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# ADVANCE RULINGS

## RESOURCE GUIDE



October 2011

This publication was produced by Nathan Associates Inc. for the United States Agency for International Development.



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The Advance Rulings Resource Guide was written by Edmund Saums and Robert Holler with contributions from Wilbur Smith and Ann Katsiak for the USAID Worldwide Support for Trade Capacity Building project (TCBoost).

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**Cover Photo**

U.S. Customs and Border Protection

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# INTRODUCTION

The role of trade facilitation in promoting economic growth and competitiveness is well recognized. This recognition is reflected in broad support for World Trade Organization (WTO) negotiations on trade facilitation; increased funding of related capacity building by multilateral organizations, including the World Bank and the World Customs Organization (WCO), other international financial institutions, and donor agencies; and the desire of developing and developed countries alike to make import and export administration more efficient.

Advance rulings are a proven means of facilitating trade, promoting transparency and consistency in customs operations, and fostering the participation of small and medium-sized enterprises in global commerce. Well-implemented advance ruling systems provide certainty to traders and their agents about how their goods will be treated at the time of import, promote consistent application of customs rulings and law, foster trust between customs and trade, and provide a transparent framework that encourages compliance. These benefits of advance rulings are consistent with the mandate of WTO negotiations on trade facilitation, which call for “further expediting the movement, release and clearance of goods, including goods in transit.” There is strong support among WTO members in the negotiating group on trade facilitation for including advance ruling commitments in a trade facilitation agreement.

The United States promotes advance rulings through the WTO’s trade facilitation negotiations and has submitted draft text on advance rulings. U.S. support for advance rulings is also reflected in the effort of the Office of the U.S. Trade Representative (USTR) to secure, through free trade agreements that have entered into force since 2004, commitments that enable importers, exporters, and producers to obtain advance rulings from each side to make transactions transparent and predictable.

At first glance, a system of advance rulings appears simple. After a country commits to putting a rulings process in place, however, customs managers often face obstacles to implementing the process. The most common are a lack of legislation and guidelines; lack of technical expertise; fragmented expertise; ineffective management controls; a relationship with the trading community characterized by pervasive and mutual mistrust; and poorly defined compliance expectations. To these obstacles can be added complex or

inadequately publicized guidelines and poorly designed declaration processing systems and practices, which, when coupled with unfettered discretion among customs officers, facilitate questionable and corrupt practices that foster mutual distrust.

This resource guide is the first in a series developed by USAID at the request of and in cooperation with USTR. The series represents the U.S. commitment to providing technical assistance and training to developing and least-developed countries so that these countries can participate fully in the Doha Negotiations. The guide complements six customs modernization handbooks commissioned by USAID.

As the guide makes clear, there are different strategies for implementing an advance ruling process. The guide is intended to assist customs administrations in devising advance ruling strategies suited to their own circumstances and in putting an advance ruling mechanism in place. The first three sections examine advance rulings in the context of customs modernization, describe the advance ruling process (Section 1), identify elements that a customs administration must already have in place or that must be developed along with advance ruling procedures (Section 2), and examine the core components of advance ruling implementation (Section 3). The final two sections provide practical guidance and examples of best practices for customs managers and their government and private sector partners. Section 4 is a step-by-step outline of the advance ruling process. Section 5 describes best practices used in Australia, Canada, and the United States.

The accompanying CD-ROM provides reference materials, including other USAID handbooks and WTO documents.

#### EXHIBIT 0-1 *Advance Rulings Defined*

The proposed text of the WTO negotiations on trade facilitation defines an advance ruling as "a determination of a member, provided in writing to an applicant prior to the commencement of trade in the good concerned, that sets forth the treatment the member shall provide the applicant in connection with an

importation covered by the application with regard to the following issues: tariff classification; the application of Customs valuation criteria; the application of duty drawback, deferral, or other relief from Customs duties; and the application of quotas."

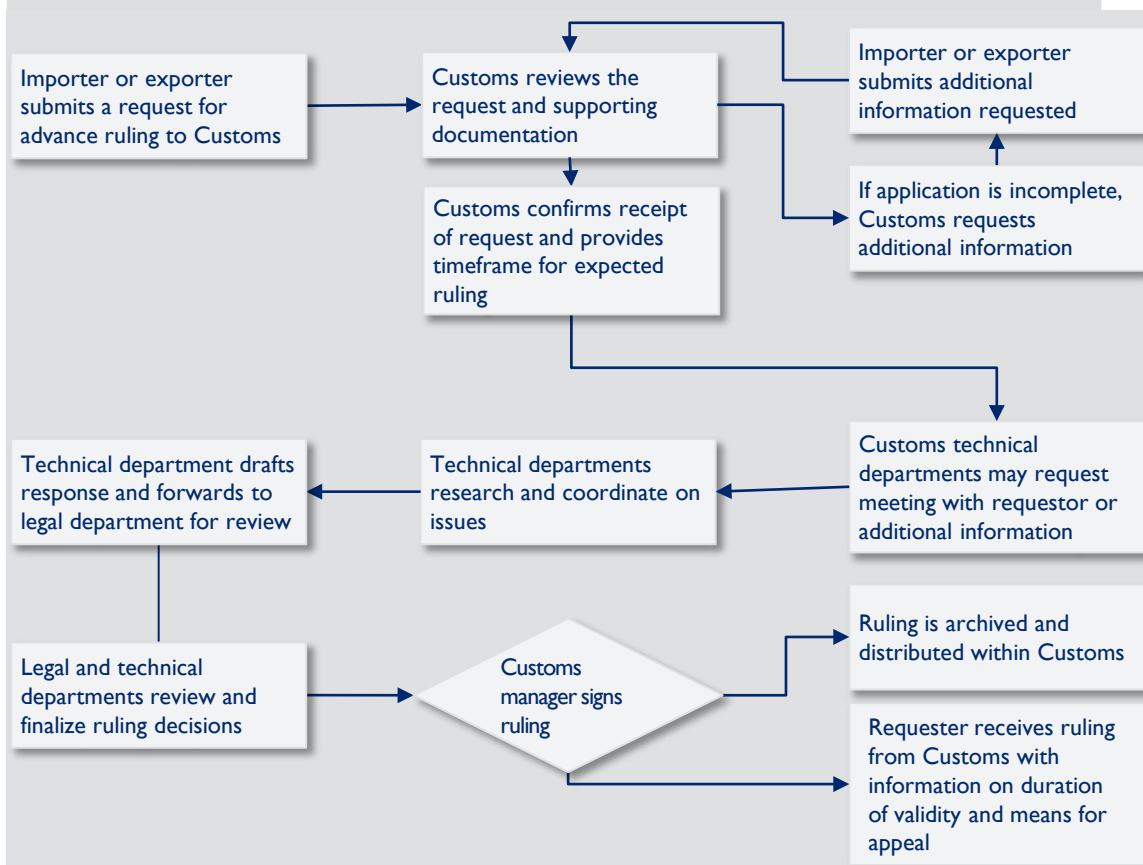


# I. ADVANCE RULING OVERVIEW

The advance ruling process is a prime example of customs and private sector cooperation and coordination. The process requires multiple disciplines in customs to work together to respond to requests from traders and their agents. In turn, the trader must give customs accurate and detailed information on which to base a ruling (see Figure 1-1).

The accompanying CD contains a summary of the application of advance rulings in U.S. free trade agreements.

EXHIBIT I-1 *Advance Ruling Process*



An importer, exporter, or approved representative formally requests an advance binding ruling (advance ruling) from customs in advance of import or export. Such requests generally pertain to the dutiability or the admissibility of a particular product under a certain tariff code. Customs reviews the request and determines if it provides sufficient information. If customs needs more information, it asks the requester to provide the information. If the advance ruling request has no deficiency, customs advises the requester that it has accepted the submission, provides contact information, and notes the date by which a ruling may be expected.

