

CLIENT ALERTS

Is “First Sale” Valuation a Practical Method to Lower Your Import Duties?

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As import tariffs rise dramatically for all products coming into the US, the customs valuation process that is the basis of calculating the duty is potentially a strategic tool in lowering an importer's financial exposure. Generally, the goods are valued using the “Transaction Valuation Method,” which is the price paid or payable to the Seller with additions for the value of “assists” provided by the Seller in the production of those goods, e.g., engineering. This is the last sale price at time of importation.

Where the supply chain consists of multiple vendors, however, a different valuation can be used. The “First Sale Doctrine” allows duty to be based on the lower price that the “middleman” receives rather than the higher price that the “middleman” then charges to the importer/buyer. For example, in a multi-tiered supply chain consisting of a foreign manufacturer, a foreign distributor, and US exporter, the valuation can be based on the price paid by the distributor to the manufacturer. This eliminates from the valuation used in the assessment of the US tariff the value-added and the profits of the distributor.

The foreign distributor can be related or unrelated to the manufacturer or US importer. The pricing between a related distributor and the manufacturer or US importer must be arm's length. However, that is already required under transfer pricing rules for related parties. Historically, only a small percentage of US imports have been valued using first sale valuations due to record keeping and other complexities. However, the increase in tariff rates is causing many companies to reevaluate the practicality of using first sale valuation.

Numerous conditions must be met in order to utilize the First Sale Rule, e.g., the transaction must be conducted at “arms- length”, and the first sale must clearly reflect that sale is for exportation to the US. Additionally, “assists” must be taken into account as

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valuation enhancements, and documentation at all levels of the transaction are required. Please call your Butzel attorney or any of the authors of this Client Alert to discuss whether your products may benefit from the use of first sale valuation and whether your current supply chain can meet the requirements.

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