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CBP Implements New First Sale Declaration Requirement

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As has been widely reported, the Bureau of Customs and Border Protection ("CBP") has issued instructions to implement the first sale reporting requirements mandated by the Food, Conservation and Energy Act of 2008 ("the Farm Bill"). Under the new requirement, entries involving first sale transactions must be flagged with an "F" at the line item level to indicate that the entered value is based upon the first sale for export. The new reporting requirement will be in effect for one year and became effective for entries made on or after August 20, 2008.

Significantly, the Farm Bill, the interim regulations and the directives issued by CBP clearly provide that the first sale declaration *is an importer requirement*. Importers will generally rely upon their customs brokers to make the appropriate declaration at the time of entry. However, the broker will only be able to accomplish this task if they are properly alerted to the existence of a first sale transaction.

It should not be assumed that the broker will be able to identify a first sale transaction based upon a routine review of the import documentation. Importers should review existing transactions and establish procedures to alert their brokers to the existence of a first sale transaction so that entry can be made properly.

Brokers are strongly encouraged to *notify their import clients in writing* of this new declaration requirement and to request that the importers specifically identify which transactions are subject to this new reporting requirement.

Failure to properly disclose the existence of a first sale transaction may cause CBP to reject the entry and may result in the assessment of penalties against both the importer and the broker.

Note also that for purposes of the new declaration requirement, "first sale" is defined to include "the price paid by the buyer in the first or earlier sale occurring prior to introduction of the merchandise into the United States." Thus, shipments involving non-resident importers of record, delivered duty paid shipments and similarly structured transactions are likely to be included in this new reporting requirement.

CBP has agreed to delay the enforcement of the First Sale Declaration Requirement for 30 days. Thus, CBP will commence the enforcement of the first sale declaration requirement on September 20, 2008. Entries subject to the first sale made between August 20 and September 19,

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2008 will not be rejected based on the failure to properly declare the first sale. However, all entries subject to this new declaration requirement made between August 20 and September 19, 2008 will require amendment.

Our office is available to answer questions relating to the first sale program as well as the new reporting requirement.

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