Customs technical experts then research the issues raised by the request and prepare a response. Some advance rulings involve multiple issues and require coordination between experts in different technical sections. The initial reviewers forward their draft response to the legal department to verify the response's compatibility with precedent (including previous rulings and court decisions). After technical and legal experts reach agreement on the draft advance ruling, a manager with approval authority reviews the ruling. When approved, the ruling, with information about the duration of the validity of the ruling and how to appeal the ruling, is sent to the requester.

Customs logs, files, and distributes the ruling internally. To ensure that customs processing officers are aware of the ruling, the ruling is made available to them—in hard copy or electronically, depending on the country. The ruling may also be made available to the public, with commercially sensitive information redacted.

In addition to these steps, an advance ruling process also includes procedures for revising or canceling rulings.

## 2. REQUIREMENTS FOR AN ADVANCE RULING PROCESS

Implementing an advance ruling process can be among the more difficult challenges of customs modernization. The proposed WTO negotiating text on advance rulings stipulates the following requirements:

- The issuing authority must publish the information that must be provided in a request for a ruling.
- The issuing authority must publish the timeframe within which it will issue advance rulings and the length of time rulings will be valid.
- Rulings must be binding for a “reasonable” period of time unless facts or circumstances supporting the original ruling change.
- If a ruling is modified or revoked, the issuing authority must notify the applicant promptly in writing and explain the basis for its decision in writing.
- If an applicant requests, the issuing authority must provide for an administrative review of a ruling or of the decision to revoke or modify a ruling.
- The issuing authority must try to make available information on advance rulings that it considers to be of significant interest to other traders, taking into account the need to protect commercially confidential information.

Designing and implementing so ambitious a program is a test of the managerial and organizational resources of any customs administration. A successful advance ruling program, like any major modernization effort, must be built on a strong foundation of top-level support, professionalism and integrity, partnership with and input from the private sector, and technical competence.

### POLITICAL WILL, PROFESSIONALISM, AND PARTNERSHIP

#### POLITICAL WILL AND SUPPORT

A successful advance ruling program requires the firm commitment of the customs administration's chief executive or director general. This guide assumes that the chief executive has obtained government consent or approval, has been assured of funding, and has reached out to ministries and agencies involved in trade and border issues. The chief executive must sponsor and advocate for the program from its inception. The chief

executive's direct involvement provides tangible support to the team developing the program, ensures that customs officers understand the program's importance, and gives the program credibility in the trade and transport community. The chief executive must be personally involved in introducing the advance ruling concept to the executive branch, the legislature, and other government ministries and agencies to obtain the governmental support and funding necessary for the program.

## PROFESSIONALISM AND INTEGRITY

No matter how well designed, a trade facilitation initiative will fail if customs management and importers and exporters cannot rely on their officers and employees to perform their duties in an ethical manner. If customary practices include the exchange of tips, gratuities, favors, or bribes, both customs and the trading community must be willing to change. In the customs administration, success begins with senior managers' firm personal commitment to provide leadership and to insist on improved policies, practices, and procedures, even when the old way of doing business is deeply ingrained. The success of an advance ruling program also depends on professionalism and integrity in the trading community, especially among importers, exporters, and brokers. Customs and its private sector partners must address integrity through a committed and results-oriented partnership. The WCO has excellent integrity assessment tools, and USAID's handbook *Establishing and Implementing a Customs Integrity Program* deals directly with this issue.

The accompanying CD-ROM contains both the WCO and USAID integrity documents.

## PARTNERSHIP WITH THE PRIVATE SECTOR

In modern customs administrations, traditional control systems have given way to risk-based selectivity systems. These systems have made complying with customs requirements easier. In developing an advance ruling process, a customs administration must deepen its relationship with the trading community and its understanding of the trading community's practices and concerns. Adversarial relationships must be replaced by working relationships characterized by mutual respect and partnership. By adopting a less adversarial approach, customs administrations can improve compliance significantly, facilitate the movement of legitimate shipments, and secure the international supply chain. Section 3 of this guide provides information on strengthening the relationship between customs and the trading community.

## TECHNICAL COMPETENCY

An advance ruling process depends on specific organizational elements and technical capacities. Ideally, customs has technically competent staff oriented operationally and organizationally, risk-based controls, simplified procedures, effective internal controls, and key information available to all pertinent staff. Customs may find that it must put these elements in place at the same time that it implements an advance ruling process. In such cases, the design and implementation of the program may be beneficially integrated

into the modernization plan on the premise that an early commitment to the advance ruling process will enhance the structure and function of preliminary reform elements.

## TECHNICALLY COMPETENT STAFF

Customs managers responsible for implementation of the advance ruling process must understand the issues involved: classification, valuation, duty drawback and application of quotas, and rules of origin (in accordance with the WTO Agreement on Rules of Origin). An effective advance ruling process requires that customs administrations ensure in-house technical competence in these core areas.

## CLASSIFICATION

Ascertaining the correct tariff classification of merchandise entering or exiting a country is a critical function of any customs administration because tariff classification affects the revenue of the government and the private sector. Because classification is usually the primary determinant of the duty to which imports are subject, most requests for advance rulings relate to classification.

## VALUATION

Valuation has a direct and potentially significant impact on the cost and conditions of importing and is often the subject of advance ruling requests. An effective advance ruling process therefore requires specialists who can conduct valuation correctly and uniformly. The hierarchical structure of the General Agreement on Tariffs and Trade (GATT) Agreement on Customs Valuation (ACV) and the complexities of valuation mean that a customs administration must have expertise in valuation. Customs authorities may wish to consider the following measures, recommended in the ACV, to develop expertise. These measures will strengthen the ability of a customs administration to issue advance rulings and will encourage ACV implementation by reinforcing reference pricing rather than declared transaction value as the basis for valuation:

- Establish and maintain a national valuation database for front-line customs officers. With the customs-determined values of previously imported goods, the database would be used to help identify questionable declared values for further consideration by specialists.
- Publish in a convenient format for internal and external use national customs laws and regulations pertaining to valuation, as well as a compendium of related customs decisions and court cases. Such a repository, like the national valuation database, contributes to the efficiency of an advance ruling program, not only the valuation component.
- Develop an audit unit of trained officers who would examine the financial and other business records and practices of importers to ensure compliance with customs record-keeping requirements and generally accepted accounting principles, and to verify information presented for purposes of customs valuation.

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The accompanying CD-ROM contains the sources and techniques of the U.S. Customs and Border Protection for determining and verifying tariff classification.

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The accompanying CD-ROM contains the General Agreement on Tariffs and Trade (GATT) Agreement on Customs Valuation.

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## DUTY DRAWBACK

If certain conditions are met, customs may refund duties and certain other taxes and fees collected at the time of importation. Successful duty drawback programs are established on the basis of legislation and implementing regulations and require the publication of precise procedural guidelines, effective organization and training of officials responsible for managing drawback procedures, and robust data collection, retention, and financial systems.

## APPLICATION OF QUOTAS

A determinant of tariff classification and the country of origin of imported goods, quotas are an important factor in advance rulings. Quotas are controls on the quantity of certain types of imported goods during a specified period of time. In the United States, quotas are “absolute” or “tariff-rate.” Absolute quotas set precise quantitative limits on the importation of certain goods into the United States; they may be global or specific to a particular country of origin. Tariff-rate quotas do not set absolute quantitative limits on the goods but specify quantitative thresholds above which higher rates of duty apply.

