

## **Technical note on the WTO Trade Facilitation Agreement**

### **Article 3: Advance rulings**

This document is an extract from  
*"Getting down to business: Making the Most of the WTO Trade Facilitation Agreement"*,  
published by the International Trade Centre in partnership with UNCTAD and UNECE.

## CHAPTER 3 ADVANCE RULINGS

### Advance rulings: Article 3

Inconsistent treatment applied to imported goods raises uncertainties for traders who do not know how their goods will be treated at the border in terms of classification, rules of origin and/or customs value.

Article 3 on advance rulings enhances predictability and transparency of cross-border trade transactions. An advance ruling is defined as a written decision provided by the authorities to traders (upon request) prior to the transaction, which sets forth a transparent and formal process for treatment of goods with regards to the goods' tariff classification and rules of origin.

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*Each Member shall provide binding written decisions about admissible customs disciplines to traders before the importation of goods.*

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The ruling obtained is legally binding on the customs authority as well as, in some countries, on the trader over a fixed time period.

### The measure

#### ARTICLE 3 ADVANCE RULINGS

1. Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
2. A Member may decline to issue an advance ruling to the applicant where the question raised in the application:
  - (a) is already pending in the applicant's case before any government agency, appellate tribunal, or court; or
  - (b) has already been decided by any appellate tribunal or court.
3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.
4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.
5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.
6. Each Member shall publish, at a minimum:
  - (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
  - (b) the time period by which it will issue an advance ruling; and
  - (c) the length of time for which the advance ruling is valid.

7. Each Member shall provide upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.
8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.
9. Definitions and scope:
- (a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
    - (i) the good's tariff classification; and
    - (ii) the origin of the good.
  - (b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on:
    - (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
    - (ii) the applicability of the Member's requirements for relief or exemption from customs duties;
    - (iii) the application of the Member's requirements for quotas, including tariff quotas; and
    - (iv) any additional matters for which a Member considers it appropriate to an advance ruling.
  - (c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.
  - (d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

## Understanding the measure

### *What is covered?*

#### *Scope*

If requested, WTO Members must provide advance rulings on tariff classification and the origin of goods. In addition, they are encouraged to provide advance rulings on:

- a) The appropriate method or criteria used to determine the customs value under a particular set of facts;
- b) The applicability of Member's requirements for relief or exemption from customs duties;
- c) The application of the Member's requirements for quotas, including tariff quotas; and
- d) Any additional matters for which a Member considers it appropriate to issue an advance ruling.

### *Core obligation*

Each Member is required to set up procedures to issue written advance rulings in a reasonable, time-bound manner to applicants who submit written requests. The ruling will be binding on the Member that has issued it, in respect of the applicant that has sought a decision from that member country. In addition, it is optional for the Member to provide that the ruling is also binding on the applicant.

### *Legal standing to submit advance rulings requests*

The advance ruling is to be issued upon request from an importer or exporter or any person with a justifiable cause. Thus, a carrier, a freight forwarder, a customs broker, or even a representative of any of the aforementioned individuals may request an advance ruling.

Members have the discretion to require that the applicant has legal representation or registration in its territory. However, this requirement should not restrict the categories of persons eligible to apply for advance rulings, in particular representatives from SMEs.

### *Publication*

Each Member shall publish, at least:

- a) The requirements needed to submit the application for an advance ruling, including the information to be provided and the format;
- b) The time period within which it will issue an advance ruling; and
- c) The length of time for which the advance ruling is valid.

In addition, Members should make publicly available any information on advance rulings, which it considers to be of significant interest to other interested parties, while protecting commercially confidential information.

### *Declining requests for advance rulings*

A WTO Member may decline to issue an advance ruling to the applicant where the question raised in the application:

- a) Is already pending in the applicant's case before any government agency, appellate tribunal, or court; or
- b) Has already been decided by any appellate tribunal or court.

The use of the word 'may' means that the WTO Member can only refuse to issue an advance ruling in those specific cases listed above. If a Member declines to issue an advance ruling, it is required to promptly notify in writing the applicant.

### *Validity, revocation, modification or invalidation of advance rulings*

Article 3.3 requests member countries to ensure that the ruling be valid for a reasonable period of time after its issuance – unless the laws, facts or circumstances supporting that ruling have changed – to ensure certainty and predictability of the treatment of goods at the time of import.

