

Commercial Customs Operations Advisory Committee
Trade Modernization Subcommittee
Rulings and Decisions Improvement Working Group
March 1, 2017

COAC

COMMERCIAL CUSTOMS OPERATIONS
ADVISORY COMMITTEE

Commercial Customs Operations Advisory Committee

Trade Modernization Subcommittee, Rulings and Decisions Improvement Working Group

DRAFT Recommendations

March 1, 2017

Recommendations on Rulings and Decision Improvements:

Resource Allocation

Recommendation #1

COAC recommends that in light of the foreseeable, imminent shifts in U.S. trade and border policy, CBP should ensure that R&R possesses the necessary resources to maintain trade and other critical subject matter priorities despite other issues that may become of significant concern. COAC also feels this is necessary due to the Administration's mandate to eliminate two regulations for every one regulation that the Government issues.

Recommendation #2

In order to expedite and facilitate the review and approval of rulings and decisions, COAC recommends CBP and R&R undertake a review of its organizational structure to optimize its resources particularly to ensure that it operates at a sufficient supervisor to attorney ratio. The ratio should be a key consideration in the organization of R&R. For instance the Tariff Classification and Marking Branch has one supervisor for nineteen (19) employees and presently covers subject matter that four branches previously handled.

Communication and Outreach

Recommendation #3

COAC recommends that until the rulings submission process is fully automated, R&R should provide a template and/or checklist to the Trade to help ensure ruling requests and protests include all vital information needed for R&R's deliberation.

Recommendation #4

COAC recommends that R&R conduct outreach, as resources permit, at association events and via webinars to clarify the type of information and best practices the Trade should consider when requesting a ruling or decision.

Recommendation #5

To enhance consistency and uniform decision making, COAC recommends that R&R take steps to ensure robust internal communication between R&R and the Centers to convey significant, pending R&R matters, using to the extent possible, electronic means.

Process Improvement & Efficiencies

Recommendation #6

COAC recommends, as is specified in the Trade Facilitation and Trade Enforcement Act (TFTEA), that CBP should encourage bi-directional training that enhances R&R subject matter expertise. CBP should support and encourage greater participation of R&R attorneys in training programs that are provided to Centers and/or Port personnel. R&R attorneys should also take advantage of training offered by universities, trade associations or other institutions.

Recommendation #7

In order to enhance and/or facilitate R&R technical expertise and greater exposure to operational matters, R&R should consider placing R&R attorneys, on a temporary duty basis, in the Centers and/or ports. This should enable R&R to be more interactive with the Centers and/or ports, and could be done on a virtual basis, provided that the necessary electronic environment between R&R and Centers and/or ports is made available.

Recommendation #8

COAC recommends, to assist in alleviating the backlog of rulings, that R&R consider offering a new option for the protestant to request an expedited sixty (60) day Application for Further Review (AFR) decision that would not result in a written published decision by R&R but would merely instruct the Center to grant or deny the protest. The use of this process would be at R&R's discretion and would be considered for future as well as pending AFRs.

Recommendation #9

COAC recommends that in order to expedite the issuance of substitution drawback rulings under the Trade Facilitation and Trade Enforcement Act (TFTEA), R&R should leverage the expertise of the National Commodity Specialist Division (NCSD) as appropriate.

Automation, Innovation & Visibility

Recommendation #10

COAC recommends that CBP and R&R devote resources to develop an automated process/system for the submission, processing and dissemination of all types of ruling requests and decisions.

Recommendation #11

COAC recommends that CBP provide funding for R&R to develop a web based, end to end case management system. This system should contain functionality that, at a minimum: receives the submission of ruling requests, creates records of such inquiries, enables the submitting party to check status and receive major milestones of case processing, records and disseminates and publishes the ruling or decision once the ruling or decision is final.

In the interim R&R should notify the inquiring party of major milestones including: case received, case assigned, awaiting information, in process, and decision rendered. Leveraging current document imaging functionality, R&R should provide a mechanism to receive ruling

requests electronically via email and once the decision or ruling is rendered, email a copy to the inquiring party.

CROSS Rulings Database

Recommendation #12

The sheer number of rulings in CROSS since its inception and the existing revocation process (19 U.S.C. 1625) impedes R&R's timely decision making process on issuing tariff classification rulings. COAC recommends that R&R should study the feasibility of sun-setting older (such as, 3 - 5 years old) classification rulings that R&R has issued (NY and/or HQ rulings), the necessary regulatory updates that would be required, whether the sun-setted rulings would still be available for access in CROSS or elsewhere for historical purposes only, or deleted automatically when the ruling reaches the 3 or 5-year time frame, the impact of such sun-setting on parties to whom the rulings have been issued as well as other parties that rely on such rulings, and options for "exceptions" of sun-setting any particular ruling if the ruling is still being used.

Recommendation #13

COAC recommends that R&R, in conjunction with OIT, research what enhancements could be made to the CROSS system search and notification/alert features, as commercially permissible and financially practicable.

Binding Ruling Requests & Reasonable Care

Recommendation #14

COAC recommends that its proposed Mitigation Guidelines Working Group address with R&R whether the pendency of a response to a prospective ruling request affects a determination as to whether the submitter exercised reasonable care.