



NamRA
Namibia Revenue Agency

ADVANCE RULING POLICY

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1. DEFINITIONS

Advance ruling is defined as: “a **binding** official decision prior to an **importation** or **exportation**, issued by a competent Customs Authority in **writing**, which provides the applicant with a time-bound assessment on the goods to be imported or exported”. The main benefit for the applicant of such ruling is that it provides the legal guarantee that the decision will be applied by the authority that issued it at the (time) moment of the importation or exportation.

2. SCOPE OF ADVANCE RULING

An advance ruling on classification, origin or valuation is an official written binding assessment on a specific product issued by the Namibia Revenue Agency (NamRA) upon a formal request by an importer/exporter or other interested person concerning (i) classification of goods; (ii) origin or (iii) the treatment which should be applied on certain element of the Customs value, prior to an import or export transaction, for a specified period. Valuation, classification or origin ruling assists importers with specific issues relating to the assessment of customs value, tariff classification and origin of imported or exported goods.

3. GOVERNANCE AND ADMINISTRATION OF THE POLICY

The implementation of this policy shall be the collective responsibility of the various Departments, Divisions and stakeholders of NamRA, with the necessary support of Management. It is nevertheless necessary to establish a Harmonised Systems, Tariff, Valuation and Origin of goods (HSTVO) Committee(s) (hereafter “the Committee”) who will consider and recommend the approval of the rulings by the Commissioner.

4. APPLICATION REQUEST AND PROCESSING

4.1 An application for advance ruling on **classification** and **origin** shall be made in writing on Application for Advance Ruling form and shall contain the following particulars:

- (a) The details for importer/ exporter i.e. full name, street address, telephone number, email address, and postal address;
- (b) A detailed description of goods;

- (c)** In the case of classification, the classification of goods envisaged (optional); the basis for the classification of the goods (optional);
- (d)** In the case of origin, the country of origin envisaged for the goods; the applicable legal basis, i.e., stating whether the advance ruling required is for preferential or non-preferential purposes;
- (e)** The composition of the goods and any methods of examination used to determine classification, origin and/or valuation;

- (f)** Any Samples, photographs, plans, catalogues, copies of technical literature, photographs, brochures, laboratory analysis results, or other documents available on the composition of the goods and their component materials which may assist in describing the manufacturing process or the processing undergone by the materials or any other documents that may assist the NamRA in determining the correct classification, or origin of the goods;
- (g)** In the case of origin, the conditions enabling origin to be determined, the materials used and their origin, tariff classification, corresponding values and a description of the circumstances (rules on change of tariff heading, value added, description of the operation or process, or any other specific rule) enabling the conditions in question to be met; in particular, the exact rule of origin applied shall be mentioned;
- (h)** Whether the goods in question are the subject of a classification, valuation or origin verification process, or any instance of review or appeal before any governmental agency, appellate tribunal or court;
- (i)** An indication by the applicant whether, to his knowledge, advance rulings for goods or materials identical or similar to those referred to under subparagraphs (b) together with (c) or (g) above have already been applied for or issued;
- (j)** Any information to be treated as confidential, whether in relation to the public or the administrations;
- (k)** Acceptance that the information provided may be stored on the Customs Management Database of NamRA.

4.2 In the case of **valuation**, an application for advance ruling decision shall include a complete statement of all relevant facts relating to the transaction(s), including:

- (a) The details for importer/exporter i.e., full name, street address, telephone number, fax number, email address, and postal address;
- (b) Description of the nature of the transaction(s), (contract, terms of sale, stock transfer, donations etc.)
- (c) Any relationship between the parties.
- (d) Specific information, depending on the issue in question. For example, if the issue is whether the commission paid by the buyer is a buying or selling commission (or whether an agency relationship exists), all details and documentation pertaining to the roles of the parties and the payment of the
- (e) commission would need to be submitted. If the issue concerns a royalty payment potentially includable under Article 8.1 (c) of the WTO Valuation Agreement, the license/royalty agreement and sales contract should be presented along with other relevant information.
- (f) If the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document(s) should be submitted with the request
- (g) A statement that there are, to the best of the importer's knowledge, no issues concerning the transaction(s) for which a ruling is sought pending before any NamRA offices or ports of entry or before any governmental agency, appellate tribunal or court
- (h) Whether advice has been previously sought from NamRA concerning the transaction(s) for which a ruling is sought, and if so, then from whom and what advice was given, if any
- (i) The applicant may also state their own opinion or position in the ruling request
- (j) Any information to be treated as confidential, whether in relation to the public or the administrations; and

- (k)** Any other information relevant to determine the value under the Agreement
 - (l)** Acceptance that the information provided may be stored on the Customs Management Database of the NamRA.
- 4.3 On receipt of the application for advance ruling, the NamRA shall:
 - (a)** Notify the applicant that the request has been received; and
 - (b)** Ask the applicant to supply additional information that may be necessary in the consideration of the request in case the application does not contain all the information required to give an informed decision.
- 4.4 An application for advance rulings can be submitted to any regional office of NamRA in duplicate.
- 4.5 An application for an advance ruling must relate to only one specific kind of goods or to similar goods presenting only irrelevant differences. An application for advance rulings on valuation, the application must relate to transactions between the same parties.
- 4.6 An application for an advance ruling must be signed by the applicant.
- 4.7 An application must be transmitted either electronically or manually to NamRA.
- 4.8 Any application for advance ruling may be withdrawn by the applicant submitting it at any time before the issuance of advance ruling by the NamRA.
- 4.9 The Application for Advance ruling for classification, valuation and origin forms are attached hereto and marked Annexure A, B and C respectively.

