

September 29, 2010

## U.S. Customs and Border Protection Withdraws Its Proposal to End the “First Sale” Rule

After much anticipation, U.S. Customs and Border Protection (CBP) published a notice in today’s Federal Register that it is withdrawing its proposed interpretation of the phrase “sold for exportation to the United States” for purposes of determining the value of goods in cases where there are multiple sales transactions prior to importation. If CBP’s proposal had been adopted, it would have eliminated an importer’s ability to use the sale price of goods from a foreign manufacturer to a middleman—the “first sale” in a series of title transfers—for goods ultimately destined to the United States.

CBP’s proposal was first published on January 24, 2008. (See Katten’s announcement of CBP’s proposal [here](#).) The agency quickly encountered stiff resistance to the proposal from numerous sources. (Katten’s Customs and International Trade Practice was involved in preparing comments that were submitted on behalf of the Customs and International Trade Bar Association on April 1, 2008.)

CBP’s proposal was questioned by Congress over two years ago. Contained in the 2008 Farm Bill (the Food, Conservation and Energy Act of 2008) was a “Sense of Congress” provision stating that CBP should not implement its proposed change to the interpretation of “sold for exportation to the United States” before January 1, 2011. Instead, CBP was required to collect information from importers who were using the “first sale” rule to value their merchandise and report this information to the U.S. International Trade Commission.

On August 25, 2008, CBP published an interim rule indicating that CBP might withdraw its proposed interpretation, but it gave no timetable for doing so. Today’s notice formalizes the withdrawal, giving importers who are using the “first sale” rule greater assurance that such practices will not be revoked in the near future.

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If you believe that your company may be able to use the “first sale” rule to value its imported merchandise, but is not yet doing so, please contact one of the Katten Muchin Rosenman LLP **Customs and International Trade** attorneys or professionals listed below to see how taking advantage of this rule could generate substantial savings in duties and fees for your company.

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