

WORLD TRADE ORGANIZATION

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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM CANADA

The following communication, dated 28 January 2005, from the Delegations of Canada, is being circulated in advance of the Negotiating Group meeting of 7 and 9 February.

POSSIBLE COMMITMENTS ON ADVANCE RULINGS

A proposal by Canada

I. BACKGROUND

1. The term "advance rulings" generally refers to the possibility for a customs administration (or any other competent authority) to provide, upon application by a trader in connection to the planned importation of goods, a written ruling with respect to the following specific requirements or entitlements:

- (a) The tariff classification of the goods, applicable rate of duty, or any tax applicable upon importation;
- (b) Whether the goods qualify as originating goods and are entitled to the benefit of preferential tariff treatment under a free trade agreement or other system of tariff preferences, and whether the goods satisfy requirements for country-of-origin marking.

2. Procedures for issuance of advance rulings by customs administrations (or other competent authorities) have been in existence for years in many countries, both developed and developing. These procedures, whether or not codified in national legislation and regulations, reflect the fact that, in most countries, tax authorities have been willing to answer inquiries by traders (be they domestic importers, or foreign exporters or producers) regarding the treatment by Customs of a specific good in advance of its importation.

II. PROPOSAL

3. By allowing the customs administration to provide a binding ruling prior to the importation of a good based on the facts and circumstances presented by an importer, exporter, a producer or its representative, parties are provided with certainty as to the application of certain provisions within existing national legislation. While the existing GATT provisions do not prevent the establishment of

advance rulings procedures, it is only in the context of the WTO Agreement on Rules of Origin that a requirement to do so exists.¹

4. Predictability for prospective and ongoing transactions would therefore be further facilitated by developing complementary GATT disciplines on the provision of advance rulings as follows:

- Advance rulings would be issued on tariff classification (including any applicable rate of duty or tax applicable upon importation).
- Advance rulings would be issued at the written request of domestic importers, or foreign exporters or producers. Advance rulings should be issued within a defined period of time after a request is made (subject to submission of sufficient information by interested parties). There will be identified situations where the customs administration can decline to issue the ruling, such as when the good is already the subject of a review or appeal.
- Advance rulings should also be binding on customs authorities (or any other competent authority), for a period of time specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged. However, it is recognized that the customs administration would have the option to modify or revoke an advance ruling immediately, should circumstances change, or when inaccurate or false information has been provided.
- To the extent possible, and subject to confidentiality requirements, advance rulings should be made publicly available; in such a manner, transparency can be improved, due process ensured, and increased information can be made available, improving compliance and lowering costs even for transactions where no advance rulings are sought.
- Appropriate special and differential treatment provisions (e.g., deferred implementation, different time requirements, etc.) could be incorporated within commitments, to reflect the specific circumstances of individual Members.

III. BENEFITS

5. The availability of advance rulings is of key importance to traders, especially small- and medium-sized ones. It provides for certainty and predictability as to how a given good would be treated by Customs once the importation has taken place. It also provides advance knowledge, in a competitive marketplace, of how a particular good will be treated by the importing country.

6. The increased certainty in transaction costs provided by advance rulings will also encourage greater investment and much needed flows of capital to developing countries. Advance rulings can also provide a visible model for implementing the principles of transparency and efficiency, providing valuable experience and lessons for any other efforts in administrative reform. It also helps to establish trust between customs authorities and traders and, hence, to reduce incentives to circumvent regulations. By informing traders of the appropriate import requirements, advance rulings encourage compliance and minimize delays, complaints and subsequent appeals.

IV. IMPLEMENTATION COSTS

7. For those countries with an advance ruling program in place, implementation costs of such a proposal would be minimal. For others, new costs would include the process for making such rulings public (e.g., publication costs), having additional officers available to examine requests from traders, and the possible need for supplementary training. That being said, since the Agreement on Rules of

¹ In Articles 2(h) and 3(f) of that Agreement.

Origin already requires Parties to provide advance rulings for the purpose of assessment of origin, incremental costs could be limited.

8. Advance rulings could reduce administrative costs that are normally incurred at the time of importation or post-importation. Initial capital costs for implementing a system of advance rulings are likely to be low relative to more capital intensive initiatives and are likely to be rapidly amortized.

V. TECHNICAL ASSISTANCE

9. Further technical assistance in this area will enable customs authorities in recipient countries to improve their ability to carry out their duty to enforce legislation, while easing obstacles to legitimate trade and economic growth. Those having implemented advance rulings have been able to utilize them as a means to provide certainty and facilitate trade; technical assistance will enable developing economies to gain further access to this policy tool.
