



AUSTRALIA'S EXPERIENCE WITH ADVANCE RULINGS

COMMUNICATION FROM AUSTRALIA

The following communication, dated 1 February 2019, is being circulated at the request of the delegation from Australia, for Members' information.

This paper aims to describe the key features of Australia's advance rulings system and to show how it meets and builds on the requirements in the WTO Agreement on Trade Facilitation (TFA).

Types of advance rulings

The Australian Government, through the Department of Home Affairs (Home Affairs) provides advance rulings (known in Australian practice as 'advice') on the following matters:

- tariff classification – determining the tariff classification of a good and, if applicable, the eligibility of the good under a Tariff Concession Order (TCO)¹;
- origin – determining whether an imported good qualifies as originating from a particular country (and is therefore eligible for a preferential rate of tariff under a free trade agreement); and
- valuation – providing advice on specific issues relating to the assessment of the customs value. This advice does not extend to calculating the customs value for a specific transaction.

Each of these matters may be relevant to the calculation of duty and taxes payable on importation of a good. The clarity provided by the advance rulings system assists traders in making decisions about future imports of goods prior to the need to commit to importation.

The requirements to apply for an advance ruling, including the information to be provided and the format are available online². Home Affairs does not charge a fee to issue an advance ruling.

Home Affairs aims to issue an advance ruling within 30 days of receiving all relevant information. Whenever Home Affairs requires further information from the applicant, the time taken to receive the information would be additional to the 30 days.

Advance rulings are valid for five years unless cancelled and are binding on both the Australian Government and on the applicant.

¹ Tariff Concession Orders (TCOs) waive import duties otherwise payable where there are no known Australian manufacturers of goods that are substitutable for imported goods.

² For applications regarding tariff classification, or eligibility under a TCO, see the information available at: <https://www.abf.gov.au/importing-exporting-and-manufacturing/tariff-classification/tariff-advice-system>. For information and regarding origin and valuation see: <https://www.abf.gov.au/importing-exporting-and-manufacturing/importing/how-to-import/requirements#content-index-5>.

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. Benefits include:

- traders obtain precise and binding information in advance of the actual transaction and for similar transactions during a specified period in future. This allows them to make commercial decisions with certainty e.g. knowing that a particular good will be eligible for preferential tariff treatment from an FTA partner would reduce the cost of the good;
- 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 any discussion needed has already taken place before the advance ruling is issued, or in a review process if that has taken place;
- 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, and improved industry compliance with tariff laws; and
- more accurate trade statistics.

When an advance ruling may be refused

Home Affairs may refuse to issue an advance ruling in certain circumstances, including:

- when the Administrative Appeals Tribunal (AAT) or the Federal Court of Australia is considering a decision involving identical or similar goods, or such a body has made a decision and it is still in the appeal period. In such cases, the application may be held over until the matter is settled rather than rejected;
- when goods which are an exact match for goods that are subject to a tariff precedent (see below);
- when Home Affairs has already made a decision on the classification of the goods, for example, a customs official has determined that the classification of a good advised by the importer is incorrect and classified the good elsewhere;
- for goods from multiple suppliers;
- the classification of the goods is already being considered as part of an active TCO application submitted by the same applicant; and
- failure to provide Home Affairs with all relevant information.

Amendment or cancellation of an advance ruling

Advance rulings may be amended or cancelled in certain circumstances, including if:

- a legislative amendment results in changes to tariff schedules;
- full disclosure of relevant information was not made in the application;
- information provided with the application was incorrect, false or misleading;
- conflicting advance rulings have been issued for goods of the same class or kind;
- the advance ruling has been reviewed internally;

- a decision of either the AAT or the Federal Court modifies a decision based on the advanced ruling; or
- Home Affairs changes its interpretation of the relevant legislation.

Where an advanced ruling is amended or cancelled, the applicant will be advised in writing regarding the reasons for the amendment or cancellation.

The consequences for an importer of Home Affairs amending or cancelling an advance ruling depend on the reason for the cancellation or amendment:

- if the advance ruling is incorrect because information provided with the application was incomplete, incorrect, false or misleading, the ruling is invalid. The importer is required to pay the correct amount of revenue on all goods imported under the advance ruling and to repay any refunds obtained on the basis of the advance ruling. The importer may be subject to penalties or other law-enforcement action;
- if the advance ruling is amended because of changes to legislation, the duty and taxes payable will depend on the law applying at the time the goods are entered for home consumption;
- if the advance ruling is cancelled or amended because of a change in interpretation of the law that results in a higher rate of duty being payable, then:
 - goods imported within the tariff advice validity period are protected and are subject to the lower rate of duty;
 - goods in transit to Australia on the day the tariff advice was cancelled or amended that are entered for home consumption within 28 days of the day of cancellation would generally pay the lower rate of duty (note that 'in-transit' provisions are applied at the discretion of Home Affairs); and
 - goods imported subsequently would pay the higher rate of duty; and
- if the advance ruling is cancelled or amended because of a change in interpretation of the law that results in a lower rate duty being payable, the importer is eligible to receive a refund of any overpaid duty.

Review processes for advanced rulings

If an applicant considers an advance ruling to be incorrect, the applicant may seek internal review by the person who issued the advance ruling.

If the applicant considers the advance ruling to be incorrect following this review, the applicant may request a formal review. The review is conducted by a Home Affairs 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 Home Affairs decision in the AAT. This right exists whether or not the advance ruling was subject to internal review by Home Affairs.

Following the AAT decision, either party to the AAT decision may appeal to the Federal Court if it believes the AAT decision was incorrect on a point of law. Note that it is possible to challenge the payment 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 AAT or court decision.

Publication of guidance

Australia issues public guidance material, in the form of tariff precedents, on tariff classification issues for various types of goods³. Whereas an advance ruling on tariff classification is for a specific good from a particular exporter to a particular importer, a tariff precedent is a statement of the Australian Government's current thinking on the tariff classification of a type of good or class of goods.

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 and whose goods match the type of goods described in the precedent in all material particulars would normally avoid penalties should the goods be classified elsewhere and subject to duty.

Australia does not publish advance rulings for reasons including the need to protect commercially confidential information. All information provided by applicants for advance rulings is treated as commercial-in-confidence. While it may be possible in some cases to edit out company details and other commercially-sensitive information in an advance ruling, this would add a significant cost to the process. In many cases, there are only a small number of traders that import a particular good in large quantities, and publication of an advance ruling could provide a competitor with commercially-sensitive information, even if the name of the importer were removed.

³ Tariff precedents are available from: <https://www.abf.gov.au/importing-exporting-and-manufacturing/tariff-classification/tariff-public-advice-products>.