

Client Advisory

August 2005

Customs and Border Protection Clarifies the Intent of Expanded Prior Disclosure Benefits Under the Importer Self Assessment Program

In response to concerns raised by the Global Trade Advisory Group, a Division of Katten Muchin Rosenman LLP, the Assistant Commissioner, Office of Strategic Trade, Daniel Baldwin, and the Strategic Trade Advisor in charge of ISA, Joseph Rees, clarified the intent of the expanded prior disclosure benefits associated with the Importer Self Assessment (“ISA”) Program. The Customs and Border Protection (“CBP”) officials advised that the expanded prior disclosure benefits are available to ISA participants for all errors in which a CBP official becomes aware that there is an indication of a violation of 19 U.S.C. § 1592 or 1593a over the entire period that an importer is a participant in the program. The errors are not restricted only to those found by auditors during the ISA application process, including the ISA Application Review Meeting (“ARM”). Instead, they include all errors found by any CBP official, with the caveat that the benefit does not apply to an error that is already the subject of an ongoing CBP investigation or where fraud is involved. The CBP officials further advised that when errors are found, CBP will provide written notice to the importer of such errors and allow 30 days from the date of the notification for the importer to file a prior disclosure pursuant to 19 CFR § 162.74.

This clarification was requested due to conflicting language contained in the *ISA Handbook*. Section 2.3 of the *Handbook* provides that the expanded prior disclosure benefit is applicable to errors found by CBP “while providing assistance, consultation or training . . .” This language would seem to restrict the errors covered by the benefit to those found by CBP when actively engaged with the applicant during the application process or ARM. CBP officials, while acknowledging the inconsistent language, advised that the intent was not to limit the benefit. As such, they further advised our Firm that the language in the *Handbook* would be changed accordingly.

We Can Help

If you have any questions about this clarification, the ISA Program in general or other customs and international trade issues, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below:

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