurring prior to the introduction of the goods into the United States, instead of the first (or earlier) sale. The result will be that transaction value is normally determined on the basis of the price paid by the buyer in the United States.”

If CBP implements its proposal, importers who currently benefit from paying lower duties by using the “first sale” rule to value their imports may experience potentially significant increases in their duty payment amounts.

CBP’s proposal, if implemented, could affect businesses in a variety of sectors where imported goods are subject to duties based on the merchandise’s value. Canadian lumber wholesalers, for example, could be hit especially hard by the effects of CBP’s proposal if future antidumping and/or countervailing duty requirements are placed on U.S. imports of softwood lumber from Canada. During the past ADD/CVD period from 2002 to 2006, Canadian wholesalers relied heavily on the first sale rule to remain competitive in the U.S. market in the face of duty deposit requirements as high as nearly 30%. If future ADD and/or CVD requirements apply to softwood lumber and CBP implements its proposal effectively eliminating the first sale rule, wholesalers may be required to pay duty on their sale price as opposed to their purchase price.

A copy of the January 24 *Federal Register* notice is available at the following address:
<http://a257.g.akamaitech.net/7/257/2422/01jan20081800/edocket.access.gpo.gov/2008/E8-1140.htm>

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CBP is considering this proposal in light of a recent commentary issued by World Customs Organization-related "Technical Committee on Customs Valuation; however, it is accepting comments on its proposal until May 24, 2008. Instructions for submitting comments are provided in the *Federal Register* notice.

Please contact us if you have any questions.

