

## **CLIENT ALERT**

### **Wherefore Software In Analyzing Substantial Transformation**

**Aug.10.2010**

On August 6, 2010, Customs & Border Protection (CBP) published a final determination ([75 Fed. Reg. 47609](#)) that Avaya's Unified Communication Solution was substantially transformed in the United States based upon the totality of the circumstances including installation of the Communication Manager software and the extensive effort at the installation site to integrate the largely foreign hardware components into a working system. CBP rejected Avaya's assertion that the installation location of software that provides the functionality of a system or hardware could be the sole determinant of substantial transformation under CBP's prior precedent, as the origin of the software has also been an important factor, and noted here that most of the software development had occurred at Avaya's Colorado facility, although some ongoing software development now occurs abroad.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

**Alan W. H. Gourley**

Partner – Washington, D.C.

Phone: +1 202.624.2561

Email: [agourley@crowell.com](mailto:agourley@crowell.com)

**Adelicia R. Cliffe**

Partner – Washington, D.C.

Phone: +1 202.624.2816

Email: [acliffe@crowell.com](mailto:acliffe@crowell.com)