



PROPOSAL ON ADVANCE RULINGS (ARTICLE 3.1.2)

COMMUNICATION FROM MALAYSIA

The following communication dated 4 March 2013 is being circulated at the request of the delegation of Malaysia for consideration by the NGTF.

1 INTRODUCTION

1.1. Article 3.1. of TN/TF/W/165/Rev.14 makes it an obligation for Members to issue an advance ruling upon receiving a written request containing all the necessary information. The only situation where a Member could refuse to issue a ruling is stated in Article 3.2, which provides for only two situations. Those situations are, "where the question raised in the application:

- (a) is already pending in the applicant's case before any governmental agency, appellate tribunal or court;
- (b) has already been decided by any appellate tribunal or court."

1.2. Article 3.2 is an exhaustive list of grounds on which a Member may refuse to issue an Advance Ruling. It follows that Members could not reject an application for an Advance Ruling on any other grounds. The Malaysian Customs Act 1967 provides for one additional ground on which the Royal Malaysian Customs may decline to issue a ruling, which is if the application is hypothetical.

2 THE ISSUE

2.1. "Hypothetical" describes something that is assumed or based on theory. An example of a hypothetical situation is a plan based on something that might never happen. In relation to our proposed text, it is an application for advance ruling on goods which do not exist or have not been manufactured and therefore should be included as a ground for an application to be declined.

2.2. It is important to ensure that each application submitted is based on the actual goods to be imported or manufactured and not based on assumptions. If this is not emphasized and is not included as a ground to decline the issuance of advance ruling, there are tendencies of arbitrary applications and custom authorities will still need to issue the ruling even though the facts given for such application are just suppositions.

2.3. We believe it is imperative to put a line on the nature of applications to be considered to avoid any unnecessary work affliction and waste of customs resources. Furthermore, such applications could distract customs from applying their resources to genuine applications, and may lead to delay in issuing rulings to other traders.

3 CONCLUSION AND TEXTUAL PROPOSAL

3.1. Based on the above considerations, we believe that it is important for the Advance Rulings discipline in the text to permit Members to refuse an application, where the application is hypothetical. It should be pointed out that such a provision would not oblige Members to refuse applications on that ground, but to simply authorize Members that have such a requirement to maintain it. The textual proposal below is submitted for Member's consideration:

"ARTICLE 3:ADVANCE RULINGS

1. ...
 2. [A Member/The competent authority] may decline to issue an advance ruling to an applicant where the question raised in the application:
 - (a) is already pending in the applicant's case before any governmental agency, appellate tribunal or court;
 - (b) has already been decided by any appellate tribunal or court; **or**
 - (c) **is for a hypothetical situation.**
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