## RULES OF ORIGIN

The WTO and its members commonly distinguish between preferential and nonpreferential rules for determining country of origin. The preferential rules pertain to whether the goods qualify for free or reduced duty rates under bilateral, multilateral, or international trade agreements to which a country is party. Nonpreferential rules are outside the scope of such agreements but are of interest to customs administrations and international traders as they relate to important aspects of the treatment of imported goods.

The WTO’s previous focus on advance rulings on origin underscores the importance of rule-of-origin determinations to trade and the need for a technically proficient cadre of officers to manage advance ruling requests. The following issues are representative of those that depend wholly or partly on preferential and nonpreferential rule-of-origin determinations:

- Admissibility into domestic commerce
- Eligibility for most-favored nation (MFN) status or preferential treatment
- Compliance with labeling and marking requirements
- Applicability of antidumping or countervailing duties
- Applicability of restrictive safeguards
- Applicability of quantitative or tariff rate quotas
- Accuracy of statistical data
- Eligibility for domestic government procurement.

## INTERNAL CONTROLS

An effective advance ruling process requires that customs managers gauge risks to the integrity of the program. On the one hand, the process can make customs' actions transparent, make the costs of international trade predictable, and facilitate the processing of declarations. On the other hand, any process that puts a small group in a position to make decisions that could have a detrimental impact on the treasury and the ethical reputation of customs must be governed by internal checks. Modern customs administrations ready to implement an advance ruling process should have an internal control system in place and should be familiar with general control concepts and techniques. A basic control structure is the foundation for an advance ruling program; we provide a template for applying general concepts to program administration in Section 3.

### 3. GETTING AN ADVANCE RULING PROGRAM STARTED

Before a customs administration can issue advance rulings, it must define the process it will follow. This section will assist customs administrations in defining a process for issuing and enforcing advance rulings that suits their operating environment and functional capabilities. An advance ruling process has the following components:

- Legal basis
- Coverage
- Organizational structure
- Internal and external coordination
- Ruling availability and applicability
- Client input
- Process of determining a ruling

Section 5 describes how Australia, Canada, and the United States approach these steps in the advance ruling process.

#### IMPLEMENTATION WORKING GROUP

The first step in a getting an advance ruling process started is assembling a working group of customs managers and officers to design and implement the program. This group should include experts in the following fields: legal and policy, tariff and valuation, information technology, statistics, and public information. Others may be useful, but these are vital. The process of implementing an advance ruling program should also involve someone from the human resources and training departments to ensure that the implications of the advance ruling program for staffing and skill requirements are reflected in recruitment, training, and staffing. Their involvement will ensure that the classification and valuation departments have the training necessary to review and apply advance rulings, rather than to hire staff to issue specific kinds of advance rulings.

Although the director general or executive officer of the customs administration will be the program sponsor, such senior managers will not be able to dedicate the time and attention necessary for day-to-day implementation. The head of the customs administration therefore should appoint a trusted representative who has good rapport throughout the organization to manage the project full time. The project manager



should nominate the rest of the working group members. customs field officers and representatives from the trading community should also participate in the working group. The trading community and customs officials outside headquarters must be involved so that they understand the program and can champion it later.

The working group can have full- and part-time members. Regardless of whether they are full time or part time, members must be free to spend the time necessary to contribute meaningfully to the implementation working group. Everyone participating in the working group must view instituting an advance ruling process as a high priority. In the selection of the members of the group, a prime consideration should be their ability to remain with the task for the long term. The knowledge and experience gained by working group members as they research and design the process will be invaluable. These knowledgeable officers should go on to lead the advance ruling program.

Other stakeholders' input and cooperation are necessary in harmonizing procedures for applying rulings and in harmonizing the procedures of other border agencies and the private sector (e.g., importer and exporter associations, brokers). Involving other agencies in the design phase will help avoid conflict and inefficiency when the program goes into effect.

## LEGAL BASIS

As a customs administration considers establishing an advance ruling process, it must determine if it has—or requires—the legal authority to do so. The legal department should lead this analysis and coordinate with the implementation working group, which will have to decide whether new laws and regulations must be drafted and passed to secure the authority to issue advance rulings. The legal basis of an advance ruling program should set the coverage of advance rulings and the time period for which a ruling is valid. See Exhibit 3-1 on three approaches to legal matters.

### EXHIBIT 3-1 *Three Approaches to Establishing the Legal Basis for Advance Rulings: Australia, United States, Canada*

Australia, Canada, and the United States take three distinct approaches to advance rulings that reflect their distinct legislative environments and circumstances.

#### **BEST PRACTICES AND SIMPLE PROCEDURES**

Australia does not have a legal mandate to provide advance rulings. Australian Customs and Border Protection Service (ACBPS) issues advance rulings as a best practice and has published *simplified procedures* for doing so. Nothing in Australia's laws or regulations prohibits customs from issuing advance rulings and putting an advance ruling process in place. If a customs administration operates in a similar environment, then this approach may be the simplest and fastest way to establish an advance ruling process.

#### **BEST PRACTICES AND DETAILED REGULATIONS**

In the United States, the Customs Modernization Act promotes

voluntary compliance and shared responsibility, but USCBP is not legally mandated to provide advance rulings. It does so as a matter of good management practice and has published *extensive and detailed* regulations on its advance ruling process. Hence, this approach is suitable if new legislation is not required and the government or the customs administration wants to promulgate detailed regulations to govern the process.

#### **LAWS AND DETAILED REGULATIONS**

Canada's Customs Act provides for the issuance of advance rulings, and the Canadian Border Services Agency (CBSA) has published detailed implementing regulations. Canadian laws and implementing regulations may prove useful to customs administrations that determine that new legislation and implementing regulations are required to implement an advance ruling program.

## COVERAGE

Before drafting legislation, regulations, or procedural instructions, the customs administration should consider the scope of the program they will put in place. In this regard, the wording proposed for the WTO trade facilitation negotiations is a useful reference. It states that a customs administration would be expected to provide, at a minimum, rulings on tariff classification; valuation; duty drawback, deferral, or other relief; quota application; and rules of origin. Advance rulings can be issued on many topics beyond the proposed WTO minimum, and extended coverage increases the potential benefits of an advance ruling program—such as voluntary compliance and clarity, predictability, and transparency. But as a practical matter, a new advance ruling program should probably be limited to the narrowest scope. Then, as resources allow and as customs gains experience and has the legal, regulatory, and procedural, capacity to do so, it can expand its advance rulings program.

## TIME PERIODS FOR PROCESSING AND VALIDITY OF RULINGS

The WTO proposes requiring customs to issue advance rulings in a “time bound manner,” to honor the advance rulings for a “reasonable period of time,” and to publish the timeframes. And, as we will see in Section 4, customs may impose additional time limits on certain other actions in the advance ruling process to ensure orderly and expeditious flow. For these reasons, a customs administration beginning an advance ruling program must identify time-sensitive actions and specify intervals for the following:

- The time allowed between
  - Determination that information supplied by the applicant is inadequate and the return of the request to the applicant
  - Request for additional information from the applicant and the applicant’s provision of that information
  - Receipt of all required information from the applicant and issuance of the ruling
- The period of time for which the advance ruling remains valid.

A brief survey on this topic in the next section yields interesting results, especially for trade relations between Australia, Canada, and the United States. In U.S. free trade agreements, the time allowed for providing an advance ruling ranges from 90 to 150 days. The U.S.-Australia FTA obligates parties to issue rulings within 120 days, but the customs administrations have committed to providing rulings within 30 days. Similarly, Canada’s commitment in the North American Free Trade Agreement (NAFTA) is to provide rulings within 120 days, but the Canadian Border Services Agency (CBSA) strives to provide rulings in a shorter period of time.

