

Commercial Customs Operations Advisory Committee (COAC)

Government Issue Paper: Rulings & Decisions Improvement

March 1, 2017



U.S. Customs and
Border Protection

Rulings & Decisions Improvement Working Group Trade Modernization Subcommittee

STATUS:

The COAC Trade Modernization Subcommittee has established the Rulings and Decisions Improvement Working Group (RDIWG) that seeks to identify areas for process improvement in the receipt and issuance of CBP Headquarters rulings and decisions focusing on tariff classification, valuation, origin, preference programs, drawback and other aspects of the entry and duty refund process. The goal is to retain the high quality of existing rulings, while substantially improving communication with the trade and the delivery time of the rulings.

Since its inception on November 22, 2016, the RDIWG has convened in six teleconferences, and met in-person for a two-day meeting on January 31 and February 1, 2017. The RDIWG has adopted a Statement of Work, and has representation from both government and the trade. The government representatives are familiar with the process of issuing rulings and decisions and the structure of CBP Office of Trade Regulations & Rulings (R&R), which is responsible for the issuance of CBP Headquarters rulings and decisions. The trade representatives include individuals representing brokers, forwarders, sureties, express carriers, law firms representing importers, and trade organizations, all of whom represent or are requesters and recipients of CBP Headquarters rulings and decisions, and work with R&R, and rely on CBP Headquarters rulings and decisions. The trade members were selected based on recommendations of participants and applications to participate.

To achieve its goals, RDIWG is considering the following issues, in accordance with its Statement of Work:

- 1) Whether the current processes and procedures for rulings and decisions set forth in part 177 CBP regulations should be amended. If so, how should they be amended?
- 2) Whether communication and transparency between R&R and the trader is adequate, concerning the necessary information and documentation for, and the receipt, processing, and delivery of the rulings and decisions. If not, what enhancements should be considered?
- 3) Whether the current resources in R&R are sufficient to deliver high quality rulings and decisions within adequate timeframes. If not, what resources should be provided?
- 4) Whether R&R should offer alternative tools in addition to rulings and decisions to provide necessary guidance to the public. If so, what should those tools be?

The RDIWG has drafted a number of recommendations, which are being reviewed in anticipation of submitting them for consideration at the March 1, 2017, quarterly COAC meeting. The draft recommendations address:

- 1) resource allocations within R&R;
- 2) communication and outreach by R&R within CBP and to the trade;
- 3) process improvement and efficiencies consisting of more interaction between and among R&R and the Centers of Excellence and Expertise and/or ports; expedited Application for Further Review of protest decisions in certain circumstances; training for R&R employees; and leveraging National Commodity Specialist Division expertise for substitution drawback contracts mandated under the Trade Facilitation and Trade Enforcement Act (Pub. Law 114-125);

- 4) automation, innovation and visibility consisting of long-term automation system development and enhancements of communication between R&R and the trade, and short-term communication improvements; and
- 5) consideration of limiting the duration of the binding effect of rulings and decisions (sunsetting), and upgrades to CROSS Rulings database.

The RDIWG intends to extend its operation until the May 3, 2017, quarterly COAC meeting to continue its work.

BACKGROUND:

The current system of CBP rulings and decisions, e.g., binding rulings, internal advice and protest review decisions, affords an indispensable degree of transparency and guidance for the international trade community, which includes numerous domestic U.S. manufacturers. These decisions are critical for trade facilitation and trade enforcement. R&R provides these tools that are vital for both proper business planning and for affording traders due process. This process includes the review and reconsideration of binding CBP rulings and decisions to promote uniform guidance. However, in a number of instances, the prolonged time taken for consideration and issuance of these decisions may diminish their value to the trader.

CBP's system of rulings is the most comprehensive in the customs and border protection world. No other customs administration publishes so many rulings (more than 193,000) on the internet, searchable in full text on so many relevant customs subjects, from tariff classification to valuation, the application of free trade agreements, to entry procedures and drawback, to the application of the navigation laws. These rulings are often cited with approval by the courts. CBP is aware of concerns from stakeholders that the timeliness of issuance of CBP Headquarters rulings should be improved, as well as communication with the trade with respect to matters pending before CBP. Accordingly, the RDIWG was constituted to receive suggestions and feedback from the trade, and for CBP to share its existing processes, with a view toward formulating recommendations for CBP's consideration on how the rulings process can be expedited and its transparency enhanced.