

“First Sale” Declaration Requirement: CBP Publishes Interim Rule

A U.S. Customs and Border Protection interim rule governing the “First Sale” Declaration requirement was published in yesterday’s *Federal Register*. The interim rule is available online at <http://edocket.access.gpo.gov/2008/pdf/E8-19640.pdf>.

The declaration requirement applies to importers of record for merchandise that has been valued for CBP purposes using the First Sale Rule. Merchandise that is not valued using the First Sale Rule is not subject to the new declaration requirement.

Is my merchandise valued using the First Sale Rule?

CBP’s interim rule states that a First Sale Declaration must be made for an entry “when the declared transaction value of the imported merchandise is determined on the basis of the price paid by the buyer in a sale occurring earlier than the last sale prior to the introduction of the merchandise into the United States.”

The First Sale Rule can arise in situations when imported goods involve a series of sales. CBP has referenced the following scenario as illustrative of a “series of sales” situation (73 Fed. Reg. 4254, January 24, 2008):

“A” is a retail store located in the [United States].

“B” is a pen distributor located in country Z.

“C” is a pen manufacturer located in country X.

A contracts with B for the purchase/sale of 1,000 pens of styles xx and yy. B. contracts with C for the same amounts and styles of pens. C subsequently ships the pens directly to A. Both transactions are conducted at arm’s length.

In the scenario presented above, the “first sale” is the sale of pens by C, the manufacturer, to B, the distributor. The sale of pens by B, the distributor, to A, the U.S. buyer, is the “last sale” prior to the introduction of the pens into the United States. If upon importation into the United States the pens are declared for CBP entry purposes based on the price paid by distributor B to manufacturer C, under the new First Sale Declaration requirement, the importer of record would be required to declare the use of the First Sale Rule to CBP by making the appropriate notation on the CBP entry summary.

For additional details regarding the First Sale Rule, consult CBP’s Informed Compliance Publication entitled *What Every Member of the Trade Community Should Know About Bona Fide Sales and Sales for Exportation* (August 2005), available on the CBP website at: http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp010r2.ctt/icp010r2.pdf

If you have questions, please contact us at compliance.us@ngjensen.com.

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