

The Rulings Process Reviewed

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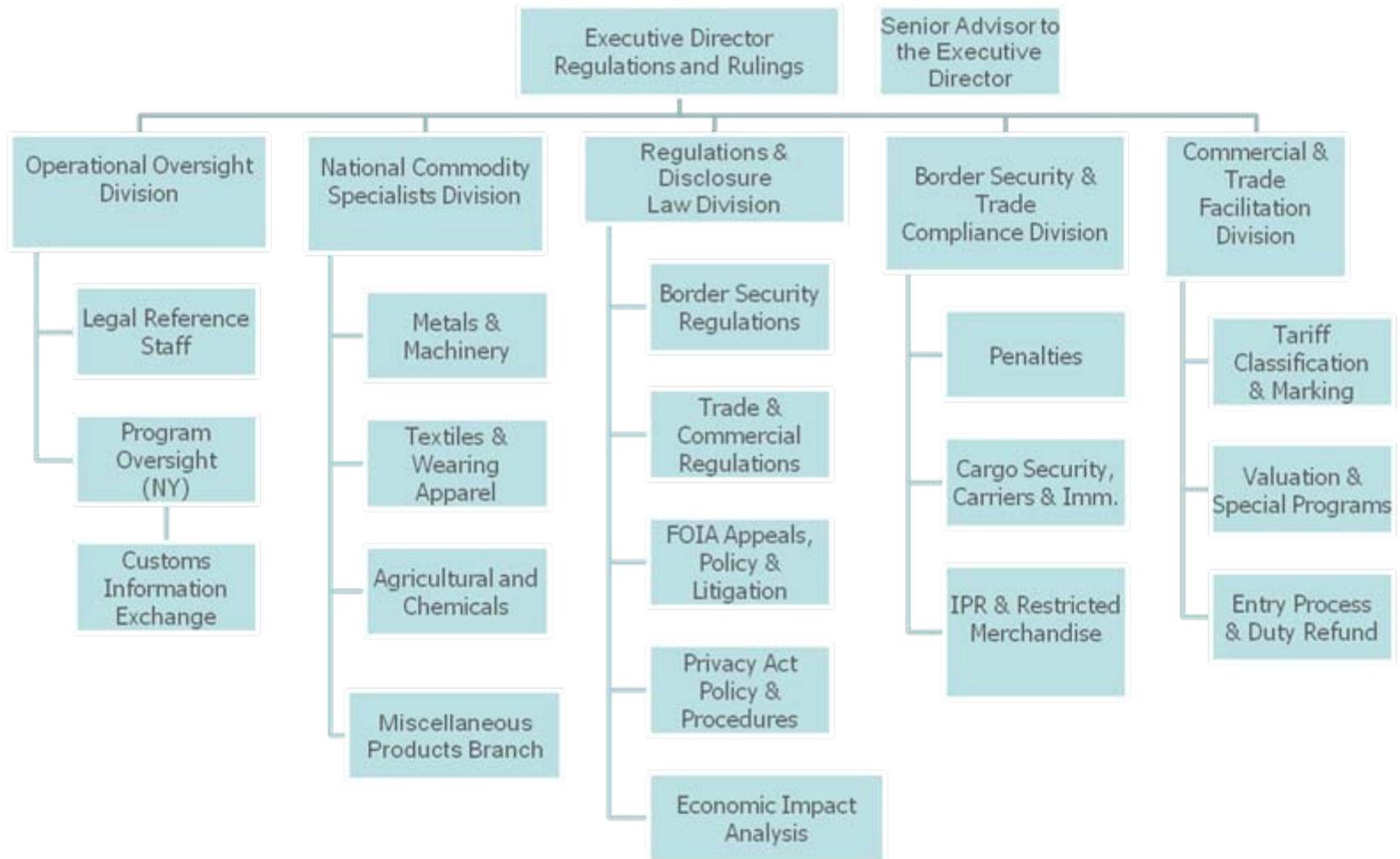


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Ruling Basics

- Why Does U.S. Customs and Border Protection (“CBP”) Issue Rulings?
- Who Issues CBP rulings?
- What is the difference between a ruling, an internal advice decision and a protest review decision?
- What is the effect of CBP Rulings?
- What is the Process for Modifying or Revoking a Ruling?