Time is of the essence because the substance of a ruling may affect the financial decisions of importers and exporters and because a timely advance ruling process promotes voluntary compliance by being clear, predictable, and transparent. Governments negotiating bilateral or multilateral trade agreements may balk at committing to rigorous

timeframes for advance rulings, but a customs administration should consider the time-critical needs of traders and the effectiveness and efficiency of its operations that result from timely issuance of advance rulings.

Moreover, because both customs and the private sector will benefit, customs should invite the trading community to participate in formulating advance ruling guidelines. More will be said later about the benefits of this.

## ORGANIZATIONAL STRUCTURE

An efficient and effective customs administration structure is important for designing and implementing the advance ruling process. A request for an advance ruling may involve multiple areas of expertise, and the various technical staff responsible for these areas must work well together. The organizational structure must provide for clear direction, defined functions, and easy communication. The technical staff should be well-trained—i.e., able to understand and apply the principles of complex international standards, such as the GATT Agreement on Customs Valuation and the Harmonized Commodity Description and Coding System—have the authority to guide field offices, and be so situated in the organization as to be effective.

There are two main ways to organize the specialists who address technical questions in advance rulings. One is to manage different technical areas—valuation, tariffs, and classification—in different departments. The second is for customs to consider technical areas interrelated and consolidate them into a single department. In designing an advance ruling program, a customs administration should answer the questions in Exhibit 3-2.

### EXHIBIT 3-2 *Is Your Organization Ready for an Advance Ruling Program?*

How well does our structure promote effective technical decision-making?

Are technical staff and offices located organizationally and geographically so that they can function effectively?

Do officers assigned to processing declarations have the skills and access to technical resources needed to make good decisions about complex issues, such as those pertaining to HS classification, GATT valuation, and country-of-origin or preferential trade agreement eligibility?

Can technical specialists make decisions about classification, valuation, rule of origin, and other matters when processing declarations before front-line officers finalize decisions? Or do they take a passive role, providing technical advice only when asked?

Should technical specialists who write advance rulings be situated at the local, regional, or headquarters level? Should they be assigned to departments according to their area of specialization or should they be consolidated into a single department?

If the responsibility for writing advance rulings is distributed among departments, how is managerial oversight ensured? Who should be the manager of the advance ruling program?

Are internal and external communication systems and procedures in place to ensure the timely dissemination of technical decisions to all parties?

To what extent does headquarters delegate the responsibility and authority for making technical decisions to regional offices or ports of entry?

Having tariff, valuation, and other technical issues managed by a single department with staff in both headquarters and large field offices offers many benefits. Establishing or expanding such a department will strengthen the skills and broaden the knowledge

of officers and enable them to specialize in commodities. With formal training in classification, valuation, rules of origin, and the like, such specialists apply principles to specific commodities (e.g., automobiles, electronics, and foodstuffs). In this way, technical skills are practiced not as discrete specialties but as aspects of broader knowledge and studied familiarity with one or more product lines and with the associated importers, foreign manufacturers and exporters, and industry practices.

This guide is not suggesting that customs administrations restructure according to a particular model to accommodate the advance ruling process. Nevertheless, a review of best practices in customs administrations with an advance ruling department suggests that the following organizational characteristics are common:

- Systematic cooperation and communication among technical specialists, and between customs specialists and traders
- A unified approach to technical decision making, probably achieved best by consolidating technical staff in the national head office or the most active commercial processing center (often in the same city as the head office)
- Preservation of administrative uniformity when technical specialists work in regional or field offices by having a technical department at the head office with clearly defined and practicable authority over the other offices
- Participation of legal staff in the advance ruling process.

Managers in charge of planning and implementing an advance ruling process should analyze their administration's organizational structure with these matters in mind.

## INTERNAL AND EXTERNAL COORDINATION

In designing an advance ruling process, customs managers must answer the following questions on coordination:

- If the technical offices are separate entities, how should they interact and who should be responsible to ensure that the separate units cooperate and communicate?
- If the technical offices are geographically dispersed, how does the head office guarantee uniformity in the advance ruling processes?
- How should the commodity specialist (or equivalent) interact with
  - Importers on general policy and process inquiries or specific technical matters?
  - Officers processing declarations?
  - The person or company requesting an advance ruling?

Regardless of whether technical competencies are consolidated or dispersed, the customs administration must be able to coordinate actions and structure the interactions of technical personnel and the systems that support and inform them. Technical errors and inconsistency are less likely in organizations that make coordination inherent to structure and function. Many of the organizational elements described below are mentioned elsewhere in this guide; here we focus on how a customs administration can shape those elements to ensure coordination of an advance ruling program.

## PROCEDURAL GUIDELINES

Written guidelines for customs personnel should define the flow of the advance ruling process from the time a request for a ruling is filed, through the technical decision-making process (including review, approval, and appeal), to the application of the ruling during declaration processing. Responsibility for the direction, and timeframes for internal and external interactions, including the transmission of documents and other information, must be clearly assigned. For example, if headquarters approves an advance ruling decision, the guidelines should define the responsibilities of the issuing office in ensuring timely distribution of that decision to interested parties, including the applicant, field offices, and other offices at headquarters. Guidelines should also describe the circumstances that warrant recommending the advance ruling program to importers, exporters, and agents, and providing instructions on responding to formal and informal requests for advance ruling–related information.

## CHANNELS OF VERTICAL AND LATERAL COMMUNICATION

Customs administrations that are instituting an advance ruling program should assess their channels of communication. Information about a substantial change in the customs administration such as the establishment of an advance ruling program must be disseminated to staff efficiently and the program thoroughly explained. This calls for management directives and coordination among divisions involved in the advance ruling process, including legal, classification, and valuation.

For example, front-line officers who lack the expertise needed to confirm if an advance ruling applies to a given transaction should have ready access to experts, whether the experts are near or far. Rules governing such access should not be so burdensome that they require supervisory approval—provided adequate notes or records are kept. Customs should also ensure that effective channels for the upward flow of information are in place. For example, as the advance ruling program is rolled out, field officers should be able to provide feedback on how the new processes are working, how they can be improved, and where training or clarification is needed.

## AUTOMATED PROGRAMS

Automated programs can be useful in coordinating an advance ruling process. For example, a standard advance ruling request and filing instructions could be made available online to ensure timely and correct receipt and routing of requests. Similarly, customs could use an automated system to track the processing of advance ruling requests. In addition, a searchable database of advance rulings edited to protect confidential information could be made available online to internal and external parties.

## INTERNAL CONTROLS

Internal controls help to ensure consistent and reliable coordination of the advance ruling organizational and procedural components. For example, the advance ruling distribution scheme proposed by the issuing office could be subject to supervisory review and approval. Subsequent periodic field audits could confirm the timely receipt and application of rulings, on either a comprehensive or selective basis, depending on the number of rulings and recipients. Internal controls should address the officers and

procedures involved in (1) writing binding rulings and (2) applying rulings to specific transactions.

Care should be taken to ensure that the responsibility for formulating technical decisions on which rulings are based and the authority for approving those decisions are vested in two separate offices, or at least in two officials with a subordinate-to-superior relationship. For example, the classification and/or valuation department would draft a ruling and a legal department would review the ruling and return it for revision to the technical department or forward it with concurrence to a higher-level manager, such as a director general or deputy director general, for approval.

In customs administrations where front-line officers who process import declarations are not required or expected to be proficient in all technical matters, timely consultation with technical experts could be required to confirm the applicability of advance ruling letters presented by importers. The form of recording the technical expert's advice could also be procedurally prescribed. Internal audits of import declarations could check for evidence of technical consultation in which advance rulings requests were accepted and applied. Alternatively, the records of the technical office consulted could be cross-checked against the corresponding import declarations.