If a Member decides to revoke, modify or invalidate an advance ruling, the Member must promptly notify in writing the applicant, setting out the relevant facts and the basis for its decision. If a Member revokes, modifies or invalidates an advance ruling with retroactive effect, it may only do so where incomplete, incorrect, false, or misleading information was provided in the request for the advance ruling.

Members are also required to provide, upon written request of the applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling. The review may be provided – either before or after the ruling has been acted upon – by the official, office or authority that issued the ruling, or by a higher or independent administrative authority, or by a judicial authority.

### ***What is not covered?***

The measure does not require the member country to have a dedicated facility issuing advance rulings at every customs office. In countries that have already implemented the measure, the best and most efficient practice is for a national level facility in the headquarters of the customs authority.

There is no obligation to create a separate functional unit that handles advance rulings. However, it is recommended to centralize technical competence in a specialized office to ensure consistency and accountability of decisions.

The measure does not also specify duration of validity of the advance ruling, or the time period by which Members will issue the decision. Each Member can decide and publish the time period to issue an advance ruling.

### **Benefits and opportunities for stakeholders**

Advance rulings foster transparency and certainty of cross-border trade transactions. Prior knowledge of goods treatment at the border will enable traders to make a rational decision on the commercial viability of their operations, quantities to be imported or pricing in domestic markets.

Processing times, documentary requirements and costs of compliance for traders will reduce when they are able to prepare for compliance with regulatory requirements before importation.

Reduced workload and delays at the border will also mean that customs authorities will be able to accelerate clearance procedures and decrease the need for storage facilities.

### **Implementation**

#### ***Implementation checklist***

The following checklist may be used to estimate the level of compliance with the measure:

- Advance rulings are issued in a timely manner, upon written request of an applicant.
- Advance rulings are valid for a reasonable period of time.
- Written notice is issued to the applicant when (and if) an advance ruling is refused, revoked, modified or invalidated with a clear explanation.
- The advance ruling is binding for the customs administration.
- Applicants are entitled to a review of the advance ruling and the decision to revoke, modify or invalidate it.
- Requirements for advance ruling application (information, format etc.), timeframe for issuance and period of validity are published.
- Efforts are undertaken to make information related to advance rulings publicly available.

### Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

	Actions suggested
<b>Implementation sequence</b>	<b>Preparatory phase</b>
	Identify a project team including legal, customs, border control, ICT, human resources experts as well as key decision makers within relevant ministries, government agencies and private sector.
	Formulate an advance ruling procedure that is acceptable for all parties and, if possible, follows international standards and best practices.
	Nominate a lead agency to lead the project.
	Carry out a needs assessment to identify changes needed to legal and institutional frameworks of the country.
	Carry out a needs assessment with the lead agency and other border control agencies to identify changes needed to workflows, business processes and procedures, human resources (organizational structures) and training needs.
	<b>Set-up phase</b>
	If necessary, adopt an appropriate legal and administrative framework to implement the measure.
	Analyse and change existing workflows and business processes to find solutions and mechanisms for incorporating regular consultations with the private sector into the administrative framework.
	According to the scope of action and responsibilities of the team dealing with advance rulings, assign appropriate financial and human resources.
	<b>Management and follow-up phase</b>
	Nominate an agency responsible for monitoring and evaluation.
	Periodically review and implement modification or upgrades to the advance ruling scheme.
	Ensure that feedback from consultations is systematically incorporated into the administrative framework to prepare advance rulings.
<b>Average time for implementation</b>	One year.
<b>Leading implementation agency</b>	The customs administration is most commonly chosen as the leading implementation agency

### Key challenges

The lack of national legal frameworks for determining advance rulings and their amendment, revocation and appeal is a key challenge. In LDCs, it may be challenging to identify previous advance rulings, particularly in those countries with poor ICT capacity. Lack of collaboration between a large number of agencies is also a common challenge. The private sector may not be aware of provisions governing advance rulings. Samples of goods may be required to be assessed in laboratory facilities when it is difficult to determine the nature and origin of the goods.

### Key factors for success

A clear legal framework for the regulation of advance rulings is crucial to ensure efficient implementation. Establishing a specialized team for advance rulings in customs headquarters, with improved ICT infrastructure, will also be a key factor. A national computer database – continuously updated – for rulings will enhance coherence, consistency and predictability of decisions. Use of a monitoring mechanism to ensure that all requests are readily answered in a reasonable time period would also be highly beneficial. A

robust public awareness campaign is vital to ensure that traders can benefit from this measure, strengthening relations between customs authorities, government officials and traders.