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U.S. Customs & Border Protection to Withdraw First Sale Rule Revocation Notice

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On September 29, 2010, U.S. Customs & Border Protection (“CBP”) will publish a Federal Register Notice withdrawing an earlier notice* which would have had the effect of ending favorable Customs appraisements under the so-called first sale rule. Under the first sale rule, where an importer is buying goods from a middleman rather than directly from a manufacturer, it may be possible to have goods valued for duty assessment purposes at the lower price charged by the manufacturer to the middleman rather than at the higher price charged by the middleman to the importer. Accordingly, for transactions qualifying for first sale appraisalment, duty is not assessed on the middleman’s mark-up.

Upon publication of the original notice, our firm filed a 43 page comprehensive comment with CBP setting forth numerous legal arguments and precedent in opposition to their proposed new interpretation of a nearly 30 year old statute.

Should you have any questions or require additional information, please feel free to contact this office.

* Specifically, in an earlier notice, dated January 24, 2008. CBP proposed a new interpretation of the phrase “sold for exportation to U.S.” when applying the transaction value method of appraisalment to multi-tiered sales transactions. Under the proposed interpretation now being revoked, only the price paid in the last sale occurring prior to the introduction of goods into the U.S., rather than the first (or earlier) sale price could be used to determine dutiable transaction value.