A customs administration could also use a software program to track pending advance ruling decisions. That program could include time parameters for each phase of the advance ruling process, from receipt of the request to the issuance of the decision and appeals. The program could use these data to generate reports of pending and completed rulings, flagging those that are delinquent at any phase of the process.

The presentation of an advance ruling decision letter with a customs declaration does not ensure that the ruling applies to that declaration. For that reason, the declaration process should include some internal control of the consistency between the details of the transaction and those in the advance ruling decision letter. Controls should have the following characteristics:

- Require prompt and objective supervisory approval of any officer's decision to disregard an advance ruling request or to take delaying action on the advance ruling application
- Be risk based and have the potential to deter and detect unethical officers misusing the advance ruling to delay the release of goods
- Detect any attempt, successful or unsuccessful, to apply an advance ruling to a transaction to which it does not legitimately apply and to ensure timely documentation and reporting of the incident to the appropriate managers, for administrative purposes and to provide a basis for possible investigation into actions taken by the parties involved, including importers, exporters, agents, and processing officers and their supervisors.

## PUBLIC AVAILABILITY OF RULINGS

The current WTO proposal on advance rulings requires customs administrations to make available all information on advance rulings of significant interest to traders

while maintaining necessary confidentiality. In meeting this requirement, policymakers must strike a balance between customs' dual roles as educator of the trading public and as guardian of traders' confidential information. As a practical matter, statutory or regulatory restrictions on the release of information will shape policy. Soliciting input from private sector parties on advance ruling policy could be constructive.

Best practices summarized here and presented in detail in Section 5 may prove useful insofar as they provide slightly different policy models. In brief, in Australia, the ACBPS restricts the availability of valuation rulings to the requester, maintains a library of tariff rulings for internal use, and makes some tariff rulings available to the public. In Canada, CBSA publishes advance rulings that it considers precedent setting and honors requests from applicants to treat certain information in the rulings as confidential. Similarly, USCBP maintains an online library of all advance ruling decisions but redacts them to protect confidential commercial interests.

## PRIVATE SECTOR INPUT

There are tremendous benefits to customs' and the private sector's sharing responsibility for the customs administration's operational effectiveness and integrity, particularly in advance ruling processes, which contribute to reaching mutually beneficial goals. For customs, advance ruling programs help ensure administrative predictability, facilitation, and transparency; for the private sector they encourage voluntary compliance and provide predictability.

As a matter of strategy, customs administrations should involve the private sector in designing and implementing the advance ruling process and should solicit input from the trade community to ensure its cooperation. Customs administrations are well advised to reach out to the traders most likely to use the advance ruling process. This outreach can be done through a formal mechanism, such as a standing or ad hoc committee made up of importers, exporters, and brokers or clearing agents; or customs and partner agencies can tap into informal contacts with trade associations.

Formal and informal private sector groups can contribute to the advance ruling process by providing input beginning with the planning and development stages. After the advance ruling program is launched, the private sector can also assist in educating traders. Robust partnership with the trading community will complement the information customs is required to obtain through formal procedures. Customs is also encouraged to consider other ways to involve traders in advance ruling program development (e.g., through the customs website, gazette or other publications, and executive press conferences).

### EXHIBIT 3-2 *Advance Ruling Program in Jordan*

A survey of the Jordanian trading community in 2010 found that 88 percent of respondents considered an advance ruling mechanism very valuable. The survey concluded that the lack of such a

mechanism hindered the scope of trading and recommended that the Jordanian customs administration establish an advance ruling program.



## 4. THE PROCESS OF MAKING A RULING

In this section we review the advance ruling process itself: application receipt, vetting and follow-up; proposed rulings; preissuance review and approval; ruling availability; appeals; and implementing documents. These aspects encompass internal operating procedures and the form and content requirements to be met by the applicants.

### RECEIPT

Instructions should provide the full postal and e-mail address of the customs administration department or office responsible for managing advance ruling requests.

If the technical specialists who prepare advance ruling decisions are located in a single department, then administrative management will logically belong to that department. If responsibility is dispersed, then one department should be designated as the lead for administrative management and be authorized to

- Route advance ruling requests to other departments;
- Assign and monitor due dates for actions, such as requesting additional information and drafting the ruling; and
- Coordinate the work of the departments involved in responding to requests that require the input of more than one department.

Immediately upon receiving a request for a ruling, the lead department should (1) assign the request a file number, entering details about the requester and the request into a log, preferably automated, and (2) send a written acknowledgement of receipt to the requester. The acknowledgement should say when the requester can expect a follow-up inquiry or a definitive response and should provide a contact name, telephone number, and possibly an e-mail address. The request numbering system should be sequential and could simply begin with the current year (e.g., 2010-advance ruling-0001). The log should include the requester's contact information, the date the request was received, the staff member or the department to which the request is assigned, and the date by which that staff member or department is expected to provide a decision or request more information.



A specific employee or unit in the lead department should be responsible for receiving, acknowledging, and logging requests; for assigning requests to an appropriate officer or department; and for maintaining and monitoring the log to ensure that responses are made by the deadline.

Customs administrations should process requests in the order received, but there may be circumstances when a request for expedited treatment should be honored. For example, USCBP allows requesters to ask that their requests be expedited. The request for special treatment must express a clear need for the treatment. The USCBP expedites requests as circumstances warrant and permit but will not provide assurance that any particular request will be fully acted on by the time requested.

## VETTING AND FOLLOW-UP

The technical specialist or department responding to the advance ruling request should review the application for completeness within a short period of time—perhaps three to five working days. In the vetting process, customs determines whether the request provides enough information, and if not, determines what other information is needed. If more information is required, the vetting officer should advise the requester in writing by the end of the time period.

The request for supplemental information should be made in writing and provide contact information for the officer handling the request, the reason the information is required, and a reasonable period of time by which the information must be provided (e.g., 30 days). It should include instructions for requesting an extension of that time period, if required.

Sometimes a requester may want to discuss a request before a ruling is issued. Customs should decide whether a meeting is necessary according to how productive it expects the meeting to be. On the one hand, granting every requester a meeting could create an unmanageable workload for technical experts; on the other hand, a blanket refusal of such meetings could create the impression that the ruling process is not transparent. Generally, customs must decide if a meeting will help decide the issues involved. And if customs grants a meeting, it should establish parameters so that the requester's expectations of resolution of the issue are realistic.

USCBP guidelines on granting meetings are outlined in Exhibit 4-1.

“Generally an oral discussion of issues will be scheduled only when, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the advance ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the advance ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be bound in writing. The conference will not conclude with the issuance of an advance ruling letter.

A person submitting a request for an advance ruling and wishing an opportunity to orally discuss the issue or issues involved should indicate that wish in writing at the time the advance ruling request is filed.

If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in the advance ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, additional conferences are necessary.

The person submitting the request for an advance ruling must provide for inclusion in the Customs file a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the advance ruling request. Such information, documents and exhibits shall be given consideration only if received by Customs within 30 calendar days following the conference.”

## PROPOSED RULING

The technical expert to whom the advance ruling request is assigned should draft a response that includes the following information and guidance:

- Name and address of the applicant
- Date that customs received the request
- Category of the request (i.e., classification, valuation, origin)
- Subject of the request
- Detailed description of the item or issues involved
- Detailed discussion of facts relevant to the decision reached by the technical expert
- Proposed ruling
- Instructions on how the requester can ensure that customs field offices honor the ruling
- Instructions on how the requester can appeal the decision to customs or higher authority and the timelines for doing so
- Space for the signature of the customs manager authorized to make a final ruling.