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Other R&R Activities

- Drafting all CBP Regulations
- Comment on Proposed Legislation
- Representing at WCO on Classification, Value and Origin
- Providing Litigation Support
- Internal Training and Public Outreach
- Informed Compliance Publications
- Advice to OT on ACE and other Operations



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Revisiting Advance Ruling Benefits

- Predictability
- Business planning
- Facilitation of entry
- Transparency and Guidance to the Public (CROSS)



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Rulings and Trade Facilitation

- The United States, Canada, Australia and Turkey have submitted a proposal under which all WTO members would be obligated to provide advance rulings on request

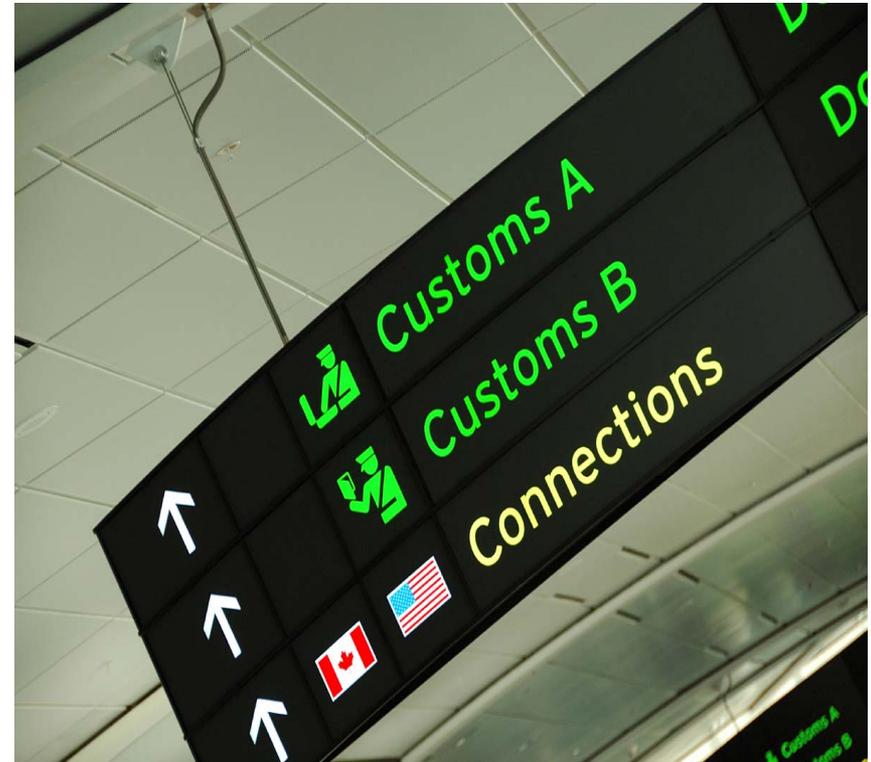


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Rulings and Other Types of Decisions

- Prospective Rulings (19 CFR 177.1)
- Internal Advice (19 CFR 177.11)
- Further Review of Protests (19 CFR 174.23)
- Ruling Reconsiderations (19 CFR 177.12)



Rulings and U.S. Law

- Neither 19 U.S.C. § 1625, nor any other statute, provides for a right to request CBP to issue such rulings and decisions, other than protest review decisions.
- The right to request an administrative ruling or decision, other than an application for further review on a protest from CBP, is entirely an administrative right.
- Rulings are issued when “it is in the sound administration of the Customs laws” to do so.



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Prospective Rulings

- 6821 prospective rulings in FY 2009
- NY rulings issued in 30 days or less
- HQ rulings issued in 90 days

Shared Responsibility and the Ruling Process

- Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter either directly by reference or by implication is accurate and complete in every material respect.
- The application of a ruling letter by a customs service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction. and the satisfaction of any conditions on which the ruling is based.

See 19 CFR 177.9



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What to Include in a Ruling Request

CBP Trade Symposium

December 8-10, 2009

Stuart P. Seidel

Washington, D.C.

