



ADVANCE RULINGS FOR VALUATION

WCO

BACKGROUND

- ◉ Concept of advance rulings well established for classification and preferential origin
- ◉ Easier to express and define (e.g. HS Code or country of origin)
- ◉ More problematic for valuation purposes:
 - Value varies between consignments; quantity, freight terms etc.
 - Different elements make up Customs value (e.g. Article 8 adjustments)
- ◉ Discussions taken place in WTO Doha Round talks
- ◉ RKC refers to provision of rulings and decisions by Customs (Chapter 9)

BENEFITS

- ◉ An important part of an effective Customs compliance programme
- ◉ Trader gets benefit of greater certainty regarding duty liability
- ◉ Reduces likelihood of Customs' interventions = leading to swifter clearance of goods
- ◉ Customs benefit from advance knowledge of anticipated importations
- ◉ Useful for risk management purposes.

WHAT IS POSSIBLE?

Consider the provision of a ruling or advice on specific aspects of a Customs value

Examples :

- ◉ Is a particular royalty or licence fee includable under Article 8.1 (c)?
- ◉ Is a commission paid to an agent or broker deemed to be a buying or selling commission under Article 8.1 (a)?
- ◉ In a multiple sales situation, which transaction meets the criteria of Article 1.1 and should be used as the basis for the price actually paid or payable?
- ◉ Where buyer and seller are related, has the relationship influenced the price?
- ◉ Where T.V. cannot be applied, which alternative method is appropriate to use?

GENERAL RECOMMENDED PROCEDURES (I)

- ⦿ Provide in form of written statement issued by Customs that interprets facts presented
- ⦿ Subject to national decision, a ruling may be binding on both Customs and the importer
- ⦿ Some administrations provide general advice which is not considered binding
- ⦿ Examine all relevant information provided; request more if not sufficient
- ⦿ Respond as appropriate; for example, based on the information provided, a particular element is/is not included in the Customs value

GENERAL RECOMMENDED PROCEDURES (II)

- ◉ Make clear that ruling will be invalid if any particular changes
- ◉ Applicant must give notice of change in status (e.g. a variation to the terms and conditions of sale etc.).
Customs should then review and update ruling as necessary
- ◉ Applicant should make reference to the ruling on applicable entry documents
- ◉ Customs may verify the facts at the time of importation to ensure they are the same as those on which the decision was based
- ◉ Customs should advise that rulings may be modified or revoked when found to be in error or no longer in accordance with official Customs position

GENERAL RECOMMENDED PROCEDURES (III)

- ◉ Established time frames for Customs to respond to requests for rulings, e.g. 90 days, and length of time rulings will be valid, e.g. 3 years (unless otherwise amended or revoked)
- ◉ Establish legal basis or administrative arrangement governing request and issuance of rulings, including right of appeal
- ◉ Whether rulings are issued centrally or regionally, advice and rulings should be made available to all Customs offices responsible for valuation controls, ideally via database
- ◉ Rulings may be published on Customs web site for reference, respecting confidentiality considerations etc.
- ◉ Typically, no fees are charged for providing rulings. Any charge should be made in accordance with Article VIII:1 of GATT 1994, i.e. only apply on a cost recovery basis.

INFORMATION TO BE PROVIDED

(I)

Complete statement of background facts, including:

- ◉ Names, addresses and other identifying information of all interested parties
- ◉ Name(s) of Customs clearance point(s) at which the merchandise will be entered (if known)
- ◉ A statement that there are, to the best of the importer's knowledge, no issues concerning the commodity for which a ruling is sought pending before any Customs offices or ports of entry or before any court
- ◉ Whether advice has been previously sought from Customs concerning the commodity in question. If so, state from whom and what advice was given etc.
- ◉ Applicant may also state their own opinion on decision being sought.

INFORMATION TO BE PROVIDED

(II)

All relevant facts relating to the transaction, including:

- ◉ Description of the transaction/s, (contract, terms of sale etc.)
- ◉ Any relationship between the parties
- ◉ Specific information, depending on issue in question. For example:
 - Regarding a commission paid by buyer, provide details and documentation pertaining to roles of parties and the payment of the commission
 - Concerning a royalty payment, provide the licence agreement and sales contract
- ◉ Any other information relevant to determination of the value

A standard application form may be devised to assist applicants in providing all relevant data.