The requester must be able to reference the advance ruling, ideally through an advance ruling number that customs can access on an electronic database, to facilitate processing and ensure that the ruling is honored by field offices. The description of the item or issue(s) addressed by the ruling must be clearly and consistently stated in the advance ruling request, the declaration, and supporting documents so the field officer can match the advance ruling with the goods at hand.

## PREISSUANCE REVIEW AND APPROVAL

To ensure the technical accuracy, uniformity, and integrity of advance rulings, technical experts' proposed rulings should be reviewed by a more senior authority before approval and issuance, such as the legal department or a manager or management committee with the necessary expertise and scope of knowledge. When the review reaches a favorable conclusion, the ruling letter can be signed, dated, and issued.

## AVAILABILITY OF RULINGS

As Section 5 describes in detail, administrations in Australia, Canada, and the United States take different approaches to making advance rulings available to the general public. All three, however, agree that customs officers must have easy access. This means rulings must be well organized for identification and retrieval, preferably by means of an automated database using easily searchable criteria such as category, item description, tariff classification, and party to whom the ruling was issued. Rulings should be available to customs officials as well as eligible outside parties.

Australia's "valuation advice rulings" are available only to the requester because they contain information on the requester's commercial and financial arrangements. "Tariff advice rulings" are maintained in a database accessible by customs officers; some that establish precedents and have been subjected to an intense review are made available to economic agents.

In Canada, the policy content of advance rulings on tariff advice, or "tariff classification" that set a precedent may be published. Sensitive commercial information may be withheld, and no information that would directly identify the client is published. Free trade agreement advance rulings that contain precedent-setting policy may ultimately be incorporated into the D-memoranda series or other publications. No information that directly identifies the producer or requesting party or any confidential business information is released. The only specific information on an advance ruling that is released, other than to the person to whom the ruling was issued, is whether a particular ruling number remains in effect or has been modified or revoked.

In the United States, advance rulings are published in a searchable database, Customs Rulings Online Search System. A requester may ask that USCBP not disclose some of the information in the ruling request, such as trade secrets, on the basis of confidentiality. The requester must bracket or highlight the confidential information in the request and specify why it should be kept confidential.

## APPEALS

When requesters disagree with customs' decision, they should have recourse to appeal. Here we examine the principles of appeals processes in international agreements. A successful advance ruling appeals process requires the same procedural transparency and internal and external communication protocols as other appeals processes.

The proposed text of the WTO negotiations on trade facilitation calls on WTO members to grant an advance ruling requester the right to appeal the decision to the issuing

authority without penalty, with right to subsequent appeal to an external body, including, in the final instance, a judicial authority. The text assigns the following characteristics to the appeal process:

- **Transparency.** The process is readily accessible to all potentially interested parties, is administered in a nondiscriminatory way, and gives the appellant the option of independent legal representation at every step.
- **Time limits.** The appeals process defines timeframes for various stages of submission and response.
- **Explanation of decisions.** Appellants may request the rationale for customs' decisions, including citation of laws and regulations.

Similarly, the Revised Kyoto Convention, which the WCO Council adopted in June 1999 and which entered into force in February 2006, sets standards for governments to establish legislatively the right of appeal in customs matters:

- The advance ruling process must provide for the initial appeal of a customs decision or omission, as well as for a further appeal to a non-customs administration if the initial appeal is denied. The place of final appeal is a judicial authority.
- The appeal must be made in writing and the customs administration must allow the appellant sufficient time from the issuance of the contested decision to prepare the appeal, and under certain circumstances, additional time to perfect it.
- Customs must issue its decision in writing as soon as possible. If the appeal is denied, customs must provide the rationale for denial and inform the appellant of options for further recourse. If the appeal is allowed, customs must implement the corrective action as soon as possible, except when it intends to appeal a judicial ruling.

## IMPLEMENTING DOCUMENTS

The design phase of the advance ruling process entails creating a variety of documents and forms, such as public notices, internal and external instructions, internal control checklists, application forms or formats, rejection letters, and ruling letters.

## 5. BEST PRACTICES

So far, we have examined the establishment of an advance ruling process in the context of customs modernization and reform; identified the main elements in advance ruling program design and implementation; and reviewed the elements of the advance ruling process. In this section we present practical examples of how the customs administrations of Australia, Canada, and the United States have dealt with the issues associated with advance rulings.

When implementing any new initiative, a review of policies and procedures used elsewhere is instructive. The following descriptions cover approaches taken by three customs administrations that have significant experience in managing advance ruling processes. Detailed information can be found on the administrations' websites. The following documents are particularly useful:

- Communication from Australia to the WTO Trade Facilitation Working Group; TN/TF/W/66; September 28, 2005
- Memorandum D11-11-3; Advance Rulings for Tariff Classification, CBSA; April 1, 2003
- What Every Member of the Trade Community Should Know About U.S. Customs & Border Protection Rulings Program; USCBP; December 2009.

Australia, Canada, and the United States use different terms for advance rulings, but for the sake of clarity, we use “advance ruling” here.

### DEFINING PRINCIPLES AND SCOPE OF AN ADVANCE RULING PROCESS

In the establishment of an advance ruling process, objectives and scope must be defined. Australian Customs and Border Protection Service's (ACBPS) 2005 communication to the WTO Negotiating Group on Trade Facilitation provides a concise description of the principles of an advance ruling process:

- Rulings should be issued in writing.
- Rulings should bind the issuing authority (whether or not codified in legislation).

- Rulings should remain valid for a defined period of time, which should be communicated to the trader.
- The system should allow authorities to modify or revoke rulings in certain clearly defined circumstances. Traders should be notified in writing of any modification or revocation and the reasons for it.
- Traders must have the opportunity to seek a review of the ruling.
- The desirability of making available rulings and precedent value must be balanced with legitimate confidentiality considerations.
- Internal records of rulings should be kept to ensure consistent decisions.
- Information on the process for obtaining advance rulings should be easily accessible so traders and their agents benefit from the service.

## LEGAL BASIS

### AUSTRALIA

Although the advance ruling process is not codified in law, the ACBPS treats advance rulings as internally binding. ACBPS's policy is to honor an advance ruling unless it was provided on the basis of false or misleading information or if the applicant failed to provide all relevant available documentation. This provides certainty for traders that rulings will not be overturned arbitrarily.

### CANADA

Canada's advance ruling process is authorized in Sections 43.1 and 60 of the Customs Act. This law is quoted in Customs' Memorandum D11-11-3.

### UNITED STATES

In 1993, Title VI of the North American Free Trade Agreement Implementation Act, also known as the Customs Modernization Act, became effective. Two concepts emerged from the act—"informed compliance" and "shared responsibility." The premise of both concepts is that the trading community should be informed of its legal and regulatory obligations to maximize voluntary compliance with USCBP requirements.

Correspondingly, the Modernization Act imposes a greater obligation on USCBP to provide the public with information on the trading community's rights and responsibilities. Although USCBP is not required to issue advance rulings, it considers the ability to request an administrative ruling or decision an administrative right and has published detailed regulations, instructions, and automated procedures related to the advance ruling program. A USCBP ruling letter represents the official position with respect to the particular transaction or issue. The person receiving the ruling letter can rely on the ruling until either the law changes or until USCBP modifies or revokes the ruling. The requester is bound to provide correct information in requesting an advance ruling and must inform USCBP that a ruling has been received in connection with an import transaction.

## IMPLEMENTING REGULATIONS

### AUSTRALIA

ACBPS “advices” can be found on its website: <http://www.cargosupport.gov.au/notices/acca/acca.asp>.

