

## **AUSTRALIA'S EXPERIENCE WITH ADVANCE RULINGS**

### **Presentation to Trade Facilitation Committee, 12-13 February 2019**

Thank you, Madam Chair

My name is Stephen McMillan and I work on trade facilitation issues in the Australian Department of Foreign Affairs and Trade, in Canberra.

Today I will briefly outline the key features of Australia's advance rulings system and also highlight the trade facilitation benefits provided by advance rulings.

The information I will provide is addressed in greater detail in Australia's paper G/TFA/W/11, which the Secretariat has circulated.

The Department of Home Affairs administers the Australian Government's advance ruling system. My department and Home Affairs cooperate closely on trade facilitation matters.

#### **Types of advance rulings**

Advance rulings are available for three customs matters:

- Firstly, tariff classification, this concerns determining the tariff classification of a good including, if applicable, the eligibility of the good under a Tariff Concession Order;
- Secondly, origin, as you would expect this concerns determining whether an imported good qualifies as originating from a particular country.
  - Origin rulings are typically requested by importers seeking to determine if a good is eligible for a preferential rate of tariff under a free trade agreement; and
- Thirdly, valuation – providing advice on specific issues relating to the assessment of the customs value.
  - I note this advice does not extend to calculating the customs value for a specific transaction.

Details on how to apply for each of these kinds of advance rulings are available online, with links provided in Australia's paper.

#### **Key characteristics of Australia's advance ruling system include:**

Key characteristics of Australia's advance ruling system include:

- No fee is charged to issue an advance ruling.
- Home Affairs aims to issue advance rulings within 30 days of receiving all relevant information.
- Advance rulings are valid for five years, unless cancelled earlier.
- And advance rulings are binding on both the Australian Government and on the applicant.

## **When an advance ruling may be refused**

Home Affairs may refuse to issue an advance ruling in certain circumstances. These include where the issue is under active consideration, either within Home Affairs or by a Tribunal or Court, or where a decision has already been made on the issue.

## **Amendment or cancellation of an advance ruling**

Advance rulings may be amended or cancelled in certain circumstances and the consequences of amendment or cancellation depend on the reason for the action.

- For example, where the advance ruling is cancelled because information provided by the applicant was incomplete, false or misleading, the ruling is invalid. Then the importer is required to pay the correct amount of revenue on all goods imported under the advance ruling.
- As a second example, where an advance ruling is amended because of a Tribunal or Court ruling which results in a higher duty being payable, the goods imported within the advance ruling validity period are protected and are subject to the lower rate of duty.

## **Review processes**

Regarding review processes, if an applicant considers an advance ruling is incorrect, the applicant may ask the official who issued the advance ruling to review it.

If the applicant still considers the advance ruling to be incorrect following this review, the applicant may request a formal review. This formal review will be conducted by a different official who is either more senior or from a different area.

For external review, if the applicant considers an advance ruling to be incorrect, after importing the good concerned and paying duty and taxes under protest, the applicant is entitled to challenge the decision in the Administrative Appeals Tribunal.

Following the Administrative Appeals Tribunal decision, either party may appeal to the Federal Court if it believes the decision was incorrect on a point of law.

An alternative to going to the Administrative Appeals Tribunal is to challenge the levying of duties directly in the Federal Court, if the applicant believes an error of law was made.

Once the matter is finally decided, Home Affairs would amend or cancel the advance ruling if warranted by the Tribunal or Court decision.

## **Publication of guidance**

Australia does not publish advance rulings for reasons including the need to protect commercially confidential information. We treat all information provided by applicants for advance rulings as commercial-in-confidence.

Australia does issue public guidance material on tariff classification issues by way of tariff precedents. These are available on the internet and the link is available in the paper circulated by the Secretariat.

While tariff precedents are not binding in the same way as advance rulings, they are advice from the Australian Government. Therefore, any importer who has reasonably relied on a tariff precedent in good faith would normally be in a good position.

### **Benefits of advance rulings**

To finish I would like to highlight the benefits of advance rulings.

Advance rulings are a proven trade facilitation tool for both traders and customs administrations that enhance the certainty and predictability of customs operations.

Particular benefits include:

- traders obtain precise and binding information in advance of actual trade, allowing them to make commercial decisions with certainty;
- clearance processes may be quicker and delays reduced because officials have already considered and decided on certain matters before importation;
- disputes with customs staff on tariff, valuation and origin issues are reduced because key issues have already been decided;
- increased cooperation and greater trust between traders and customs authorities;
- greater consistency in decisions relating to tariff, valuation and origin issues through centralised decision-making and publication of tariff classification precedents;
- improved industry compliance with tariff laws; and
- finally, more accurate trade statistics.

I would welcome any questions from Members.