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CBP Changes Rules for Sampling and Offsetting in Prior Disclosures

Recently, U.S. Customs and Border Protection (CBP) published a [final rule](#) regarding the use of sampling and offsetting in audits and prior disclosures. This final rule adopts changes to CBP's audit procedures and the corresponding regulations found in 19 CFR Parts 162 and 163. This final rule follows a proposed rule initially published on October 21, 2009. *See* 74 Fed. Reg. 53964.

The final rule, which will take effect December 27, 2011, adds provisions that allow for the use of sampling methods in both CBP audits and private party prior disclosures and for the offsetting of overpayments and over-declarations in Customs-directed and private party prior disclosures, when filed generally or as part of an audit, if certain conditions are met.

Under this rule, both importers and CBP may elect to use sampling methodologies in 19 U.S.C. §1592 cases and audits to determine errors and calculate any loss of revenue. Statistical sampling allows CBP and now the private importer to review a representative sub-set of entries from the universe of transactions that fall within the selected time period and scope. The results obtained from the sampling review are applied to the complete universe and project a reliable assessment of what the importer or CBP would have found if each entry had been separately considered. If a private party uses a sampling methodology as part of a prior disclosure, the disclosure must include an explanation of the sampling plan and methodology used.

In the disclosure, the filer must also confirm that a review of 100 percent of the transactions was impossible or impractical, the sampling plan was prepared in accordance with generally recognized sampling procedures, and the sampling procedure was executed in accordance with that plan.

The final rule also extends a private party's ability to offset under- and overpayments of duties beyond the audit setting and prior disclosures filed as part of a CBP-directed audit to those prior disclosures filed at the private party's own initiative. In order to meet the statutory requirements outlined in 19 U.S.C. §1509, the filing party must specifically request that offsetting be allowed and consent to Regulatory Audit's independent review of the offsetting applied. The prior disclosure will also remain subject to a substantive review by the Fines, Penalties & Forfeitures office. In addition, offsetting will not be allowed if the overpayments or over-declarations were made for the purpose of violating any provision of law or if the underpayments or under-declarations were made knowingly and intentionally.

A complete discussion of the comments received and CBP's responses are included in the Federal Register Notice. If you have any questions or if you would like more information about how these rule changes might benefit you, please contact a Barnes/Richardson attorney.