### CANADA

Regulations regarding advance rulings are quoted in CBSA Memorandum D11-11-3.

### UNITED STATES

Part 177 (Administrative Rulings) of Title 19 (Customs Duties) of the U.S. Code of Federal Regulations provides the regulatory authority for the U.S. advance ruling process. The regulations, which are cited as 19 CFR 177, can be accessed at <http://www.gpoaccess.gov/cfr/index.html>.

## ORGANIZATION AND STAFFING

### AUSTRALIA

Until August 2002, each regional office in Australia issued “binding valuation advices” and at traders’ request also reviewed original valuation advices. Upon request, the central office conducted second-level reviews. In broader measures to improve business practices and ensure high-quality service, ACBPS decided that as of August 2002 the regional office in Melbourne would issue initial valuation advices and the central office would provide the only review. That same one-step review now applies to tariff advices and origin advices. Two officers issue valuation advices and about 35 issue tariff advices, at a scale roughly equivalent to 25 full-time officers. The vast majority of advance rulings relate to tariff classification. In 2004/2005, ACBPS issued 3,254 tariff advices, 85 valuation advices, and 35 origin advices.

### CANADA

Canada’s customs rulings, advance rulings for tariff classification, and advance rulings under free trade agreements are issued by CBSA regional offices where the goods are to be imported (in most cases, nearest the importer). If goods enter more than one region, the regional office nearest the importer’s headquarters issues the ruling.

### UNITED STATES

USCBP’s Office of Regulations and Rulings issues advance rulings. The office has three divisions that issue binding rulings. The National Commodity Specialist Division in New York City has four branches: Metals and Machinery, Agricultural and Chemicals, Textiles and Apparel, and Miscellaneous Products. This division issues binding prospective rulings covering product groups in the following areas:

- Tariff classification
- Country of origin

- Country of origin marking
- Preferential treatment under FTAs.

The Commercial and Trade Facilitation Division and the Border Security and Trade Compliance Division are at USCBP headquarters in Washington, D.C. Each division has five branches that issue advance rulings on the following issues: tariff classification and marking; valuation and special programs; entry process and duty refunds; cargo security, carriers, and immigration; and intellectual property rights and restricted merchandise. These branches issue advance rulings in the following areas:

- Valuation, including regional value content determinations under FTAs
- Vessels and carriers
- Restricted merchandise
- Intellectual property
- Duty drawback
- Temporary importation under bonds
- Foreign trade zones
- Bonded warehouses
- Merchandise processing fees
- Government procurement or “Buy American”
- Entry and collection procedures.

The size and complexity of the Office of Regulations and Rulings is more than justified by the scope and number of advance ruling requests received annually. In 2009, USCBP issued 6,821 rulings. As of December 2009, more than 160,000 advance rulings were available in the Customs Rulings Online Search System at [www.rulings.cbp.gov](http://www.rulings.cbp.gov).

## ELIGIBILITY

### AUSTRALIA

Advance rulings in the following categories are available to Australian importers and to overseas exporters and their agents: tariff advices, origin/preference advices, and valuation advices.

### CANADA

Advance rulings for tariff classifications and FTAs are available to importers, exporters, and authorized agents. Rulings on value for duty, origin, and marking are provided under National Customs Rulings. These rulings are granted at the request of any importer or agent acting on behalf of an importer, but are not issued to exporters and producers, other than origin advance rulings for nonpreferential purposes, although departmental advice may be given.

### UNITED STATES

Advance rulings are available to importers and other interested parties with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information related to tariff classification, country of origin determinations,



trade agreement and trade programs, country of origin marking, valuation, coastwise trade, restricted merchandise, intellectual property rights infringement, duty drawback, temporary importation under bond, foreign trade zones, bonded warehouses, and other technical matters.

## APPLICATION PROCEDURES

### AUSTRALIA

Requests for an advance ruling can be made directly in the ACBPS mainframe computer by licensed users or in writing on a special form. Each request can address only one issue and supporting documentation must be submitted within five working days.

### CANADA

Requests for advance rulings must be submitted by letter to the CBSA. Requests must be limited to a single product, though more than one request can be submitted at a time.

### UNITED STATES

A request for an advance ruling may be filed in writing with the Office of Regulations and Rulings for valuation or carrier rulings or with the National Commodity Specialist Division for tariff classification rulings. Requests for binding classification rulings, as well as for certain marking, origin, NAFTA, and applicability-of-trade-program rulings, may also be filed electronically.

## APPLICATION FORMS OR FORMATS

### AUSTRALIA

ACBPS gives interested parties the following instructions for requesting advance rulings:

- Guide for Lodgment of Customs Advices, July 2008
- Document 2008/039291, Instructions and Guidelines—Valuation Advices, July 2009.

### CANADA

CBSA provides interested parties with the following instructions for requesting advance rulings:

- Memorandum D11-11-1, National Customs Rulings
- Memorandum D11-11-3 Advance Rulings for Tariff Classification
- Memorandum D11-4-16, Advance Ruling Under Free Trade Agreement.

### UNITED STATES

Requests for advance rulings from USCBP can be filed by letter or online using the electronic rulings template (<https://apps.cbp.gov/erulings/index.asp>). USCBP specifies the information that must be in a written request but does not have a specific form for making a request.

The accompanying CD-ROM also contains the following documents and forms:

- European Union, Application for Binding Tariff Information
- India, Application for Advance Ruling
- New Zealand, Application for a Customs Ruling, Classification or Duty Concession, Form C7
- New Zealand, Application for a Customs Ruling, Country of Produce or Manufacture, Form C7A
- New Zealand, Application for a Customs Ruling, Correct Application of Regulations, Form C7B.

## REQUIRED INFORMATION

### AUSTRALIA

The request for advance ruling must include the following information:

- Identification of the goods
- Identification of parties to the importation or transaction, and when relevant, explanation of the roles of each
- Outline of the proposed treatment of the valuation issue and reasons for the proposed treatment
- Mention of the relevant provisions of the Customs Act that the applicant has considered
- Identification of contracts, agreements, and arrangements that relate directly or indirectly to the transaction
- When relevant, explanation of the financing and payment arrangements.

### CANADA

The letter of request should include the following information:

- Requester's name and address
- Requester's business number (if applicable)
- Statement that the requester is the importer, exporter, producer, or authorized representative
- Name and telephone number of a person who has full knowledge of the request
- Principal ports of entry
- Statement noting whether the item is or has been the subject of a verification of tariff classification, an administrative review or appeal, a judicial or quasi-judicial review, a request for a national customs ruling or other advice, or a request for an advance ruling
- Whether the goods have previously been imported
- Full description of the goods, including trade names or commercial, common, or technical designations
- Composition of the goods
- Manufacturing process for the goods
- Description of the packaging
- Anticipated use of the goods, the tariff classification the requester considers appropriate, and the rationale for that classification
- Manufacturer's product literature (if possible)
- Drawings and/or photographs (if possible)
- Schematics (if possible)
- Sample of the goods for examination (if possible).

