Client Advisory

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Katten Muchin Rosenman LLP

Customs and International Trade

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U.S. Customs and Border Protection Proposes Guidance on Sampling Methods for Audits and Prior Disclosures, Offsetting Overpayments in Audits

U.S. Customs and Border Protection (CBP) published a notice in the October 20 Federal Register regarding the use of statistical sampling methods in CBP audits conducted under 19 U.S.C. § 1509(b) and in prior disclosures. The notice proposes revisions to CBP regulations governing these procedures and explicitly authorizes the use of statistical sampling methods to produce an efficient way of reviewing a high volume of import transactions.

The proposed revisions to CBP's regulations generally bring them into conformity with existing law and CBP practice. Under these revisions, CBP has the sole discretion to determine the time period and scope of the audit and the number of transactions in its sample. The specifics of a sampling plan will be discussed with the entity prior to the commencement of the audit; if the audited entity accepts the sampling plan, it waives the right to challenge that plan at a later date. CBP also has the discretion to authorize audited entities to perform self-testing using accepted sampling methods, and the same waiver provision applies in this case. In any case, CBP reserves the right to conduct a full entry-by-entry audit.

The Federal Register notice also covers regulations regarding the use of offsetting overpayments or over-declarations in CBP audits. The proposed regulations implement an amendment to Section 1509(b) under the Trade Act of 2002. Under the revised regulations, CBP is authorized to account for overpayments of duties and fees and over-declarations of quantities or values when calculating a revenue loss, if the following conditions exist:

1) The overpayments or over-declarations are identified by CBP during a CBP audit conducted under Section 1509(b) (i.e., treatment does not extend to offsetting overpayments in a prior disclosure situation).
2) The audit was completed on or after August 6, 2002.
3) The overpayments or over-declarations relate to liquidated entries.
4) The overpayments or over-declarations are identified by CBP as having been made within the time period and scope of the CBP audit (i.e., where a sampling methodology is used, the overpayment must be part of the sample).
5) The overpayments or over-declarations are determined by CBP not to have been made for the purpose of violating any provision law, whether or not enforced by CBP.

If you have any questions, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below:

Peter J. Battaglioli
202.625.3500 / peter.battaglioli@kattenlaw.com

David M. Dunbar
202.625.3577 / david.dunbar@kattenlaw.com

Eric R. Rock
312.902.5228 / eric.rock@kattenlaw.com

Benjamin H. Shanbaum
312.902.5306 / benjamin.shanbaum@kattenlaw.com

Mark S. Zolno
312.902.5436 / mark.zolno@kattenlaw.com

The use of offsetting in CBP audits also contains certain limitations. First, CBP will disallow the use of offsetting to reduce underpayments that are made fraudulently. Additionally, CBP will not allow an importer to offset duties for an entry where the entry was eligible for a duty preference or allowance, but where it was not timely claimed or established at the time of entry, or within the time allowed after entry.

Finally, if the offsetting results in a net overpayment to CBP, CBP will not issue a refund to the importer. In cases where a refund of duties would otherwise be authorized by law (e.g., post-entry NAFTA claims made within a year from the date of importation), CBP will advise the importer to file a separate claim or protest to recover any additional duties not factored into the offsetting calculation.

CBP welcomes written comments on the proposed regulations. Comments are due by December 21.

Katten

Katten Muchin Rosenman LLP

www.kattenlaw.com

CHARLOTTE CHICAGO IRVING LONDON LOS ANGELES NEW YORK PALO ALTO WASHINGTON, DC

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