

Duty Savings Through First Sale Planning.
By Dan Curry

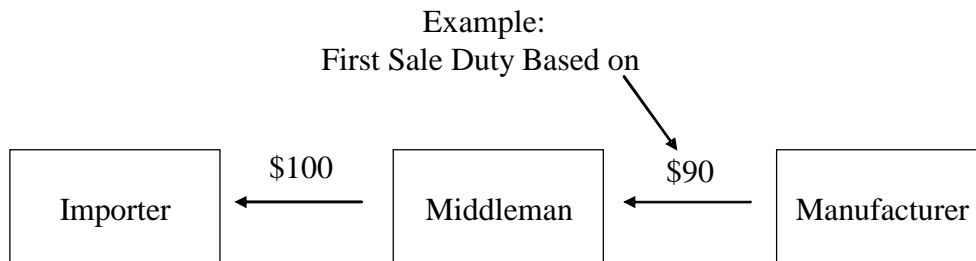
One way to make an importing business more profitable and competitive is to structure cost-effective strategies known as first sale duty savings structures. First sale planning allows importers to declare lower customs values without changing existing pricing with vendors and customers.

Most duty rates are *ad valorem* (based upon the value of the goods). Goods are often appraised at the transaction value, which is the price paid or payable when the goods are sold for exportation to the U.S.

The first sale rule applies only where there is a legitimate choice between two statutorily viable transaction values. The manufacturer's price constitutes a viable transaction value when the goods are clearly destined for export to the United States and when the manufacturer and the middleman deal with each other at arm's length, in the absence of any non-market influences that affect the legitimacy of the sales price.

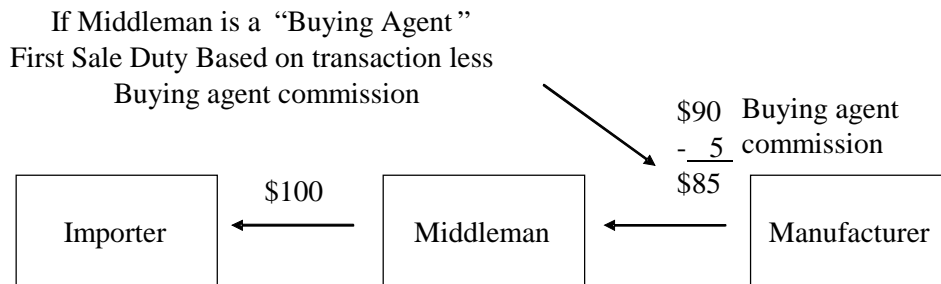
Once it is determined that both the manufacturer's price and the middleman's price are statutorily viable transaction values, the rule is that the manufacturer's price, rather than the price from the middleman to the purchaser, is used as the basis for determining transaction value. Indeed, if an importer establishes that his or her claimed, lower valuation applies, the importer is entitled to the benefit of that lower valuation even if Customs' valuation also satisfies the same statutory requirements. Importantly, the "first sale" need not be to purchasers located in the United States to provide the basis for valuation.

The declared customs value using the first sale structure (the price between the manufacturer and middleman) being necessarily lower than the declared customs value using the FOB structure, which assesses duty based on the price paid by the importer to the middleman, yields significant duty savings, as indicated in the example below:



Importers can take certain steps to ensure that their first sale planning is a success. For instance, label products specifically for the U.S. market; make it possible for Customs to easily identify U.S. bound goods from goods destined for other countries; substantiate related-party prices; and keep records to allow Customs to verify proof of payment to the factory and computation of any assists.

In addition, structure first sale transactions using buying agents rather than selling agents. Selling commissions are dutiable; buying commissions are not dutiable. A selling commission is any commission paid to the seller's agent, who is related to or works on behalf of the manufacturer or seller.



For commissions to qualify as (non-dutiable) buying commissions, certain standards must be met: payment must go directly from the middleman to the agent; the middleman, not the manufacturer, must exercise control over the agent; the agent cannot share commission with the manufacturer; the agent cannot charge a markup on the price of the goods; and commission payments cannot go through the manufacturer. A written buying agency agreement is always recommended.

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