

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP
COUNSELORS AT LAW

399 Park Avenue
25th Floor
New York, New York 10022-4877
(212) 557-4000
Fax: (212) 557-4415

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Instructions for Retroactive Reporting of First Sale Declarations

By: Alan R. Klestadt, Esq.

As previously advised, importers are required to declare at the time of entry when the transaction value of goods entered for consumption or withdrawn from warehouse is determined on the basis of the price paid by the buyer in a sale occurring earlier than the last sale prior to the introduction of the merchandise into the United States, i.e., under the "first sale" rule. This first sale declaration requirement is applicable for one year for all goods entered on or after August 20, 2008.

Although CBP has announced a 30-day interim grace period to allow filers time in which to become system ready to transmit the new data element, CBP is mandated by law to collect this data for a one-year period beginning August 20, 2008. Therefore, CBP is requiring the trade to retroactively report the required data element that should have been declared during the grace period.

Entry summaries for entries made between August 20, 2008 and September 19, 2008 which are subject to the First Sale Declaration Requirement and must be amended if importers were unable to declare at time of filing. Importers or filers must submit a written request to the respective CBP ports of entry to amend affected entry summaries. The letter should be accompanied by a spreadsheet listing the entry summaries with line numbers that require the first sale indicator. CBP will consider this submission as a declaration of the first sale for the subject entry summaries and will update the summary record in the Automated Commercial System (ACS). **Retroactive reporting of the first sale declaration for entry summaries filed during the grace period must be presented to CBP by close of business September 26, 2008.**

CBP has advised that Post Entry Amendments (PEA's) are not the authorized vehicle for this one-time administrative reconciliation of entry summary data. Further, this declaration must be made by the importer at the time of filing a consumption entry and does not meet the criteria for submission via a single or quarterly PEA. This suggests that first sale declaration omissions discovered after September 26, 2008 must be remedied by filing a prior disclosure.

Please feel free to contact our offices if you have questions regarding whether particular import transactions are eligible for declaration under the first sale rule of appraisal or how to comply with the new reporting requirements.