
Simons & Wiskin

Trade Talk

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Study of Possible World Procedure for Advance Customs Rulings

The World Customs Organization (WCO), the Brussels-based international organization responsible for promoting international cooperation on customs matters, is currently examining the possibility of creating a procedure for issuing binding advance rulings on the tariff treatment of merchandise being traded internationally. Binding advance rulings establish the classification and tariff treatment of merchandise before it is imported and are binding both the importer and the government. This facilitates trade by giving the business sector the ability to be

aware of the legal consequences of the transaction and plan pricing strategy in advance. Many countries such as the United States have a procedure for obtaining advance rulings from the national Customs authorities. But an estimated seventy or more countries around the world do not have a reliable system of binding pre-entry tariff classification procedure and are not capable of developing one in the foreseeable future.

Companies that export to these countries must seek advice from customs lawyers or other consultants, and although this professional advice may be reliable, it is not binding on the government of the importing country. For this reason, it has been suggested that such countries may need to have recourse to an institution or authority outside the national Customs administrations to issue advance rulings to the trade community. It has further been suggested that the WCO would be an appropriate institution to perform this function. The WCO has considerable institutional expertise on classification issues, since it is responsible for the development of the international Harmonized System of tariff nomenclature used

as the basis for most national tariff statutes.

In response to this idea, the WCO has conducted a preliminary study of the possibility of establishing an binding advance ruling procedure. WCO presented this preliminary study to the member-country delegates and private sector representatives at a meeting in Brussels on April 21 and 22, 2006. The private sector representatives at the meeting were strongly in favor of the idea. The member-country delegates expressed mixed views, reflecting a concern that the WCO does not currently have the resources for such a program and expressing a preference for development of national-level procedures, but at the same time recognizing that national-level capacity is unlikely to be developed in the near future.

The WCO April meetings concluded with a recommendation that the WCO should continue to study the possibility of creating an advance ruling procedure, with the study to consider technical, legal, and resource issues. The recommendation will also state the preference of the WCO member-country delegates that member-countries should develop their own capability in this area. This recommendation was presented for decision to the WCO Policy Commission in June.

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In the meantime, until either national or international advance ruling procedures are adopted for the countries that do not currently have such procedures, businesses that export to such countries should continue to seek advice from customs lawyers and consultants on the classification and tariff treatment.

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CBP Interim Regulation for Retroactive Refund of Duties Under CAFTA

Customs and Border Protection (CBP) has issued an interim regulation to provide for the retroactive refund of duties under the U.S. Free Trade Agreement with Central American and the Dominican Republic (“CAFTA”). Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States signed CAFTA in August 2004 and Congress enacted the U.S. implementing legislation in 2005. CAFTA entered into force with respect to El Salvador on March 1, 2006, and with to Honduras and Nicaragua on April 1, 2006. It has not yet entered into force for Guatemala or the Dominican Republic.

CAFTA provides for the retroactive application of the preferential tariff provisions of the Agreement with respect to qualifying textile or apparel goods of eligible CAFTA countries that were imported on or after January 1, 2004, and before the date of

entry into force of the Agreement for the country in which the goods originated. Specifically, if a textile or apparel good of a CAFTA country would have qualified as an “originating good” eligible for preferential duty treatment if CAFTA had already been in force, but was entered or withdrawn from warehouse for consumption on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to the country in which the good originated, the entry will be liquidated or reliquidated at the applicable rate of duty for that good under the Agreement, and excess duties paid will be refunded. To be eligible for the retroactive refund, the importer must file a refund request that contains sufficient information to enable CBP to locate the entry or to reconstruct the entry if it cannot be located and to determine that the good satisfies the requirements for eligibility. Under CBP’s new interim regulation, the refund requests must be filed with CBP by the later of December 31, 2006, or the date that is 90 days after the entry into force of the Agreement with respect to the country in question. Thus, the deadline will be December 31, 2006 for goods from El Salvador, Nicaragua, and Honduras, but will depend on the date CAFTA enters into force for Guatemala and the Dominican Republic.

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Firm News

Patrick C. Reed of Simons and Wiskin has been elected vice president of CITBA, the Customs and International Trade Bar Association. As part of his duties as vice president, Mr. Reed will continue to work on proposed legislation to expand the jurisdiction of the U.S. Court of International Trade. He will also continue his international trade law practice with Simons & Wiskin.

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This newsletter is for informational purposes only and is not intended to set forth legal opinions. If the reader has any questions regarding the information contained herein, appropriate counsel should be consulted.

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