Some general points to remember

- Rulings are generally limited to prospective transactions, use IA (177.11) or AFR (174.23) otherwise
- NY can answer most tariff classification, marking and NAFTA requests. HQ OR&R will handle most others
- NY is quick; e-rulings are available but you still have to provide complete information
- Always research GRIs, Chapter and Section notes, ENs, past rulings, court cases and in the case of NAFTA, the latest Rules of Origin

Some general points to remember

- Research CROSS and other search tools using various terms
- For value issues, also consult the the Valuation Encyclopedia
- Review the regulations and statutes for non-tariff rulings (value, entry, drawback, carriers, etc)
- Remember to advise CBP if there are court cases pending
- Each request must state whether issue has been considered by, or is pending before CBP, CIT, CAFC, etc.
- State whether it is one of a series of transactions

Classification Ruling Requests

- Generally addressed to National Commodity Specialist Division in New York
- Complete statement of all relevant facts – include laboratory analysis where appropriate
- Full and complete description of goods to be imported (composition by weight/percentage/volume, use, common name, industry name, selling price, etc., depending on item)
- Include descriptive brochures, photos, specifications, links to website for additional information

Classification Ruling Requests - continued

- When required, samples may be submitted (For security reasons, contact office before sending samples – especially powders or chemicals)
- Include references to rulings on similar goods and any court cases
- Provide definitions of terms with the source of definitions
- Discuss possible HTS alternatives and why you do or do not believe they are applicable
- Use eRulings when you can – be mindful of rules on attachment size and formats - you can “cut and paste” into the eRuling form
- Always give your contact information

Classification Ruling Requests - continued

- NY will not normally handle confidentiality requests
- If your information is not accurate, or if the imported goods do not match the goods as described in the request, the ports can refuse to honor the ruling for the actual goods
- In citing older rulings, note any changes in the HTS language (chapter, heading, subheading or legal notes)

Valuation Ruling Requests

- Identify all parties to the transaction, their location and their relationship to the importer
- Include all relevant facts and describe all transactions, including terms of sale and INCOTERMS used in detail
- In the case of royalties and commissions, include the actual agreements
- Request confidential treatment if appropriate
- Suggest the outcome
- Cite to prior rulings, court cases, Statement of Administrative Action to the Trade Agreements Act, etc.

Country of Origin and Origin Marking

- Identify final product and indicate how it is normally displayed and sold or distributed to purchasers
- Identify each assembly or manufacturing step together with where the operations occur and where the materials were sourced from
- Include detailed bills of materials where appropriate
- Provide illustrations or photographs of proposed marking in relation to rest of product or packaging
- Indicate whether goods will be subject to further processing after importation and describe such processing



Rulings for Other Transactions

- Identify all parties to the transaction and their roles
- Clearly describe the proposed transaction and what type of ruling you are seeking
- Provide all relevant facts
- Provide citations to any pertinent (or conflicting) laws, regulations, instructions, directives, etc.

Contact Information

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Appealing a Ruling

- A person who has received a ruling and disagrees with it has the right to appeal that ruling. See 19 USC 1625 (b)
- Write to CBP HQ and explain the reason you believe the ruling is incorrect



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Internal Advice 19 CFR 177.11

- A field office may request internal advice at any time, but this most frequently occurs when the good has already been imported but CBP has not made its final decision on how the good will be treated.
- May concern the interpretation of a ruling already issued
- As an importer, you must request the advice through the field office.
- Both the port's views and the importer's views are sent to R&R HQ for decision.
- HQ decision governs unless the port asks for reconsideration.



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Review of Protests

- Protest – (19 USC 1514) the means to challenge or contest a decision by CBP as to:
 - the appraised value of the merchandise;
 - the classification and rate and amount of duties chargeable;
 - all charges or exactions of whatever character including the accrual of interest within the jurisdiction of the Secretary of the Treasury;
 - the exclusion of merchandise from entry or delivery under any provision of the Customs laws;
 - the liquidation or reliquidation of an entry, or any modification thereof; and
 - the refusal to pay a claim for drawback



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Seeking Further Review of a Protest

- Most protests are handled at the port of entry
- Protests that meet certain criteria are eligible for further review when requested
 - inconsistent with a previously issued ruling;
 - involves questions of law or fact that have never been ruled on by CBP or the courts;
 - involves previously issued ruling letters or court decisions but the importer is providing new facts or legal arguments that were not presented to CBP or the courts at the time of their decision;
 - involves a question that Regulations and Rulings Headquarters Office refused to answer in the form of an internal advice request.



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Further Review of a Protest cont'd

- R&R decision is issued to the port director
- 60 days to furnish to the protestant
- Published on CROSS
- 180 days for the protestant to file suit in the U.S. Court of International Trade

Reliance and Modification of rulings

- July 30, 1975 - TD 75-186 codification of rulings procedures in regulations
- 1978 Congress added new section 625 to the Tariff Act of 1930 as part of the Customs Procedure Reform and Simplification Act.
 - Detrimental Reliance – 19 CFR § 177.9
- 1993: Congress amended section 625 as part of the Customs Modernization title of the North American Free Trade Agreement (“NAFTA”) Implementation Act (“Mod Act”).
- 2002: Customs set forth the final regulations interpreting and implementing section 625 in Treasury Decision 02-49.



