

COMMUNICATION FROM SINGAPORE

The following communication, dated 29 April 2005, from the Delegation of Singapore, is being circulated in advance of the Negotiating Group meeting of 2-4 May.

PROCEDURAL ELEMENTS FOR ADVANCE RULINGS

I. INTRODUCTION

1. Enhancing transparency, certainty and predictability in the application of border regulations and procedures are core objectives of GATT Article X.
2. For traders, knowing in advance how customs rules and regulations will be applied, minimizes unnecessary delays and costs. For customs authorities, informing traders of relevant import requirements encourages compliance and minimizes complaints and subsequent appeals.
3. One way in which border clearance can be expedited is through the usage of advance rulings. In this respect, several proposals (e.g., TN/TF/W/9 from Canada; TN/TF/W/10 from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; TN/TF/W/12 from the United States of America) have been tabled.
4. The proposals tabled, to-date, have spelt out possible elements for advance ruling programmes. They include suggestions to have advance rulings for issues such as tariff classification, customs valuation and duty deferral.
5. Advance rulings are not new to the WTO. As noted in the proposals already tabled, Article 2 of the Agreement on Rules of Origin provides for advance rulings that are to be made on assessment of origin. It sets out the time period in which the assessment is to be made, the conditions and the duration of the validity of the assessment.
6. In general, an advance ruling programme would include the following elements:
 - (a) Advance rulings may be issued upon request on matters such as tariff classification, applicable duties and valuations.
 - (b) Upon receiving the request, the advance ruling would be issued within a certain time period (e.g., x days).
 - (c) The advance ruling would be binding on customs authorities for a period of time, provided that the facts and circumstances on which the ruling is based remain unchanged.

7. While the benefits to traders are clear, those Members who do not have an advance ruling programme, may have concerns that such a programme may be difficult or burdensome to implement.

II. SINGAPORE'S EXPERIENCE

8. Since 2002, Singapore has put in place advance ruling programmes for goods imported under two bilateral free trade agreements, the Japan-Singapore New-Age Economic Partnership Agreement and the US-Singapore Free Trade Agreement. Although Singapore Customs ("Customs") did not have the practice of issuing advance rulings prior to 2002, it was not uncommon for them to respond to informal enquiries from traders, as is the case in most countries.

9. The main object is to lay down clear and simple standard operating procedures upon which formal binding advance rulings could be processed and administered. In this regard, we have tried to develop procedural elements that strike a balance between providing predictability and certainty to traders on the one hand, and ensuring that Customs would not be overburdened on the other.

10. By sharing the main procedural elements that we have developed, we hope to provide an example of how a relatively simple advance rulings programme can be established.

III. PROCEDURAL ELEMENTS

1. Who may apply

- To avoid frivolous requests, only importers and exporters or their agents may request an advance ruling. All requests for an advance ruling would be made in writing, signed by the person authorized by the requesting party and submitted using a company letterhead form.
- Each application should be restricted to an individual product.

2. Information required from applicant

- Advance rulings can only be made where the applicant has provided full and accurate disclosure of all relevant information (including supporting documentation). To avoid unnecessary delays in processing the application, the applicant has to ensure that Customs is given all the relevant information. However, some applicants may not know how much information and detail is required. As such, Customs would as far as possible, set out the kind of information they require from the applicant, e.g., composition of the good, a description of the process by which the good is manufactured or the transaction value of the good. In this respect, one possible approach is to require all applications to be made on a standard form.
- If insufficient information is provided, Customs could request that the applicant provide the additional information within a certain period of time. Customs may decline or postpone the issuance of an advance ruling where the applicant fails to provide the additional information within the time stipulated.

3. Processing requests for advance rulings

- Assuming that all relevant information has been provided, Customs would proceed to make the necessary evaluation and determination for the advance ruling. As a guide for the processing officer, Customs would, where possible, prescribe how each type of application would be considered.

4. Issuing of advance rulings

- The advance ruling should be issued within a certain time period upon receipt of all the necessary information and documents from the applicant.
- For the applicant to be able to rely on the advance ruling, it would have to be in the form of a written statement issued by Customs.
- The advance ruling would be effective on the date of issuance or such date as may be specified in the ruling, which is not later than the date of importation of goods.
- The advance ruling would be applied to importations without regard to the identity of the importer, exporter or producer, provided that the facts and circumstances are identical in all material aspects.
- The advance ruling would remain in effect for a specific period of time from the date of the issuance if:
 - there is no change in the material facts or circumstances on which it is based;
 - all of its terms and conditions are complied with; and
 - it has not been revoked.
- There are provisions for Customs to provide the applicant, on request, with the reasons for the ruling.

5. Non-application, modification or revocation of advance ruling

- An advance ruling may not be applied if it is determined that imported goods differ materially from the goods which were the subject of the ruling or if the person requesting the ruling has failed to act in accordance with the terms and conditions of the ruling.
- The advance ruling may be modified or revoked if:
 - the advance ruling is based on an error of fact or law;
 - there is a change in law; or
 - there is a change in the material facts or circumstances on which the ruling was based.

6. Notice of modification or revocation

- Customs is required to give notice in writing of any modification or revocation of an advance ruling and of the effective date of the modification or revocation to the person to whom the advance ruling was given.
- Customs may postpone the effective date of such modification or revocation for a period of time, where the person to whom the ruling was issued has relied in good faith on that ruling.

- A modification or revocation of an advance ruling would apply to goods that are the subject of the advance ruling and are imported on or after the effective date of the modification or revocation. It would not apply to importations of a good that have occurred prior to the date.

IV. CONCLUSION

11. The procedural elements set out above allows for traders to benefit from greater certainty and predictability while also maintaining some flexibility for Customs, such as allowing rulings to be modified or revoked under certain circumstances. This is an example that Members could consider when examining the issue of advance rulings.

V. SPECIAL AND DIFFERENTIAL TREATMENT

12. However, we recognise that least developed countries and some developing countries may have difficulties implementing advance ruling programmes. Special and Differential Treatment should therefore be an integral part of any commitment in this area. In this regard, Members may wish to discuss the following:

- (a) The procedural elements and subjects that should be included in Members' advance rulings programmes. For example, developing countries and least developed countries may initially need to commit only to advance rulings for tariff classifications.
 - (b) Longer implementation time frames for developing and least developed countries, and other phased-in approaches.
 - (c) Allowing developing and least developed countries to implement more onerous obligations on a best endeavour basis.
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