5. CONSIDERATION OF APPLICATION

- 5.1 Division Technical Services & Excise Management will receive an “Application for Advance Ruling form” in duplicate, check completeness and provide the copy back to applicant with date of acceptance and registration number.
- 5.2 In case the request come through Regional Offices of NamRA, the Manager will examine the submitted form and related documents, make recommendations, and submit to Division Technical Services & Excise
- 5.3 The rulings will be will assessed and tabled to the Committee as stipulated above under point 3; the Committee will review the ruling and made recommendations to the Head of Customs and Excise for consideration and ultimate decision will be made by the Commissioner.
- 5.4 NamRA endeavor to issue advance rulings within 30 days after acceptance of the application, provided that all required information has been submitted.

6. DECLINING AND POSTPONING ISSUANCE OF ADVANCE RULINGS

- 6.1 NamRA may decline the issuance of an advance ruling or postpone where applicant fails to provide additional information requested under paragraph 3.3(b) within 30 days after the issuance of the letter/request by NamRA.
- 6.2 The issuance of an advance ruling may be declined where goods are the subject of a classification or origin verification process or where a transaction is the subject of a valuation verification process, or any instance of review or appeal before any governmental agency, appellate tribunal or court.
- 6.3 The issuance of an advance ruling may be declined were the

classification, origin or valuation of a good has already been decided by an appellate tribunal or court.

- 6.4 An advance ruling application will be declined when there is already a valid decision for the same importer/exporter for the same commodity.
- 6.5 An advance ruling application is declined when the application is not related to any actually envisaged trade operation (import/export, etc.).
- 6.6 If request is refused, NamRA shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

7. GRANTING OF APPLICATION

- 7.1 NamRA shall grant Advance ruling after the Committee made recommendations to the Head of Customs and the approval will be by the Commissioner. Head of Customs to Chair the Committee.
- 7.2. If the NamRA grants an application, it shall issue to the applicant an advance ruling, stating—
- (a)** The title, number and date of the advance ruling.
 - (b)** The name, address or social reason, fiscal number identification of the recipient of the advance ruling.
 - (c)** Whether it is an advance classification ruling, an advance valuation ruling or an advance origin ruling, and, if an advance valuation ruling, details of the valuation criteria / method(s) to which it relates.
 - (d)** The specific kind of goods to which the advance ruling relates.
 - (e)** Particulars of the transactions to which the advance ruling relate to only one specific kind of goods or to similar goods presenting only irrelevant difference. If it is an advance valuation ruling, the application must relate to transactions between the same parties.
 - (f)** Particulars of the advance ruling made.
 - (g)** Any assumptions made or conditions imposed by the NamRA in connection with application of the advance ruling.

- (h) The period for which the advance ruling will remain valid.
- (i) Any other relevant information.

7.3 Advance rulings on classification, origin and valuation shall be issued in writing to the applicant with:

- (a) An indication of what particulars will be treated as confidential; and
- (b) A notification of the right of review and appeal of the advance ruling.

7.4 When an advance ruling is issued to the applicant, it would be entered into the Customs Management Database of NamRA and thereafter disseminated to all Customs offices in the country.

8. VALIDITY PERIOD OF ADVANCE RULING

8.1 Advance rulings may be used in respect of a particular good only where it is established to the satisfaction of NamRA that the good in question and the circumstances determining its valuation, classification and its origin conform in all respects to those described in the advance ruling.

8.2 Advance ruling will be valid as long as the proof is provided that the goods conform in all respects to those described in the advance ruling.

9. BINDING EFFECT OF AN ADVANCE RULING

9.1 NamRA Advance rulings on classification, valuation and origin are binding on the entire customs administration at all Customs offices and shall be valid for a period of one-year (1) year from the date of issue.

9.2 An advance ruling only binds NamRA as against the recipient of the ruling for the respective advance ruling of the specific goods or matter stated in the advance ruling.

9.3 An advance ruling binds NamRA as against the recipient with regard to the goods or matter stated in the advance ruling from the date on which the decision takes effect.

- 9.4 The recipient of the advance ruling shall be responsible to ensure that there is correspondence in all respects of the goods or matter stated in the advance ruling and those for which the advance ruling is applied.

