

**“First Sale” Declaration Requirement: CBP Releases Interim Rule;  
Declarations Required for Applicable Entries as of Yesterday, August 20;  
Requirement to Remain in Effect Until August 19, 2009**

U.S. Customs and Border Protection confirmed today that it will require First Sale Declarations for applicable entries made on and after August 20. The declaration requirement applies to importers of record for merchandise that has been valued for CBP purposes using the First Sale Rule summarized below. Merchandise that is not valued using the First Sale Rule is not subject to the new declaration requirement.

- **Background**

**Summary of the First Sale Rule:** The First Sale Rule is often 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*. Additional details regarding the First Sale Rule and the Farm Bill First Sale Declaration requirement can be found in our January 31 and July 1, 2008 *NGJ International Trade Updates* at <http://www.ngjensen.com/itu.php>.

**The First Sale Declaration Requirement:** The recently-passed Food, Conservation and Energy Act of 2008 (commonly referred to as the “Farm Bill”) requires CBP to collect First Sale Declarations from importers for a one-year period and to report its findings to the U.S. International Trade Commission. The ITC will report to Congress with respect to the use of the First Sale Rule during the one-year period.

- **Interim Regulations**

CBP recently released interim regulations regarding First Sale Declarations. The regulations provide in part that “for all goods entered for consumption. . . from August 20, 2008 through August 19, 2009, an importer of merchandise must enter an “F” next to the declared value on CBP Form 7501” [the entry summary] when the First Sale Rule is used as the basis for the declared value.

A copy of the interim regulations is available on our website at:

[http://www.ngjensen.com/news/First\\_Sale\\_Declaration\\_Interim\\_Requirement.pdf](http://www.ngjensen.com/news/First_Sale_Declaration_Interim_Requirement.pdf). The interim regulations are scheduled to be published in the *Federal Register* on Monday, August 25, 2008.

The *NGJ International Trade Update* provides information obtained from third parties, primarily government, and advice based on that information. Norman G. Jensen Inc. (NGJ) has not verified the accuracy of the information nor is it capable of verifying the accuracy of the information. As a consequence, NGJ will not be liable for injury suffered as a result of reliance on the information or the recommendations provided in the *NGJ International Trade Update*.

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Visit our website at [www.ngjensen.com](http://www.ngjensen.com)

*Norman G. Jensen, Inc. is a validated participant in the Customs-Trade Partnership Against Terrorism (C-TPAT).*

- **Entries Affected by New First Sale Declaration Requirement**

CBP at the Area Port of Champlain, New York today issued an Information Notice (No. 08-F0-25) confirming that the First Sale Declaration requirement will apply to entries made on and after August 20, 2008. A copy of the Information Notice is available on our website at [http://www.ngjensen.com/news/First\\_Sale\\_Grace\\_Period.pdf](http://www.ngjensen.com/news/First_Sale_Grace_Period.pdf).

Although the Information Notice states that CBP is granting a 30-day “grace period” to importers with respect to the First Sale Declaration requirement, the “grace period” does not exempt importers from their responsibility to ensure entries made during the 30-day period contain the required First Sale declaration. CBP’s “grace period” provides that entries made between August 20 and September 19, 2008 which require a First Sale Declaration will not be rejected based on any First Sale Declaration requirements; however, such entries made during this period “will require amendment” if the required First Sale declaration is not provided. Therefore, although CBP states in the Information Notice that it will not commence enforcement of the First Sale declaration requirement until September 20, 2008, CBP does not state in the notice that its enforcement will not include retroactive enforcement of entries filed during the 30-day “grace period” between August 20 and September 19. CBP states in the Information Notice that the international trade community is “strongly encouraged to implement the requirements of the First Sale Declaration Requirement as soon as feasible before September 19, 2008.”

- **How to Comply With the First Sale Declaration Requirement**

**Importers of Record for Merchandise Valued Using the First Sale Rule:** In order to allow NGJ to prepare the entry summary with the required First Sale Declaration, importers of record whose merchandise is valued pursuant to the First Sale Rule must ensure the import invoice indicates “Value determined pursuant to First Sale Rule.” NGJ will not make a First Sale Declaration on an importer’s entry summary without this written instruction.

NGJ is reviewing its electronic systems to determine how those systems can assist affected parties in supplying First Sale Declaration information to NGJ.

For entries of merchandise valued using the First Sale Rule for which the entry summary was filed on August 20, and for shipments that have been imported but for which the entry summary has not been filed as of today, importers of record should contact their NGJ account representative or nearest NGJ office as soon as possible to provide written instructions regarding First Sale Declarations for those entries or shipments.

**Importers of Record for Merchandise Not Valued Using the First Sale Rule:** As indicated above, Importers of Record of merchandise that is not valued using the First Sale Rule are not required to make a First Sale Declaration to CBP regarding that merchandise. Accordingly, no additional information is required on invoices for merchandise that is not valued using the first sale rule.

If you have questions regarding this issue, please contact us at [compliance.us@ngjensen.com](mailto:compliance.us@ngjensen.com).