

DRAFT – November 12, 2012

Islamic Republic of Afghanistan

Ministry of Finance

(DRAFT)

Order of Advance Ruling

On Binding Decisions

Chapter One

General Provision

Basis

Article 1

This order is enacted pursuant to Article 17B of Custom Code of Afghanistan and describes procedures for issuance of advance rulings on binding decisions.

Objective and Authority

Article 2

(1) Objective. This regulation sets out requirements for Customs binding decisions on the tariff classification and country of origin of imported or exported goods and the eligibility of goods for tariff preferences under international agreements. It includes rules for importer and exporter's requests for such decisions; Customs processing of such applications; the use of binding decisions when declaring goods to Customs; the revocation, annulment, or invalidity of a decision; and the publication of decisions.

(2) Authority. This regulation also delegates authority, duties and responsibilities for the administration of binding decisions to the Director of Technical Affairs Directorate of the General Directorate of Customs.

Definitions

Article 3

(1) "Applicant" means the person who makes an application for a binding decision or on whose behalf an application is made.

(2) "Binding Decision" means a written decision by Customs provided to an applicant prior to importation or exportation of goods that sets forth the treatment that Customs shall provide to the goods with regard to:

1. the tariff classification and rate of duty applicable to the goods under the Customs Tariff;
2. the country of origin of the goods in terms of Articles 29 and 30 of the Customs Law (hereinafter "**non-preferential origin**"); or
3. the eligibility of the goods for preferential treatment under international agreements to which Afghanistan is a party (hereinafter "**preferential origin**").

(3) "Customs Tariff" this is a document that has defined in article 23 of Afghanistan Custom Code.

(4) "Days" means calendar days, unless otherwise expressly provided.

(5) “Person” and **“Person Established in Afghanistan”** shall have the meaning as defined in Article 3 of the Customs Law.

(6) “Prospective transaction” means a planned future import or export transaction. A transaction is not prospective if it concerns a shipment of goods that has already been declared to or released by Customs, or if the transaction is essentially hypothetical in nature.

Chapter Two

Binding Decision

The Applicant

Article 4

An applicant for a binding decision shall be the importer or exporter of the goods. The applicant shall be a person established in Afghanistan.

The application may be submitted by the authorized representative or agent of the applicant. Customs may require proof that the representative or agent is authorized to act on behalf of the applicant.

Qualifying Transactions

Article 5

A binding decision shall be issued only with respect to a prospective transaction; provided, however, Customs may accept the applicant’s averment without further proof that an application for a binding decision relates to a prospective transaction, unless Customs has evidence to the contrary.

Application

Article 6

(1) An application for a binding decision shall be in written form and must contain the following information:

1. the applicant’s name, address, phone number and, if available, email address;
2. if the application is submitted by a representative or agent on behalf of the applicant, the address, phone number and, if available, the email of that representative or agent;
3. the name of the port or place at which any goods involved in the transaction will arrive or be declared;

4. the type of decision requested (tariff classification, country of origin or eligibility for tariff preferences) and, if the request is for a decision on eligibility for tariff preferences, the applicable international agreement; and
5. an averment that the application relates to a prospective transaction.

(2) The applicant may set out his views in the application as to the tariff classification, origin or eligibility of goods for tariff preferences, as the case may be, and any reasons in support thereof.

(3) The application shall be dated and signed by the applicant or by the representative or agent of the applicant.

(4) In addition to the general information described in paragraph (1), if the application is made for:

1. a tariff classification decision, then the application must include:
 - a full and complete description of the goods to be classified; and
 - if relevant to the proper classification of the goods under the Customs Tariff, information as to the principal use of the goods in Afghanistan, the commercial, common, or technical designation of the goods, and, where the goods are composed of two or more materials, the relative quantity (by weight and by volume) and value of each.
2. A decision on the country of origin or eligibility of goods for tariff preferences, then the application must include:
 - a detailed description of the goods and their tariff classification, if known;
 - a description of the manufacture or other processing of the goods, with the kind and level of detail that is relevant to the rules under which origin is to be determined.
 - any samples, photographs, plans, catalogues or other documents available on the composition of the goods and their component materials and which may assist in describing the manufacturing process or the processing undergone by the materials.

