

CBP Won't Act on Controversial "First Sale" Proposal Prior to 2011; Will Require "First Sale" Declarations For One-year Period

On January 31, 2008 we reported that CBP proposed to effectively eliminate the "first sale" valuation rule (see our January 31, 2008 *NGJ International Trade Update* at <http://www.ngjensen.com/news/itu/2008-01-31.pdf>). CBP recently stated that it does not intend to proceed further on its proposal prior to January 1, 2011. CBP will, however, begin requiring all importers to provide CBP a declaration at the time of entry stating whether or not the transaction value of imported merchandise is declared based on the first sale rule.

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 Commissioner Ralph Basham announced CBP's decision to withhold taking further action during his remarks at a June 24 hearing before the Senate Finance Committee. The Commissioner's comments were consistent with a provision of the recent farm bill, which provides in part that "(i)t is the sense of Congress that (CBP) should not implement a change" with respect to CBP's recent proposal "before January 1, 2011."

Although importers who utilize the first sale rule appear to have been granted a reprieve from CBP's proposal to eliminate the rule, CBP will nonetheless be requiring all importers to provide a declaration regarding the use of first sale for each importation. This "First Sale Declaration" requirement appears in the farm bill and directs CBP to require each importer to provide CBP with a declaration "as to whether the transaction value of the imported merchandise is determined on the basis of the price paid by the buyer in the first or earlier sale occurring prior to introduction of the merchandise into the United States." The provision requires CBP to report periodically for one year to the U.S. International Trade Commission (ITC) with respect to the information it obtains from the First Sale Declarations. The ITC will report to Congress with respect to the use of the first-sale rule during the one-year period during which CBP is to collect the declarations.

We have not received specific instructions or details from CBP regarding the First Sale Declaration requirement; however, we are continuing to monitor the situation and will provide an *NGJ International Trade Update* when more information is available.

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