

GAC Decree No. 236 on "The Interim Administrative Procedure for Customs Advance Ruling"

On 26 December 2017, the General Administration of Customs ("GAC") released Decree [2017] No. 236 "The Interim Administrative Procedure for Customs Advance Ruling" ("the Interim Advance Ruling Procedure" or "Decree No. 236").

Summary

The Interim Advance Ruling Procedure, which will come into effect on 1 February 2018, was enacted by China Customs for the purposes of promoting trade facilitation, improving the trade environment and providing more certainty to businesses engaged in import/export activities. That is, this new regulation allows importers/exporters to request and obtain a formal Advance Ruling from China Customs, prior to the actual importation/exportation of the goods in question, as per the scope/subject matter and application procedures below:

Ruling Scope	<ol style="list-style-type: none"> 1. Tariff classification 2. Origin 3. Customs Valuation <ul style="list-style-type: none"> • considerations related to the dutiable value determination; • royalty payments, commissions, freight and issuance, etc.; • special relationships between parties; and • other considerations as relevant; • Customs valuation method. 4. Other customs matters prescribed by the GAC
Ruling Applicant	Importer/Exporter of Record (IOR/EOR) registered with China Customs, related to the actual importation or exportation in question.
Ruling Authority	Direct Subsidiary Customs of GAC where the Applicant is registered.
Application Documents	The Application Form for Customs Advance Ruling of People Republic of China ("Application Form") and other relevant documents as required by China Customs. Note: each Applicable Form shall only include one specific subject matter for ruling purposes.
Timeline	<ul style="list-style-type: none"> • The application should be submitted 3 months prior to the planned importation/exportation. (Note: in limited circumstances where the IOR/EOR has an acceptable reason(s), an application may be submitted within the three months period mentioned above.) • Customs shall decide to either accept or decline the application within 10 days of the receipt of the application. • The ruling shall be issued by Customs within 60 days from the acceptance of the application.
Validity	The Applicant should follow the ruling when making import/export declarations for such goods specified in the ruling, and those declarations will be accepted by Customs.
Validity Period	3 years from the issuance date of the ruling, unless it is revoked or withdrawn by Customs before then.

Our Observation

Advance Ruling is a program that has been implemented by Customs administrations in many other countries. Rolling out the program is considered a milestone step for China Customs, as part of its ongoing reform efforts, aligning with its objective of promoting international trade facilitation and pursuing the balance between supervision and service functions.

Impacts on Business

The Advance Ruling program is a proven trade facilitation mechanism for both the Applicant and Customs administration.

More certainty over the customs treatment and duty cost

The implementation of the Advance Ruling program will enable importers and exporters:

- Make import/export declarations in an accurate and compliant manner;
- Improve the predictability of their duty costs;
- Lower the risks resulting from a misinterpretation of Customs rules and regulation and declaration error(s);
- In particular, the 3-year validity period should provide a more stable customs environment for importers and exporters cross-border operations.

More efficient clearance to facilitate international trade

The scope of the Advance Ruling program includes tariff classification, origin, and customs valuation, which are the three most critical areas for China Customs' tariff administration. Advance Rulings will allow the importer/exporter to reach agreement with Customs in respect to uncertainties in these areas before the actual importation/exportation. This should help reduce the possibility of being challenged/interrupted during the import/export clearance process.

Considerations for implementation

The Decree No. 236 outlines the framework of the new Advance Ruling program. It is anticipated that there will be follow-up operational guidelines released shortly with further details regarding the programs implementation.

In particular, we noticed the following issues are still to be addressed:

Transition to the Advance Ruling:

Prior to the release of the Interim Advance Ruling Procedure, China Customs had other processes for the pre-review of classification, valuation or other subject matters. Thus, Customs may have issued formal documents on their opinion already. However, with the new ruling program, the validity of these previous documents now becomes unclear, subject to GAC's clarification on the following:

- Whether the previous formal documents remains valid after the implementation of the Advance Ruling program; and
- Whether importers/exporters that have already obtained such formal documents should apply for an Advance Ruling on the same subject matter after the new program comes into effect.

Validity of the Advance Ruling

In accordance with Decree No. 236, Customs shall accept import/export declarations made in alignment with the Advance Ruling. However, in situations where the Advance Ruling is revoked, withdrawn or invalidated; Decree No. 236 does not specify whether it would retrospectively affect previous importation/exportation, in particular:

- For revoked Advance Rulings caused by fraudulent, inaccurate or incomplete application documents/information, whether the Applicant would be held responsible for previous declarations and therefore, subject to penalties;
- For Advance Rulings withdrawn because of "an Advance Ruling issued by Customs in error", whether the Applicant would be exempted from legal liability and penalties resulting from the incorrect declarations made in accordance with that Advance Ruling.

The authority department for Advance Ruling

The Decree No. 236 does not specify which department(s) within the direct subsidiary Customs shall be responsible for the Advance Ruling program (e.g. acceptance, review and decision, etc.). Though it is anticipated that the Tariff Department will be in-charge, there could still be involvement from other department(s) in the ruling process.

Documentation requirement for the Advance Ruling

Decree No. 236 does not specify in detail, what documents and information are required for the Advance Ruling application. It is expected that the requirements would vary for applications on different subject matters (e.g. classification, valuation, origin, etc.), and these details should be addressed in the operational guidelines issued at a later date. But from a practical perspective, this can be critical for ensuring a smooth application process.

Our suggestion:

In general, the introduction of the Advance Ruling program should benefit importers/exporters with regards to the declaration process and improve operational efficiency across these cross-border activities. By reaching agreement with Customs in advance, importers/exporters will be able to better manage their customs compliance risks.

Manage risk by utilizing Advance Ruling.

- An Advance Ruling provides an additional approach for reducing customs risks.
- If there is any uncertainties in the areas of tariff classification, customs valuation and origin, we suggest companies may wish to explore the feasibility of applying for an Advance Ruling to manage/mitigate the potential risks as much as possible.
- Note, ongoing efforts would be required to ensure trade compliance. Heath-checks conducted on a regular basis is still considered an effective way to achieve this purpose.

Get prepared before applying for Advance Ruling

- Customs could decline a ruling application or even revoke an existing ruling decision if the documents and information provided by the Applicant are not complete or accurate.
- Also, the ruling will be valid for a 3-year period during which the Applicant is not allowed to request a separate ruling on the same subject matter from Customs.
- In this regard, we suggest companies are thorough when preparing their Advance Ruling application in order to avoid an unfavorable result and may wish to seek assistance from external service providers with the requisite technical knowledge and expertise.

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