

US Customs update
First Sale for Export into the US – latest developments

Importers into the US have received good news after a threat earlier this year to end the use of the First Sale arrangements for imports into the US was withdrawn. On January 24, 2008, US Customs and Border Protection (CBP) published in the Federal Register (73 FR 4254) a proposed rule re-interpreting the customs valuation statute that would have essentially eliminated First Sale valuation for customs duty purposes. However, on May 22, 2008, the US Congress passed the Food, Conservation, and Energy Act of 2008, Pub.L.110-234, 122 Stat. 1547 (the Act), including a ‘sense of Congress’ provision which advised CBP not to re-interpret the customs valuation statute until January 1, 2011. Instead the Act required CBP to collect data on First Sale and monitor the practice in the interim.

To meet this requirement, CBP has recently announced that effective August 20, 2008 importers of merchandise must enter an ‘F’ next to the declared value at the line level on CBP Form 7501 (or its electronic filing equivalent) 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 before the introduction of the merchandise into the United States (i.e. if it is based on First Sale). It is anticipated that CBP will use the information to target companies for scrutiny to ensure the transactions are in fact eligible for First Sale valuation and the company maintains contemporaneous supporting documentation.

As a result it is highly recommended that importers using First Sale assess that they currently satisfy the First Sale requirements, and document their due diligence in this area to demonstrate they have exercised reasonable care. Failure to exercise this due diligence may result in heavy financial fines and the denial of First Sale privileges into the US.

Importers may expect CBP to begin issuing requests for information via Customs Form-28’s and Custom Forms-29’s related to the First Sale practice in order to verify either:

1. If an ‘F’ was not indicated on the customs entry, that the customs entry did not involve First Sale appraisalment (that the importer did not indicate ‘F’ when they should have); and
2. If an ‘F’ was indicated, that the related sales documentation and information regarding this customs entry satisfies the First Sale requirements.

4 Eyes Ltd is able to assist your company to review your existing First Sale arrangements for compliance or assess your future eligibility, and exercise the necessary reasonable care in this area.