



UNCTAD Trade and Transport Facilitation Technical Note No.22

Advance Rulings

The measure in the WTO context

Article X of the GATT 1994 “Publication and Administration of Trade Regulations” sets out transparency obligations and legal redress provisions on customs matters for WTO Members.

§1 stipulates that “Laws, regulations and judicial decisions and administrative rulings of general application...pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on import and export...shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.”

§3 requires Members to administer laws, regulations, decisions and rulings in a uniform, impartial and reasonable manner and “maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters.”

While advance rulings per se are not mentioned in Article X, they fall under the generic heading of administrative rulings. However, §1 only refers to publication requirements and not to institutional set ups, whereas §3 contains the obligation to create mechanisms and procedures for review and corrective administrative action in customs matters.

In the context of WTO negotiations to improve and clarify GATT 1994 articles on trade facilitation, Members submitted several proposals to institute an advance ruling regime and related procedures whereby both exporters and importers upon request may obtain individual rulings from customs administrations, including on tariff classification, customs valuation, rules of origin, applicable duties, and duty deferral.¹

Definition of advance ruling

An advance ruling for customs purposes can be defined as a binding official decision prior to an import or export, issued by a competent authority in writing, which provides the applicant with a time-bound tariff classification, valuation, entitlement to preferences, or an assessment of the origin accorded to a particular good.² Such rulings must protect confidential information submitted by the trader, can be revoked in case of changed circumstances, and must be appealable by the applicant.

The World Customs Organisation's (WCO) guidelines on advance rulings in accordance with the provisions of standard 9.9 of the Revised Kyoto Convention define the term as follows:

¹ See TN/TF/W/8, 9, 10, 12, 38, 45, 66, 70, 80, 120, and 125 on the WTO document website for individual proposals on advance rulings or a summary in TN/TF/W/43 and its revisions.

² For further elaboration, see TN/TF/W/66

The expression “binding ruling” (or “advance ruling”) generally designates the option for Customs to issue a decision, at the request of the economic operator planning a foreign trade operation, relating to the regulation in force. The main benefit for the holder is the legal guarantee the decision will be applied.

A pertinent discipline in the WTO Agreement on Rules of Origin, Article 2(h), which might serve as a model for an advance ruling provision, is worded as follows: “Members shall ensure that, upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time... Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (j). Such assessments shall be made publicly available subject to the provisions of subparagraph (k).”

Background

Article X aims at lending transparency and predictability to the regulatory environment pertaining to trade, particularly customs procedures and formalities. Their complexity often constitutes a major trade barrier leading to delays and additional costs to the business community and consumers. For this reason also, new companies in the market and small/medium size enterprises sometimes hesitate to engage in foreign trade. Authoritative and binding advance rulings allow traders and investors to make business decisions in a stable and predictable environment for a specified period of time, regarding taxes and duties on certain import and export goods. Many customs administrations operate procedures for advance rulings, especially in relation to classification of commodities. Similar procedures are used by several countries to provide certainty and predictability on investment and direct taxation issues, eg, when foreign investors contemplate business activities in another country.

To reduce delays at border points and during customs clearance, importers and exporters and their agents need to familiarise themselves with regulations and conditions (Customs, investment, financial and transport) in their own country and often those of their trading partners. This is particularly important for being able to take full advantage of trade benefits and preferential agreements in force. Most regional and free trade agreements contain provisions for advance rulings on classification, value and origin of goods. Many developed and some developing countries possess the administrative and legal mechanisms to issue advance rulings for investment and trading purposes, and post application requirements, but rarely individual rulings, on their websites.

Subject areas for advance rulings

Classification according to the national customs tariff. The identification of the proper tariff heading and subheading determines the duty rate to be applied to commodities. Many tariffs contain up to, and often more than, 10,000 headings with highly technical chapters, such as chemical compounds, textile goods, and electronic components. Sometimes, final classification depends on laboratory analysis of a sample of the goods. Hence, an advance analysis and classification decision will simplify the clearance process and reduce delays.

Assessment of customs value. This involves the determination of the value of goods according to the national customs tariff – normally giving effect to the International Convention on the

Harmonized Commodity Description and Coding System (HS) and in line with GATT Article VII.³ Such customs valuation defines duty liability and the compilation of foreign trade statistics. Valuation can be a complex and lengthy process, for example in situations when seller and buyer are related or associated in which case Customs may have to probe into the circumstances of the transaction to assess whether the invoice price reflects the true price payable, or when the transaction value of an identical or similar import has to be computed. A final decision often depends on the importer submitting satisfactory documentation. An advance valuation decision greatly facilitates customs clearance.

Verification of the origin of goods declared for preferential treatment. This procedure includes appraisal of a range of elements such as classification and valuation, assessment of the production and/or minimum treatment in accordance with the preferential agreements concerned. Preferential treatment extended under bilateral, plurilateral and international trade regimes (eg, the General System of Preferences (GSP) or free trade agreements) confers lower duty on condition that the goods comply with the rules of origin of the trade regime. Hence, to promote the smooth exchange of goods between participating countries, trade agreements normally include provisions on advance ruling.

