

# Customs Valuation Proposal Seeks to Increase Duties on Imports

U.S. Customs and Border Protection (CBP) has proposed eliminating the “first sale rule,” which allows importers to reduce duty liability in certain multi-tiered transactions. 73 Fed. Reg. 4254 (Jan. 24, 2008). Under U.S. law, the preferred method to value imported goods is the transaction value method, or the price of the goods “when sold for export” to the United States. U.S. Courts and CBP have held that if two sales for export to the U.S. exist, then CBP must assess duties on imported products based on the first sale. For example, in multi-tiered transactions, importers are able to reduce duty liability by using the sales price between the manufacturer and middle-man, rather than the sales price between the middle-man and U.S. importer. Elimination of the first sale rule will significantly increase duties for companies currently relying on this rule, and prevent companies from taking advantage of this rule in the future.

CBP’s proposal is based on the April 2007 World Customs Organization (WCO), Technical Committee on Customs Valuation, Commentary 22.1, which states that in multiple sale transactions the “sale for export” to the importing country is the “last sale” prior to importation. One of the responsibilities of the WCO is to provide guidance on the interpretation of the provisions of the World Trade Organization (WTO) Agreement on Valuation to signatory countries. While U.S. customs valuation law implements the WTO Agreement on Valuation, WCO Commentaries on the Agreement are not legally binding on U.S. law. If adopted, CBP’s proposal will limit past court rulings to the products subject to the

decisions, and revoke all past CBP rulings and decisions upholding the first sale rule.

Comments on CBP’s proposed elimination of the first sale rule are due by **March 24, 2008**.

KELLEY DRYE COLLIER SHANNON

## INTERNATIONAL TRADE AND CUSTOMS AND TAX PRACTICES

Kelley Drye’s International Trade and International Tax professionals assist global businesses in minimizing duty and tax liabilities related to trade in goods. If you have any questions about the proposed rule, or how your company might be able to reduce tax and duty liabilities in its global operations, please contact one of our International Trade or International Tax professionals:

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