The Bottom Line

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USING THE FIRST SALE RULE TO MITIGATE DUTIES

Summary

Where there are multiple sales of goods prior to their importation into the United States, the First Sale Rule allows importers, in certain circumstances, to use the price paid in the first, or earlier, sale as the basis for the customs value of the goods rather than the price the importer ultimately paid for the goods. Using the "First Sale Rule" to reduce the customs value of the goods results in a decrease in duties owed for the imported merchandise.

Background

Under the First Sale Rule, the entered value of a qualifying transaction may be based on the purchase price between the manufacturer and the middleman/vendor rather than between the middleman/vendor and the importer. Under U.S. law, the preferred method of valuing imported merchandise for customs purposes is the transaction value of the goods sold. The transaction value method is the primary method for determining the value of imported goods based on the price actually paid, or payable by a buyer, plus adjustments for certain fees, such as commissions, packing, royalties, and licensing fees. Other methods for determining value include "identical goods," "similar goods," "deductive value," and "computed value." When the transaction value is the correct method for determining value and the goods are sold more than once before they are eventually imported, the First Sale Rule allows an earlier sale to be used in declaring customs value as long as that sale can be documented as a sale for exportation to the United States, and the importer meets all other Customs requirements.

Current Status

Although an importer may be able to limit the amount of duties paid utilizing the First Sale Rule, they would need to ensure that specific Customs-mandated conditions are being met. In order to qualify, a multi-tier transaction needs to meet the following requirements:

1. The 'first sale' must be a bona fide sale between the manufacturer and intermediary, and include a transfer of title.
2. The manufacturer and intermediary must be unrelated or conduct their transactions at "arm's length."
3. At the time of sale between the manufacturer and intermediary, the product must be clearly destined for export to the U.S. 4. The importer must be prepared to provide supporting documentation including, but not limited to, purchase orders, invoices, contracts, bills of lading, and proof of payment. All supporting documentation regarding alternate valuation of goods must be maintained for five years from the date of import.

Impact

At a time when volatility in trade policy has left some traditional methods of lowering costs unavailable (such as Generalized System of Preferences) and is threatening to eliminate others (such as NAFTA), importers are continuing to use the First Sale Rule to save millions of dollars in import duties each year. The First Sale Rule can have an especially impactful effect on goods coming out of China, now subject to additional duties of up to 30% (as of October 18). Caution needs to be exercised, however, before declaring reduced value on imports to ensure the importer has the required documentation to support the claim.

RESOURCES:

Use of the "First Sale Rule" for Customs Valuation (USITC)
The First Sale Rule: A Way to Reduce Exposure (China Briefing)