Benefits

Advance rulings are a proven trade facilitation tool for both traders and customs administrations by providing certainty and predictability in customs operations. While traders can get exact and binding information in advance of the actual transaction and for a specified period in the future, customs clearance of the goods in question will be more efficient and require fewer staff.

1. Advance and binding information, eg, on classification, gives the trader precise duty and tax liabilities and thus allows him to decide if imported goods are competitive in the domestic/foreign market.
2. Disputes with Customs on tariff headings, valuation and origin, ie, eligibility for preferential treatment, are avoided, as are delays in customs clearance.
3. Automated customs clearance, pre-arrival clearance and electronic release of goods from Customs will be expedited by advance rulings. Traders will also be able to conduct just-in-time operations more efficiently.
4. Advance rulings will raise cooperation and confidence between traders and Customs and reduce time consuming complaints and appeals.
5. Transparency will be improved through publication of application procedures for advance rulings and potentially lead to greater compliance when individual rulings are made public, either in a gazette or on a database accessible to the traders. Confidential information on production and processing methods needed to classify a good, eg, is protected.
6. Customs integrity will not be challenged during the clearance of consignments under advance rulings, because the decision on classification etc has been taken prior to the clearance.
7. Advance rulings promote investments because of the greater certainty they lend to customs requirements and financial implications of business decisions.

³ WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

The above demonstrates that advance rulings may be crucial for final decision making when a company contemplates investment in a new market or country. The effect of investment rules, taxation matters and customs procedures will be clarified and made binding on the authorities, removing surprise elements at the time of the actual transaction.

Cost

Outlays connected with setting up an advance ruling regime may vary depending on whether or not similar regimes are already in place for taxation and other domestic business purposes, or authorised traders. In such cases, advance rulings on customs matters may be modelled in a like fashion. A team of Customs experts on classification, valuation and origin determination, eg, together with a judge and tax expert, set up to hand down authoritative rulings, might need some training or study of the functioning of advance ruling regimes, issuing binding rulings, revocation and appeal mechanisms. Such training and operating expenses are likely to be offset by more expedite customs operations due to advance rulings. Countries receiving many applications for advance rulings may need to develop a database (or expand current IT-systems) to publish and archive rulings.

Countries might also consider a cost recovery scheme by charging a fee for rulings.

As with any new procedure, training is necessary to ensure that the administration and publication of the new discipline is developed within the strategic framework of Customs. Normally, in-house trainers or managers will be capable of such activities. Should such capacity not be locally available, the task could be covered by staff from central authorities or from the WCO and external experts.

Implementation

A legal authority for advance rulings should be constituted under the Customs act to ensure an equitable application of procedures, transparency and legal redress in case of a dispute. Advance ruling is mostly applied to determine classification, origin and Customs value. However, Customs administrations may further expand the scope of advance ruling to cover other Customs regimes such as excise duty, duty exemption, drawback etc.

Application procedures and use of advance rulings the following elements:

1. Nationally based companies can apply for advance rulings for goods they intend to import or export. Other companies with a justifiable cause, including foreign companies, may, in principle, also apply for advance rulings, provided all necessary details are presented in a satisfactory way.
2. The applicant must supply customs administration with all necessary details and documents (and sometimes samples) relating to the goods planned for import or export. The level of information depends on specific requirements pertinent to particular goods, eg, when classification is based on a specific content; this has to be documented through catalogues, declaration by the producer etc. If any details are confidential, the trader must explain this in the application.
3. Most countries require a special application form, in which the trader must declare all relevant details and attach supporting documents. In some countries, the application form can be submitted electronically, including supporting documents.
4. The ruling is legally binding on the holder and on the authorities, and valid for a defined period, eg, three or five years. This implies that the holder of a ruling may carry out

several transactions within the set time limit, provided that the contents of the goods and other circumstances remain unchanged.

5. Customs may revoke advance ruling if legislation or other rules are amended by the authorities concerned. In such cases, a period of grace should be given to the holder.
6. Advance rulings are generally issued in writing within a prescribed time limit, eg, 30-120 days after submission of the request. Additional time may be necessary if the applicant omits essential information or if laboratory analysis of a sample of the goods is required.
7. Except for confidential information, Customs should make decisions public (gazette, web or database access) to ensure transparency of the administration and uniform treatment of the traders. Customs offices must be informed of the advance rulings.
8. Advance rulings can be subject to appeal by the applicant.
9. Binding advance rulings are often issued free of charge; some countries charge the trader for additional costs, such as laboratory analysis and advice from technical experts.
10. Upon importation/exportation of goods under advance ruling the declarant must refer to the exact number and date of the decision in the Customs declaration

Local capacity

Simplification and streamlining of customs procedures, including the introduction of advance ruling, is advisable for countries with an active business and trading community. While plan and strategy for modernisation are the responsibility of a ministry or department, the actual implementation and operation is undertaken at local Customs offices.

Local Customs staff, therefore, should be given targeted training as to the philosophy and benefits related to advance rulings. They need to be cognizant of customs procedures and nurture close relations with the trading community. Computer literacy is highly desirable.

There is no doubt that advance ruling procedures can – and should - be introduced at local level. With some additional training and capacity building, Customs staff have the necessary ability and skills to successfully implement and operate advance rulings.

References

The Uruguay Round Agreement on Rules of Origin - www.wto.org

The International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention) – www.wcoomd.org