

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 4 February 2005, is being circulated at the request of the United States.

ADVANCE BINDING RULINGS

I. PROPOSAL

X Make available, upon request of a trader in advance of trade, binding rulings in certain specific subject areas (e.g., tariff classification, customs valuation, duty deferral).

II. IMPROVEMENT AND CLARIFICATION

1. This proposal would present an improvement by bringing certainty for traders and customs authorities regarding key elements of import transactions, in advance of trade commencing. An example of this type of WTO commitment, albeit with a narrow subject matter application, already exists in the Rules of Origin Agreement.¹ The latter includes elements related to duration of the ruling, modification procedures and other specific parameters of operation.

III. EXPERIENCE

2. As has been described in great detail during the previous WTO work on Trade Facilitation, establishing a regime for traders to obtain binding rulings in advance of trade is a cornerstone for providing certainty at the border (e.g., G/C/W/384 *submission by the United States of America*; C/C/W/379 *submission by Canada*; G/C/W/363 *submission by European Communities*; G/C/W/392 *communication from the World Customs Organization*). An advance ruling allows a trader to know

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¹Article 2 of the Agreement on Rules of Origin states 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);"

with certainty how merchandise will be treated, allowing for the amount of duties to be known before the goods are even loaded for transport. Like many other Members, the United States has had a longstanding rulings program, and relies on it as an integral element of its efforts to ensure compliance. Rulings are issued within 90 days from receipt of the ruling request, and the subjects of the rulings include: classification, value, admissibility, marking, country of origin, and cabotage.

IV. COSTS

3. To a large extent, establishing an advance binding ruling regime is a re-orientation of certain customs administrative decision-making away from the border, and into a function that may not be attached to an actual ongoing trade transaction. As such, it can involve redirection of administrative resources, but involves costs associated with training personnel, some of which may be transitional. A possible method for an advance ruling regime to be self-supporting would be through a reasonable fee structure for obtaining a ruling, which some Members already use. Another possibility for reducing the costs in establishing a regime would be through resource sharing, such as through a regional ruling authority. In its recent survey, the OECD reported that countries it reviewed did not consider the administration of binding rulings as calling for additional resources. (OECD publication TD/TC/WP (2004)36).

V. SPECIAL AND DIFFERENTIAL TREATMENT

4. There currently exists a significant array of situations among developing country Members as to whether and how commercial rulings may be provided. Establishing a fully operating advance ruling regime may present significant challenges to some developing country Members, particularly Least-Developed Members.

5. As with every other proposal, the United States looks forward to working with Members to examine the question of whether appropriate transition mechanisms would be necessary to address particular needs. Given the unique importance and nature of this proposed commitment, the United States is interested in working with Members to consider what other means to implement the proposal, such as resource sharing between Members, "mutual recognition" of rulings between Members, or other mechanisms to utilize expertise outside the capacity of some Members.

VI. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

6. The United States has experience in providing technical assistance in the establishment of advance binding rulings regimes, assisting in drafting of legislation and regulations, and providing training to subject-matter experts.

VII. NEXT STEPS IN NEGOTIATIONS

X Members refine the subject areas and procedural elements of a commitment to provide advanced binding rulings, and explore avenues for implementation through means such as resource sharing or mutual recognition.

X Members work together to develop a method and means for undertaking a diagnosis of individual Member situations regarding an advance ruling regime, including an assessment of time and resources needed for full implementation.