## UNITED STATES

A request for an advance ruling must contain all facts relevant to the transaction, including the following:

- Name, address, e-mail address, and phone number of the requesting party
- Names, addresses, e-mail addresses, and other identifying information of all interested parties (if known) and the manufacturer ID code (if known)
- Name(s) of the port(s) in which the merchandise will be entered (if known)
- Description of the transaction
- Statement that, to the importer's knowledge, there is no issue pending before USCBP or any court
- Statement about whether advice has been sought from a USCBP office, and if so, from whom, and what advice was rendered
- For tariff classifications, the following additional information
  - Full and complete description of the good in its imported condition
  - Component materials
  - Principal use of the good in the United States
  - Commercial, common, or technical designation
  - Illustrative literature, sketches, digital photographs, flow charts, and the like
  - Chemical analysis, Chemical Abstracts Service number
  - Any special invoicing requirement provided in the regulations
  - Any other information that would help determine the classification of the article
- For requests dealing with country-of-origin issues that determine the applicability of special duty rates and other trade programs, the following detailed information:
  - Country or countries where each source material was made or harvested
  - Country or countries where each production step took place
- For requests for a trade program or agreement ruling such as NAFTA (North America Free Trade Agreement), or special trade programs such as AGOA (Africa Growth and Opportunity Act), in addition to the detailed production information for country-of-origin rulings, information on costs incurred in each production country
- For requests for country-of-origin marking rulings that determine whether goods are properly marked or labeled:
  - Detailed description of how the article and its container will be marked
  - Illustrations showing how the goods are labeled and packaged
  - Illustrations showing all other labeling and packaging besides country-of-origin marking
  - Detailed description of how the goods will be used or sold upon importation.

## TIMELINES FOR CUSTOMS RESPONSE

### AUSTRALIA

ACBPS aims to finalize requests in 30 days, but complex requests can take longer. If additional information is required, ACBPS will request the information within 28 days. If the requester does not provide the information or request an extension of time by the end of that period, ACBPS will cancel the request. If an advance ruling cannot be finalized in 30 days, customs will notify the requester of the extended time period.

### CANADA

When CBSA receives a request and all necessary information, the standard processing time is 120 calendar days, but CBSA aims to issue rulings in a shorter period. If additional information is required, CBSA notifies the requester in writing and allows 30 calendar days for the requester to provide the required information.

### UNITED STATES

Generally, the National Commodity Specialist Division issues rulings within 30 calendar days of receiving a request. Delay may occur if a laboratory report or consultation with another agency is required. Rulings that require referral to headquarters are issued by mail within 90 days of receipt by the Office of Regulations and Rulings.

## DECISION LETTER GUIDELINES

### AUSTRALIA

Each decision on a request, including whether to accept or reject the request for a ruling, includes the reasons for the decision and refers to the section(s) of the Customs Act on which the decision is based. The decision is conveyed to the requester in writing and is recorded in the customs mainframe database.

### CANADA

In Canada, advance rulings include the tariff classification number and the reasons for the determination. The ruling letter also provides an advance ruling number, which is placed on the customs invoice, commercial invoice, and customs declaration form or automated input block. CBSA will not issue an advance ruling when the application involves a matter before the courts; there is a redetermination on identical goods; it is not possible to determine all the material facts; the request is hypothetical; there are multiple goods on the request; the goods have already been imported and the importation will not continue; the request involves proposed or draft legislation; or the goods are subject to verification. If CBSA declines to accept an advance ruling request, it will inform the requester in writing of its reasons.

### UNITED STATES

Generally, the National Commodity Specialist Division issues rulings within 30 calendar days of receiving the request. Some delay may occur if a laboratory report or consultation

with another agency is required. Rulings that must be referred to headquarters are issued by mail within 90 days of receipt by the Office of Regulations and Rulings.

## DURATION OF ADVANCE RULING VALIDITY

### AUSTRALIA

Advance rulings are valid for five years from the date of notification. After five years, the advance ruling is automatically canceled. If it is still required, the requester must make a new request.

### CANADA

Advance rulings are in effect from the date of issue for as long as the ruling is not modified, canceled, or reversed.

### UNITED STATES

An advance ruling remains valid unless the law changes or the USCBP modifies or revokes the ruling.

## REVOCATION OR AMENDMENT

### AUSTRALIA

ACBPS may revoke or amend an advance ruling within five years if circumstances warrant; for example, if

- Relevant legislation is amended,
- Incorrect information was provided or relevant information was withheld,
- Customs changes its views, or
- Customs has issued conflicting rulings.

### CANADA

CBSA may review an advance ruling at any time to establish its continued validity. An advance ruling may be revoked or modified on any of several grounds listed in the Tariff Classification Advance Rulings Regulations. The advance ruling may be revoked or modified by CBSA headquarters or by the CBSA region that issued the advance ruling, or by any other region with the concurrence of the region that issued the ruling. The notice of the modification or revocation takes the form of a new advance ruling issued to the original requester. The voided advance ruling ceases to be valid on the date of issuance of the new ruling.

### UNITED STATES

If an advance ruling is no longer valid it may be modified or revoked. Generally the modification or revocation will apply only to importations that occur after the date of the modification or revocation. Revocations will be made retroactive only in limited

circumstances, such as when the requester has not acted in accordance with the ruling's terms and conditions or when the modification or revocation benefits the requester.

USCBP may also determine that a previous ruling is incorrect. If so, the procedure depends on how long the ruling has been in effect. If the ruling letter is less than 60 days old, USCBP may simply issue a new ruling letter indicating that the previous letter has been modified or revoked. The new letter will be effective upon publication. If the ruling under question has been in effect for 60 days or more and USCBP determines that this ruling must be modified or revoked, USCBP must issue a notice in the weekly Customs Bulletin containing a copy of the ruling to be revoked, as well as a copy of the proposed ruling. USCBP gives the public 30 days to comment after a notice is published. USCBP takes into consideration all comments received in the 30-day period and responds to them in the final ruling letter, which is also published in the Customs Bulletin. This revised or modified ruling letter becomes effective 60 days after the date it is published in the bulletin. A ruling may also be revoked by operation of law.

## RIGHT TO APPEAL

### AUSTRALIA

If an advance ruling requester is dissatisfied with a decision, the requester may ask the Central Office to review the decision. A request for review must be in writing and must state the reasons for disputing the decision. If a requester is dissatisfied with the review decision of the Central Office, the requester may refer the matter to the Administrative Appeals Tribunal or to a court of competent jurisdiction.

### CANADA

A requester who disagrees with the tariff classification number determination in an advance ruling may dispute it within 90 days of the effective date of the ruling. The appeal must be made in writing and must state the basis for the appeal. In exceptional circumstances an extension of the 90-day period may be requested. Further appeal may be made to the Canadian International Trade Tribunal within 90 days if the requester does not agree with the CBSA's decision on the dispute.

### UNITED STATES

Requesters have 30 calendar days from issuance of an advance ruling to file a written appeal for administrative review with the Office of Regulations and Rulings. The request must state the grounds on which the ruling is viewed to be incorrect, with particular regard to USCBP's application of the law. This analysis may include citations of previous rulings on the same good, transaction, or issue.

## AVAILABILITY OF RULINGS

### AUSTRALIA

Valuation rulings are made available only to the requester because the ruling is based on the commercial and financial information provided by the requester. Tariff advice decisions are kept in a computer library of decisions for use by customs officers. A certain percentage of tariff advices is subject to in-depth examination, and some of these are kept in a separate database available to customs officers, owners, and agents for precedent purposes. ACBPS is reviewing the tariff advice system and whether tariff advices should be made available to the public.

### CANADA

The policy content of advance rulings that set a precedent may be published. In such cases products are clearly identified by name (including brand names) and model numbers. Clients must advise the CBSA of any confidential information in a request for an advance ruling or for review of an advance ruling to ensure that this information is not published. No information that identifies the requester is published.

### UNITED STATES

Advance rulings are published in the Customs Rulings Online Search System. Ruling collections are separated into Headquarters and New York and go back to 1989. Collections can be searched individually or collectively. A requester may ask that USCBP not disclose some information in the ruling request, such as trade secrets, on the basis of confidentiality. The requester must highlight confidential information in the request and specify why that information should be kept confidential.







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