Miller & Chevalier

Dana Watts Discusses the "First Sale" Rule for Reducing U.S. Importers' Duty Levels in SupplyChainBrain

"Watch: Can Importers Still Use the 'First Sale' Rule for Goods from China?"

SUPPLYCHAINBRAIN

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Dana Watts, Counsel with Miller & Chevalier, explains the "first sale" rule for reducing U.S. importers' duty levels, and discusses whether it remains a viable method for achieving that purpose for imports from nonmarket economies such as China and Vietnam. "First sale allows you to use the earlier, cheaper price to pay lower duties," Watts explained. To successfully employ the rule, importers must meet three criteria: there must be a bona fide sale, an "arm's-length" transaction, and the goods must be destined for export to the U.S. Did the U.S. Court of International Trade complicate matters by adding a fourth criterion for the use of the first sale rule – "the absence of any non-market factors that would influence the price" – in *Meyer Corp. v. U.S.*? Since China is considered a "non-market" economy by the U.S., that decision could theoretically thwart many importers' tariff mitigation strategies by affecting "first sale" transactions from China and Vietnam.