

**COMMUNICATION FROM AUSTRALIA**

The following communication, dated 28 September 2005, from the Delegation of Australia, is being circulated in advance of the Negotiating Group meeting of 5-6 October 2005.

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**BINDING ADVANCE RULINGS**

Australia's Experience

**I. INTRODUCTION**

1. Enhancing transparency, certainty and predictability in the application of border regulations and procedures are core objectives of GATT Article X. Advance rulings<sup>1</sup> facilitate trade by:

- providing certainty for traders and their agents, as to how their goods will be treated by the country of import;
- promoting consistency and equity in the trading process and application of the law;
- establishing confidence between Customs administrations and traders; and
- encouraging compliance and minimizing delays, complaints and appeals.

2. Australia was pleased to cosponsor a proposal for possible commitments on advance rulings (TN/TF/W/9). That paper, and subsequent contributions from other Members, set out possible elements for advance ruling systems. The present paper outlines the procedures adopted by, and the experiences of, the Australian Customs Service (Customs) in providing binding advance rulings in relation to valuation and classification issues. The paper's intention is to share with Members Australia's system of advance rulings and the principles underlying that system.

**II. COVERAGE OF BINDING ADVANCE RULINGS**

3. On request, Australia provides binding advance rulings on tariff classification, origin/preference and valuation issues. The vast majority of advance rulings relate to tariff classification. In 2004-05, the number of binding advance rulings issued by Customs was: 3,254 for tariff classification, 85 for valuation and 35 for origin/preference.

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<sup>1</sup> The term "advance rulings" generally refers to the possibility for a customs administration (or any other competent authority) providing, upon application by a trader/agent in connection to the planned importation of goods, a written ruling with respect to the specific requirements or entitlements, such as tariff classification, valuation, origin or eligibility for preference.

4. This service is available to Australian importers and to overseas exporters and their agents. The service provided is similar in concept and operation for each of the issues mentioned above. Section III addresses the experience of Australia in respect of its Valuation Advice Service (VAS), while Section IV provides an overview of procedures for tariff classification advice.

### III. PROCEDURES ADOPTED FOR VALUATION ADVICES

5. The valuation of imported goods is determined in accordance with the valuation provisions of *Customs Act 1901*. Those provisions are based on the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*. Policy and procedural guidelines for issuing valuation advices are set out in Volume 8A of the *Australian Customs Service Manual* (the *Customs Manual*).<sup>2</sup>

6. In Australia, applications for a Valuation Advice (VA) can be lodged:

- electronically, being input directly into a Customs mainframe computer database (TAPIN) by licensed users; or
- in writing, using a specially prepared form (available from the Australian Customs Service website, [www.customs.gov.au](http://www.customs.gov.au)).

7. Details of manually prepared VAs are input into TAPIN by Customs staff.

8. Each application needs to be accompanied by supporting documentation.

9. Supporting information needs to be submitted to Customs within five working days.

10. The information may include but is not limited to:

- identifying the goods;
- identifying the parties to the importation/transaction and, where relevant, explaining the roles of each party;
- outlining the proposed treatment of the valuation issue and the reasons for that proposed treatment;
- nominating the relevant provisions of the *Customs Act 1901*<sup>3</sup> that the applicant has considered;
- identifying all contracts, agreements and arrangements that relate directly or indirectly to the transaction; and
- where relevant, explaining the financing and payment arrangements.

11. Each application can address only one valuation issue.

12. An applicant can withdraw an application at any time prior to finalization of the decision by Customs.

13. Where additional information is required to finalize a VA, Customs will request the provision of that information within 28 days. If the applicant does not provide that information, or request an extension of time, within 28 days, Customs will cancel the application.

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<sup>2</sup> Available from the Australian Customs Service website, [www.customs.gov.au](http://www.customs.gov.au).

<sup>3</sup> The *Customs Act 1901* is readily accessible through the Australian Government's legislative website, [www.comlaw.gov.au](http://www.comlaw.gov.au).

14. In order to provide an effective service to importers and to their representatives, Customs aims to finalize all applications within 30 days (where the applicant does not need to provide additional information).

15. For complex valuation issues, Customs may require more than 30 days to finalize the VA. Where the VA cannot be finalized within 30 days, Customs notifies the applicant of the extended time period.

