

# Client Advisory

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## Customs Compliance Pendulum to Swing Back to Commercial Enforcement

Notwithstanding U.S. Customs and Border Protection's ("Customs") post-9/11 concentration on anti-terrorism, including the Customs-Trade Partnership Against Terrorism and other security initiatives, Katten Muchin Rosenman LLP has learned that instructions have been issued by Customs Headquarters to import specialists and other Customs officials at the ports of entry to step up commercial enforcement activities. This mandate from Headquarters includes urging the ports to initiate penalty cases against importers for commercial violations. For example, importers that have misclassified articles now face penalties, not just additional duties, in cases where the misclassification resulted in duty underpayments. In addition, Customs is scrutinizing importers' entries to determine whether they are subject to antidumping duties and, if so, whether they are being deposited in the correct amount.

This policy change is significant in that Customs' past practice, unless there was evidence of wrongdoing on the part of an importer, was simply to notify the importer that additional duties were owed and then to collect duties on those particular entries and, perhaps, unliquidated entries. In other words, Customs did not normally try to collect increased duties on a retroactive basis.

In addition, Customs has begun a new audit program, named the "Quick Response Audit" ("QRA"). The QRA is concentrated in a single area, such as valuation, tariff classification, antidumping, intellectual property violation, or GSP, considered by Customs to be "high risk." Even those importers who have been admitted to Customs' Importer Self-Assessment program ("ISA") and supposedly are not subject to audits by Customs will nevertheless be subject to a QRA, should Customs identify their shipments as falling within a high risk category. QRAs have been characterized by some as "hit and run" audits.

The effect of Customs' new "get tough" commercial enforcement initiatives is that importers may be exposed to potential additional duties, interest, and penalties for a period of up to five years from the date of infraction, which is the statute of limitations applicable to most civil penalty cases. The "bottom line" is that importers are forewarned to scrutinize carefully the information they are submitting to Customs to ensure its accuracy. An importer that fails to do so proceeds at its peril.

### We Can Help

If you have any questions about Customs' commercial enforcement against importers, please contact one of the Katten Muchin Rosenman Customs and International Trade attorneys or professionals listed below.

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