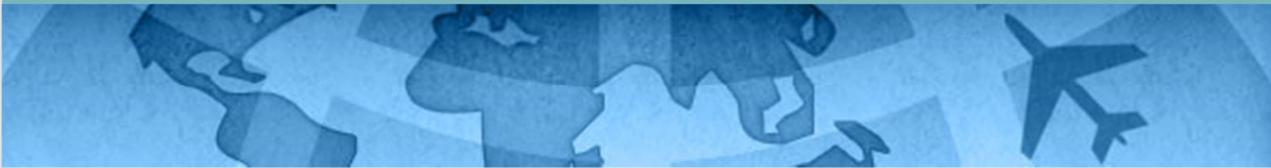


SPC&B Update

July 14, 2014 - In This Issue:

CBP Proposes New First Sale Documentation Requirements

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Comments Sought on CBP's Proposed Changes to First Sale Documentation Requirements

As you may already know, U.S. Customs & Border Protection (CBP) has been distributing a draft modification to the Informed Compliance Publication (ICP) on *Bona Fide Sales & Sales for Exportation to the United States*, which suggests that importers may be required to maintain and provide access to an exhaustive array of financial records, which go beyond the information typically required today, of all parties to first sale transactions in certain circumstances. If implemented, the proposed requirements would be a serious impediment to participation in the first sale program.

It is well known that CBP does not favor the first sale concept and, in fact, attempted to eliminate the use of first sale valuation several years ago. After CBP decided to maintain the *status quo* in the face of opposition by Congress and the trade, importers have continued to benefit from duty savings basing the dutiable value on the first sale in middleman transactions. Now, however, while ostensibly not changing its "totality of the circumstances" review policy, CBP may require a substantial amount of highly confidential information within the custody and control of third parties; i.e., middlemen, contractors, factories, that importers may find difficult or impossible to obtain, effectively eliminating their ability to benefit from first sale valuation.

The proposed revisions to the ICP came about as a result of a challenge by an attorney to CBP auditors who had requested certain documentation to substantiate a first sale claim. CBP decided that it would be helpful to the trade to outline all of the documentation that CBP might ask for in verifying first sale claims. In doing so, however, CBP has overreached, indicating that importers could be required to provide the agency with full access to the books and records of the middleman and the manufacturer when the two are related, as well as the financial records of a third party parent company when the middleman and manufacturer are subject to common ownership, in order to prove that all costs are being covered and that a reasonable profit is being made.

While there may be a small number of vendors willing to provide CBP with access to their books and records, it is more than likely that most vendors will not agree to such an intrusive review. As a result, importers may be unable to confirm that the declared value is accurate in circumstances when the middleman and manufacturer are related. This could result in a significant drop in the use of first sale valuation.

Fortunately, CBP is continuing to accept comments on the draft ICP. We urge you to consider responding if the proposed changes have the potential to affect your company's business. We stand ready to assist you in the preparation and submission of comments, either individually or as a group.

For further information on first sale valuation and documentation, please contact Gail T. Cumins at gcumins@spcblaw.com, Alli Baron at abaron@spcblaw.com, or Donna Shira at dshira@spcblaw.com, or call us at 212-425-0055.

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