16. Each decision on an application, whether accepting or rejecting the applicant's case, includes the reasons for the decision and refers to the section(s) of the Customs Act 1901 supporting the decision. The decision is conveyed to the applicant in writing and is recorded in TAPIN.

17. Advices are valid throughout Australia for five years from the date of notification of the VA. After five years, the VA is automatically cancelled. If an advice is still required, the applicant needs to lodge a new application.

18. Although not codified in legislation, Customs treats VAs as internally binding. Customs' stated policy is to honour a VA unless it was provided on the basis of false or misleading information, or where the applicant failed to provide all relevant available documentation.<sup>4</sup> This provides certainty for traders that rulings will not be arbitrarily overturned.

19. Customs may revoke or amend a VA within five years where particular circumstances warrant, e.g., where:

- an amendment to the legislation has relevance to the VA;
- incorrect information was provided or where relevant information was withheld;
- Customs changes its views (this occurs very infrequently and can result from such factors as legal precedent or the receipt of supplementary information); and
- Customs has issued conflicting VAs.

20. The circumstances under which Customs may amend or cancel a VA are set out in Volume 8A of the Customs Manual.

21. Where an applicant for a VA is dissatisfied with the decision made by Customs, the applicant may request the Central Office of Customs to review the decision.

22. An application for a review of a VA must be in writing, and must fully address the reasons why the decision is disputed. The review will take into account only that information that had been provided by the applicant to the original decision maker.

23. Where an applicant for a VA is dissatisfied with the (review) decision of Central Office, the applicant may refer the matter to the Administrative Appeals Tribunal or to a court of competent jurisdiction.

24. Each ruling is made available only to the applicant, as the ruling is based on the commercial/financial arrangements of the applicant.

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<sup>4</sup> *Australian Customs Service Manual*, Volume 8A.

#### IV. PROCEDURES ADOPTED FOR TARIFF ADVICES

25. Rates of duty payable by importers are determined by the classification of goods within the *Customs Tariff Act 1995*.<sup>5</sup> Australia's Customs Tariff is based on the Harmonized Commodity Description and Coding System (the HS system), developed by the World Customs Organization.

26. Tariff Advices (TAs) are binding decisions issued by Customs at the request of a trader or their agent regarding the classification of a particular good. Procedures for issuing tariff advices operate in a similar way to the valuation advice system. Specific guidelines for the issue of TAs are set out in Volume 7 of the *Customs Manual*.<sup>6</sup>

27. Traders or their agents can apply for a TA:

- electronically, through TAPIN; or
- in writing, using the form available from the Customs website ([www.customs.gov.au](http://www.customs.gov.au)).

28. When an officer makes a decision, the result is notified to the trader/agent by the return of a hard copy or by notification through TAPIN.

29. Like VAs, TAs remain binding on Customs for five years from the date of advice.

30. The conditions under which Customs may revoke or amend a TA are set out in the Customs Manual. Such circumstances include:

- where there is a change in the law relevant to the advice;
- where incorrect information was provided to Customs or relevant information was withheld from Customs; and
- Customs changes its views (this occurs very infrequently and can result from such factors as legal precedent or the receipt of supplementary information).

31. Where an applicant for a TA is dissatisfied with the decision made by Customs, the applicant may request the Central Office of Customs to review the decision.

32. An application for a review of a TA must be in writing, and must fully address the reasons why the decision is disputed. The review will take into account only that information that had been provided by the applicant to the original decision maker.

33. Where an applicant for a TA is dissatisfied with the (review) decision of Central Office, the applicant may refer the matter to the Administrative Appeals Tribunal or to a court of competent jurisdiction.

34. Details of TAs issued by Customs are maintained in a "library" of decisions which are available through TAPIN for use by Customs officers. A percentage of decisions are subject to further, in-depth examination by a Customs and a selection of these "audited" decisions are kept in a separate PRECEDENT database, which is available to Customs officers and owners/agents for precedent purposes.

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<sup>5</sup> The *Customs Tariff Act 1995*, incorporating Australia's customs tariff, is available on [www.customs.gov.au](http://www.customs.gov.au).

<sup>6</sup> Available on [www.customs.gov.au](http://www.customs.gov.au).

