



SANDLER, TRAVIS & ROSENBERG, P.A.

An International Trade and Business Practice

FIRST SALE RULE FACT SHEET

FIRST SALE IN A NUTSHELL

First Sale valuation was first established as US law in a 1988 case litigated by ST&R Senior Member Len Rosenberg (*E.C. McAfee Co. v. United States*, 842 F.2d 314 (Fed Cir. 1988)). Since that seminal case was decided, importers have been able to take advantage of appraisement under the **First Sale Rule**.

Simply stated, the **First Sale Rule** allows the entered value of qualifying transactions to be based on the purchase price between the middleman and the factory, rather than the middleman and the importer. The **First Sale Rule** may also apply to import transactions where the middleman is related to the importer or the factory. The middleman's mark up to the importer is not included in the entered value, allowing the importer to save substantial duty costs.

Additional First Sale duty savings can be realized through the mechanism of cost-shifting, where non-production costs are shifted to the middleman/reseller. ST&R pioneered this cost-shifting methodology and has obtained numerous rulings from Customs substantiating the legitimacy and legality of the practice.

CBP'S PROPOSAL TO ELIMINATE FIRST SALE

In a notice published in the Federal Register, U.S. Customs and Border Protection is proposing to eliminate the favorable valuation methodology under the **First Sale Rule**. CBP's proposed interpretation, which is based on an April 2007 finding by the World Trade Organization's Technical Committee on Customs Valuation, would result in substantial tariff increases for importers using the **First Sale Rule**.

INDUSTRY CHALLENGES

Concerned importers and industry associations are challenging what they consider to be an illegal tax on imports and a move by the government to abdicate US sovereignty.

Sandler, Travis & Rosenberg, PA and the American Apparel & Footwear Association (AAFA) have established a First Sale Coalition and are working aggressively to attack this ill-conceived proposal at the administrative, legislative and judicial levels.

February 1, 2008