Customs Valuation Proposal Seeks to Increase Duties on Imports

January 25, 2008

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

Kelley Drye has prepared a client advisory further describing the potential ramifications of the rule's elimination.