

***Customs Administrative Ruling Process
Is Modification in Order? ****

***15th Judicial Conference of the United States
Court of International Trade
November 19, 2008***

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**U.S. Customs and
Border Protection**

Rulings in General

- Why Does U.S. Customs and Border Protection (“CBP”) Issue Rulings?
- On What does the Adequacy of the Ruling Process Depend?
- What is the Process for Modifying or Revoking a Ruling?

U.S. Customs and Border Protection
Statistical Highlights

| | Entry Summaries Filed/Processed | Revenue Collected |
|---------|------------------------------------|-------------------|
| FY-2004 | 28.1 Million | \$26 Billion |
| FY-2005 | 29 Million | \$28.6 Billion |
| FY-2006 | 31.1 Million | \$30 Billion |
| FY-2007 | 30 Million | \$33 Billion |

Revisiting Ruling Benefits

- Predictability
- Business planning
- Facilitates entry
- Guidance to the Public

Grading The US Ruling System

- Transparency: Customs On-line Ruling Search System (CROSS) More than 152,000 Full Text Rulings
- Due Process: Full Right to De Novo Administrative Review 19USC 1625(b)

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

19 USC 1625 - HISTORY

- **1978**: New section 625 governing publication of rulings was 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 issued final regulations interpreting and implementing section 625 in Treasury Decision 02-49.

THE MOD ACT and 1625

- Congress amended section 625 in order to:
 1. Reduce the time period for rulings publication from 120 days to 90 days;
 2. Create a statutory right to appeal an adverse interpretive ruling;
 3. Establish a notice and comment procedure for a ruling modifying or revoking an existing ruling or treatment; and
 4. Require publication of customs decisions that limit court decisions

The 1625 Clock

- Upon publication of a proposal to modify or revoke a ruling or treatment, a minimum of 30 day period for public comment
- CBP is to publish the new decision 30 days after the comment period closes
- Apply the new decision 60 days after publication

THE DECISION TO MODIFY

- 19 USC 1625 is procedural only: silent on the criteria for modification or revocation
- Request for modification by the ruling recipient or other importer
- At CBP's initiative, to align inconsistent rulings or to correct an error

T.D. 02-49

Revocation by Operation of Law

Exceptions to the notice and comment requirements of section 625—

- Rulings and decisions modified or otherwise materially 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 CBP under other authority.
- 67 FR 53483, Page 53492.

See 19 CFR § 177.12(d)

T.D. 02-49: 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.

Conclusions

- The ruling system is generally working well
- Modifications are a very small percentage of total rulings issued
- 1625 is not perfect, but it draws a reasonable line between reliance and the agency's need to properly apply the law

Attachment

§ 1625. Interpretive rulings and decisions; public information

(a) Publication

Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.

(b) Appeals

A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.

(c) Modification and revocation

A proposed interpretive ruling or decision which would—

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision.

After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

(d) Publication of customs decisions that limit court decisions

A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.

(e) Public information

The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs ^[1] laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5.



U.S. Customs and Border Protection