(5) An application for a tariff classification binding decision shall be limited to one specific commodity. One specific commodity shall mean goods representing a single product denomination and branding (marking), producer or manufacturer, composition, structure or any other identical customs nomenclature related characteristics.

(6) An application for a decision on origin or eligibility for tariff preferences shall relate to only one type of goods and one set of circumstances conferring origin or eligibility.

(7) The application should be accompanied by photographs, drawings, or other pictorial representations of the goods in question, and, whenever possible, by a sample, unless a precise description of the goods is not essential to the decision requested. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the ruling request.

(8) Any goods consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis.

(9) Any information that is provided in or in connection with the application that the applicant claims to be confidential must be clearly identified.

(10) The application should be in the form of a letter. If the applicant chooses or is requested to submit any documents with the application, the applicant may submit, and Customs shall accept, copies.

(11) The application must be submitted by mail or delivered by hand to: General Directorate of Customs, *[add here address for mail and physical address for hand delivery]*.

(12) All documents submitted in connection with the application shall be retained by Customs in its files and will not be returned. If the applicant wishes a sample to be returned, the application should so state and should specify the desired means of return.

Customs Registration of Application

Article 7

Customs shall without delay following receipt of the application register the application and assign to it a unique reference number. Customs shall communicate the reference number and date of receipt to the applicant or, if the application was submitted by a representative or agent on behalf of the applicant, to that representative or agent.

Withdrawal of Applications

Article 8

The applicant or his representative or agent may withdraw the application for a binding decision at any time before Customs issues a decision.

Time Period to Take Decision

Article 9

(1) Customs shall promptly review the application and issue a decision as soon as possible but not later than 30 days following the date of receipt of the application.

(2) If unable to issue a decision within 30 days, Customs may extend the period for decision by an additional 30 days.

(3) In such cases, Customs shall, before the expiry of the original time-limit, notify the applicant with respect to article 9 paragraph (2) of this regulation or the representative who submitted the application on behalf of the applicant. The notification shall be made in writing and shall indicate the reasons for the extension.

Requests for Additional Information.

Article 10

(1) Customs may ask the person submitting the application for additional information, if such information is required to make a decision.

(2) Customs shall provide the person submitting the application a reasonable period of time for response.

(3) Until the information is received by Customs the time limit for taking a decision specified in paragraph (1) article 9 of this regulation shall be suspended.

Form of Decision.

Article 11

Customs decision shall be notified to the applicant in writing and shall include the following information:

1. the applicant's name and address;
2. the name and address of the issuing Customs office;
3. the reference number assigned to the application;
4. a description of the goods, sufficient in detail to allow their identification when the goods are declared for import or export;
5. if the application requests a tariff classification, Customs conclusion regarding the tariff classification of the goods;
6. If the application requests a decision on origin or eligibility for tariff preferences, Customs conclusion regarding origin or eligibility and reference to the law under which such conclusion was made, such as the provisions of the Customs Law or regulations or the particular international agreement;
7. the justification for the decision; and
8. the applicant's right of appeal against the decision.
9. The decision shall be signed by the issuing Customs official, with the date and place of issuance.

Refusal to Issue Decision

Article 12

(1) A binding decision shall not be issued if:

1. the application does not comply with the requirements of this regulation;
2. an application was previously made, by or on behalf of the applicant, with respect to the same matters; or
3. The question raised in the application is pending in an appeal to General Directorate of Customs, the Customs Arbitration Administration or a court, or has already been decided by such bodies.

(2) Where a binding decision cannot be issued, Customs shall, pursuant to article (9) paragraph 3 of this regulation within the time limit for decision prescribed notify the applicant in writing specifying the reasons that a binding decision is not issued.

Legal Effect of Decision

Article 13

(1) A binding decision issued by Customs under this part shall be binding on Customs as against the applicant only with respect to goods for which a customs declaration is made after the date the decision is issued. A decision shall be binding on the applicant only with effect from the date on which he receives notification of the decision.

(2) A binding decision shall remain valid for a period of three years from the date of issuance unless it ceases to be valid due to change in law or is revoked or annulled by Customs.

Invalidity Due to Change in Legal Basis of Decision

Article 14

(1) A binding decision concerning tariff classification shall cease to be valid if changes are made to the Customs Tariff and the decision no longer conforms to the law. The decision shall be invalid as of the date of the adoption of changes to the Customs Tariff.

