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CLIENT ALERT

ITC Issues Customs Value First Sale Rule Report – Are Importers Missing Duty Savings Opportunities?

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As required by the Food Conservation and Energy Act of 2008 (the Act), the U.S. International Trade Commission (ITC) recently issued a report on the use of the first sale rule for customs valuation of imports. Under the first sale rule importers may lower duties by using the first sales price for goods, which are sold multiple times before importation, to determine duty liability. For example, an item may be produced in China, sold to a middleman in Hong Kong, and in turn sold to a buyer/importer in Los Angeles. The first sale rule allows the U.S. importer to declare the product's value, for import duty purposes, as the price of the original China-Hong Kong transaction. Because the value attributable to earlier sales may be lower than that assigned to later sales, use of the first sale rule can lower the duties paid by importers.

In 2008, U.S. Customs and Border Protection (CBP) attempted to eliminate the judicially mandated first sale rule, but CBP's efforts met significant industry and Congressional opposition. As a result of this opposition, the Act prevented CBP from taking further action to revoke the first sale rule until at least January 1, 2011, and required importers to provide import data on the use of the first sale rule to enable the ITC to complete its report. The data presented in the ITC report suggests that many importers may not be taking advantage of the potential duty savings opportunities offered by the first sale rule.

The report examined U.S. imports between September 1, 2008, to August 31, 2009, and its key findings include:

- Of the $1.63 trillion in total U.S. imports, $38.5 billion, or about 2.4 percent, were imported using the "first sale rule."
- Approximately 8.5 percent of all U.S. importers (over 23,000) use the first sale rule.
- The top five industries using the first sale rule by total import value are - machinery, transportation and computers (31 percent), electrical equipment (15 percent), textile, apparel and footwear (14 percent), raw materials (excluding plastics and rubber, 13 percent), and food and agriculture (12 percent).
- Most importers in each industry, however, do not use the first sale rule. The greatest percentage of first sale use in the top two industries (by value) are for textile, apparel, and footwear (just over 5 percent), and food and agriculture (approximately 4.9 percent). Goods imported in these industries tend to have the highest duty rates, thereby conferring the greatest benefits on first sale rule users.
- The ITC was unable to quantify revenue impact (duty savings) or economic impact of the first sale rule.

Despite the small percentage of importers using the first sale rule, eliminating this rule would adversely impact importers who currently use the rule, and deprive other importers of the duty saving benefits that this rule offers. Certain importers may not use the first sale rule because it is difficult to meet the legal requirements to comply. Crowell & Moring has assisted many importers in taking advantage of first sale rule through its global duty recovery program. Please contact John Brew or Dan Cannistra if you have any questions about the ITC report, or potential first sale rule benefits.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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