## **V. AUSTRALIA'S EXPERIENCE**

35. Binding advance rulings provide Customs and importers with certainty regarding the treatment of imported goods.

36. Another positive aspect of having binding advance rulings is that they provide for a greater level of accountability of staff involved in the decision-making process. Other officers empowered to make like decisions can contemplate the reasoning for decisions and this logic can be questioned, or used to support deliberations involving similar issues.

37. The availability and accessibility of recorded decisions on TAPIN is of great benefit to Customs in that it contributes to the uniformity and consistency of decisions. The retention of decisions on TAPIN can reduce the time taken in making decisions. Furthermore, binding rulings can be dependant on legal precedents and all decision-makers might not know of the existence, or relevance, of decisions of Courts or the Administrative Appeals Tribunal.

38. The TAPIN database used by Customs provides for transparency in the decision-making process: the decision-maker is required to document the reasons for the decision, and that decision and reasoning are available to the applicant and to other Customs officers.

39. Until 2002, each regional office of Customs issued VAs. The applicant for the VA could seek an internal review of the VA. That review would be conducted in the Customs office where the original decision was made. The review decision could be subject to a second review where the applicant disagreed with the review decision. The second review was undertaken in Central Office. TAs were issued and were subject to review in the same way as VAs.

40. As part of broader measures to improve business practices and to ensure a quality service, Customs conducted a review of the VAs (and of TAs) in 2002. In the interests of providing greater certainty and a speedier resolution of issues, Customs decided that, from 1 August 2002, all VAs would be issued from its regional office in Melbourne, and that all VAs would be subject to only one internal review, in its Central Office. (Customs also decided that, from 1 July 2002, all TAs would be subject to only one internal review). As a consequence of the revised review process, all reviews of binding advance rulings (i.e., VAs, TAs and Origin Advices) are now conducted in Central Office.

41. As a result of the changes of 2002, the VAS has been streamlined with valuation issues now being finalized quicker.

## **VI. COSTS**

42. The resources devoted to issuing VAs and TAs are as follows: two officers issue VAs, and around 35 officers issue TAs among other tasks. The resources devoted solely to the issuing of TAs (the most frequently requested service) would equate to around 25 officers. The TAPIN database was recently redeveloped at a cost of around A\$600,000. The annual operating costs for TAPIN (covering maintenance, regression testing of changes, fixes and minor enhancements and system changes brought about by the impact of other associated computer systems) is around A\$150,000.

43. By their nature, advance rulings are sought where there is doubt over classification, valuation or preference eligibility of a particular good. While there is a cost in issuing advance rulings, an advance rulings system results in efficiency gains, in improved compliance and in fewer disputes. The costs outlined above reflect the automated system used by Australia. Actual implementation costs would depend on the type of the system adopted by individual Members, as well as the volume of requests handled by the system.

## **VII. TECHNICAL ASSISTANCE AND CAPACITY BUILDING**

44. Members that do not currently provide advance rulings may require technical assistance to put in place an advance ruling system adapted to their circumstances, and to train staff in its operation. The Asia-Pacific Economic Cooperation (APEC) has put in place a Collective Action Plan (CAP) aimed at establishing advance classification ruling systems in member economies. Seventeen member economies have adopted procedures to accept requests for, and provide, an advance classification ruling. A further two are in the process of adopting procedures.

## **VIII. CONCLUSION**

45. This paper outlines the system in place in Australia for issuing advance rulings. Australia recognizes Members will need to implement advance rulings in a way best suited to their own national customs infrastructure, according to the means available to them. Nevertheless, Australia considers the following basic principles should underpin any advance ruling system:

- rulings should be issued in writing;
- rulings should bind the issuing authority (whether or not codified in legislation);
- rulings should remain valid for a defined period of time, which should be communicated to the trader;
- the system should nonetheless incorporate flexibility for authorities to modify or revoke rulings under certain clearly defined circumstances. Traders should be notified in writing of any modification or revocation, and the reasons for it;
- there must be an opportunity for a trader to seek a review of the ruling;
- the desirability of making available information on rulings with precedent value needs to be balanced with legitimate confidentiality considerations;
- internal records of rulings should be kept to ensure consistency of decision-making; and
- information on the process for obtaining advance rulings should be easily accessible, to enable traders and their agents to benefit from the service.

46. An advance ruling system based on these principles, however basic in itself, would provide greater certainty, transparency and predictability for traders and authorities alike, consistent with the aims of GATT Article X.

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