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Reliance before the Mod Act

- 19 CFR § 177.9(d)(2)(v) Detrimental Reliance
 - Basis for Delayed effective date.
 - All of the parties involved in the transaction acted in *good faith in reliance* upon the ruling and retroactive modification or revocation *to their detriment*.

Pre-Mod Act

- 19 CFR § 177.10 Publication of Decisions
 - 19 CFR § 177.10(c) Changes of practice or position
 - Before the publication of a ruling which has the effect of changing a practice and which results in the assessment of a higher rate of duty, notice that the practice (or prior ruling on which the practice is based) is under review will be published in the FEDERAL REGISTER and interested parties given the an opportunity to make written submissions with respect to the correctness of the contemplated change.
 - 19 CFR § 177.10(d) Limiting Rulings
 - A published ruling may limit the application of a court decision to the specific article under litigation, or an article a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.



MOD ACT

- Congress amended section 625 under the Mod Act to:
 1. Reduce the time period for publication from 120 days to 90 days
 2. Create a statutory right to appeal an adverse interpretive ruling; and
 3. Require that a ruling modifying or revoking an existing ruling or treatment be first published in the “Customs Bulletin” for notice and comment.
 4. Require publication of customs decisions that limit court decisions.



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What triggers the modification or revocation process?

- Frequently, the importer requests reconsideration of a ruling that has been in effect for at least 60 days
- CBP believes that a previously issued ruling is incorrect
- CBP believes that previous “treatment” is incorrect



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The Notice and Comment Process

- Publish the proposal in the Customs Bulletin for public comment (30 days)
- Analyze the comments received
- Then either:
 - Publish a final decision (effective 60 calendar days after publication)
 - Withdraw the proposal
 - Issue a modified proposal



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Defining and Interpreting Treatment

- Under 177.12(c)(i), there must be evidence that:
- (A) There was an actual determination by a Customs officer regarding the facts and issues involved in the claimed treatment;
- (B) That Customs officer making the actual determination was responsible for the subject matter on which the determination was made; and
- (C) For over a 2-year period immediately preceding the claim of treatment, Customs consistently applied that determination on a national basis as reflected in liquidations of entries, reconciliation or other Customs actions with respect to all, or substantially all of *that person's Customs transactions* involving materially identical facts and issues.



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Defining Treatment: A Question of Balance

- Customs noted the commercial complexities of customs operations that formed the context in which the regulations were formulated.
 - *Customs must deal with a very large number of import transactions each year and must at the same time facilitate international trade – See 67 FR 53483, Page 53491.*
- Customs was very up front about its need to balance its responsibilities. See 67 FR 53483, Page 53491.



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Exceptions to the Requirement to Publish: Revocation by Operation of Law

- 19 CFR § 177.12(d) –Exceptions to the notice and comment requirements of section 625—
 - Rulings and decisions affected by:
 - Subsequent laws passed by Congress,
 - Subsequent actions taken by the President or other Executive Branch agencies,
 - Subsequent decisions by the courts, or
 - Collateral public notice and comment procedures pursued by Customs under other authority.



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Exclusions from “Treatment”

- 19 CFR § 177.12(c)(iii):
 - The preceding period is less than 2-years;
 - The issue relates to the admissibility of merchandise;
 - There is a false statement or omission in connection with the transaction, or
 - The person has failed to follow Customs advice regarding the manner in which the transaction should be presented.



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Balancing Rulings Program against Other CBP Responsibilities

Without some Limitations on “Treatment”

- Customs would have to monitor all customs transactions of whatever type arising over the preceding 2-years *before issuing a ruling or decision* to determine if section 1625(c) procedures were necessary;
- The number of times in which Customs must initiate section 1625(c) procedures would increase drastically;
- The entry and liquidation process would suffer significant delays
- The prospective ruling and internal advice procedures would be scaled back or eliminated in their entirety.



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Conclusions about Rulings

- CBP has the most open and transparent ruling system in the world
- An advance ruling is the best vehicle for predictability: it is quick and inexpensive and will not be changed without your getting a chance to have your say
- Most rulings are never modified or revoked
- If your good has already been imported, you have the internal advice procedure and perhaps the protest review procedure available to you.



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