(2) A binding decision concerning origin or eligibility for tariff preferences shall cease to be valid if changes are made to the preferential or non-preferential origin rules under which the decision was issued, and the decision no longer conforms to the law. The decision shall be invalid as of the effective date of the adoption of changes to such origin rules.

Annulment

Article 15

(1) Customs shall annul a binding decision if it determines that:

1. the decision was issued on the basis of incorrect or incomplete information;
2. the applicant knew or ought reasonably to have known that the information was incorrect or incomplete; and
3. if the information had been correct and complete, the decision would have been different.

(2) Customs shall notify the person to whom the decision was issued that it has been annulled, with the reasons.

(3) The decision shall be considered annulled from the date the original decision took effect.

Revocation

Article 16

(1) Customs shall revoke a binding decision if:

1. the decision is not consistent with an interpretation of the law as determined by a final judgment of the Customs Arbitration Administrative or a court; or
2. the General Directorate of Customs specify that the decision no longer conforms to the custom legislation

(2) Customs shall notify the person to whom the decision was issued that is has been revoked, and shall provide the reasons.

(3)The revocation of a decision shall take effect from the date on which the applicant receives the notification of the revocation.

(4) Except where the applicant requests it, the revocation of a favorable decision shall not affect goods which, at the moment where the revocation shall take effect, have already been declared and still are under a customs clearance procedure by virtue of the revoked decision.

Applicant's Obligations in Entry of Goods

Article 17

(1) A binding decision may be used only by the applicant or by his agent or representative on his behalf.

(2) At the time a customs declaration is made to Customs for release of goods subject to the binding decision, the applicant or his agent or representative shall inform Customs that he is in possession of a binding decision in respect of the goods.

- 1.This information shall be indicated on the customs declaration, and shall include the reference number of the binding decision concerned.
- 2.At the request of Customs, the person submitting the declaration shall provide a copy of the binding decision.
- 3.Customs shall assess duty and process the goods declaration in conformity with the terms of the binding decision.

Publication of Binding Decisions

Article 18

Subject to the restrictions under Article 13 of the Customs Law against disclosure of confidential information, Customs shall publish or otherwise make available for public inspection all binding decisions.

Rights of Appeal

Article 19

An appeal pursuant to Article 18 of the Customs Law may be made by the applicant with respect to the following provisions of this Regulation:

1. Customs issuance of a binding decision under Article 9;
2. Customs refusal to issue a binding decision under Article 12;
3. Customs failure to issue a decision within the time limits prescribed by Article 9;
4. Customs revocation of a binding decision under Article 16;
5. Customs annulment of a binding decision under Article 15; and
6. A customs officer's failure to apply a binding decision in connection with entry of goods.

Chapter Three

Administration of Binding Decisions

Establishment

Article 20

Binding decisions shall be administered by the Technical Director of Customs ("Technical Director") of the General Directorate of Customs of the Ministry of Finance. The Technical Director shall perform such duties in connection with administration of the binding decisions program as assigned by the Director General of Customs.

Authority, Functions, and Powers of the Technical Director

Article 21

The Technical Director shall possess the full authority, powers, and duties necessary to administer binding decisions on behalf of Customs as prescribed by this regulation, including, without limitation:

1. taking any action pertaining to the classification, promotion, demotion, reassignment, transfer, or separation of personnel required to administer the binding decision program;
2. proposing the necessary functional organizational units, working procedures, and reporting responsibilities within the Customs Technical Presidency; and
3. publishing or otherwise making publicly available administrative rulings, decisions, and application forms, wherever practical without charge, and through the Internet, subject to obligations regarding protection of confidential data under Article 13 of the Customs Law.

Delegation

Article 22

For the purpose of accelerating the process of facilitation on trade, the Technical Director of Customs may delegate its privileges, responsibilities, powers transferred by this regulation, to the Head of Technical Department or to other subordinates in the Technical Department of Customs.

Reservation**Article 23**

The Director General of Customs shall retain the right to exercise any authority that is delegated under this regulation to Technical Director, and to review his exercise of any authority that is delegated under this Regulation.

Enforcement**Article 24**

This would be enacted as soon as it signed and would be published in Official Gazette.