10. WITHDRAWAL OF ADVANCE RULING

- 10.1. NamRA shall withdraw an advance ruling if the advance ruling was issued as a result of fraud, misrepresentation or incorrect or incomplete or false or misleading information provided by applicant.
- 10.2 Where an advance ruling is withdrawn, the applicant to whom the advance ruling was issued shall be notified of the withdrawal in writing.
- 10.3 NamRA will withdraw advance ruling without replacing it with an amended version retrospectively from the date of issue.

11. MODIFICATION, REVOCATION OR INVALIDATION OF ADVANCE RULINGS

- 11.1. NamRA may revoked, annulled, suspended or withdrawn an advance ruling either on application by the recipient of the advance ruling or on own initiative—
- (a)** To correct an error in the advance ruling.
 - (b)** To give effect to modifications in the Nomenclature, new Classification decisions by the WCO or
 - (c)** other relevant bodies, modification of the Explanatory Notes or decisions by a Tribunal.
- 11.2 Where an advance ruling is modified, revoked or invalidated, the applicant to whom the advance ruling was issued shall be notified in writing of:
- a) Any modification, revocation or invalidation of the advance ruling
 - b) The effective date of the modification, revocation or invalidation
 - c) The relevant facts
 - d) The basis for the modification, revocation or invalidation

12.EFFECT OF MODIFICATION, REVOCATION OR INVALIDATION

12.1 A modification, revocation or invalidation of an advance ruling on classification, origin or valuation shall be effective:

- (a)** From the date on which the modification, revocation or invalidation is issued; and
- (b)** In the case of modification and revocation, until such date as may be specified in the notice given.

13.RETROSPECTIVE APPLICATION OF MODIFICATION, REVOCATION OR INVALIDATION

13.1 A modification, revocation or invalidation of an advance ruling on classification, origin or valuation may be applied with retrospective effect only where the advance ruling was based on incomplete, incorrect, false or misleading information that had been submitted.

14.POSTPONED APPLICATION OF MODIFICATION OR REVOCATION

14.1 The effective date of a modification or revocation of an advance ruling shall be postponed if the person to whom the advance ruling was issued demonstrates that he has relied on that advance ruling in good faith and that the modification or revocation is to his detriment.

14.2 Postponement made under paragraph 13.1 shall be notified in writing to the person to whom the advance ruling was issued.

15.CLEARANCE OF GOODS UNDER ADVANCE RULING

15.1 When clearing goods for home use or a customs procedure under an advance ruling, the recipient of the advance ruling or other person clearing the goods on behalf of the recipient shall—

- (a)** On request furnish such information concerning the goods as NamRA may require and;

- (b) Provide proof to NamRA that the goods conform in all respect to those described in the advance ruling as applied.

16. RIGHT OF REVIEW AND APPEALS

- 16.1 All applicants of advance ruling have the right to reviews and appeals within ninety (90) days of receipt of a written ruling from NamRA and appeals and reviews should be done in accordance with Section 44(6)(c), (d), (e); 75(4)(a);51(8)(b) and (e) of the Customs and Excise Act 20 of 1998 as amended.
- 16.2 Where an advance ruling is modified, revoked or invalidated, and there is no appeal against that modification, revocation or invalidation within the prescribed time limit of ninety (90) days or if such appeal has been made and dismissed, the Office of the Commissioner: NamRA may publish notice of the modification, revocation or invalidation on its website or other appropriate platform.
- 16.3 Appeal against the decision of the Commissioner may be submitted to the Minister within ninety (90) days.
- 16.4 Failing to obtain resolution within the Ministry/NamRA, remedy can be obtained from High Court.

17. PUBLICATION AND CONFIDENTIALITY

- 17.1 NamRA endeavors to make any information on advance rulings on classification, origin and valuation, which may be of significant interest to other parties publicly available.
- 17.2 NamRA will treat the information submitted to it, for the purpose of the application of advance rulings as confidential or shall not disclose it without the specific permission of the person or government providing such information, except to the extent that may be required to be disclosed in the context of judicial proceedings.

18.LEGISLATIVE PROVISIONS

Local Legislative Provisions

17.1 Customs and Excise Act, Act No.20 of 1998, as amended.

- (a) Section 2 The Commissioner to administer this Act
- (b) Section 3 Performance of duties and exercise of powers
- (c) Section 51 Payment of duty and rate of duty applicable
- (d) Section 75 Value for customs duty purposes
- (e) Section 76 Transaction value
- (f) Section 77 Adjustments to price actually paid or payable
- (g) Section 83 Interpretation of sections 75, 76 and 77
- (h) Section 50 Origin of goods
- (i) Section 106 Notice of intended proceedings and period for instituting proceedings

International Legislative Provisions

17.2 World Trade Organization (WTO) - Agreement on Trade Facilitation

- (a) Article 3 – Advance Ruling



Sam SHIVUTE
COMMISSIONER

22 June 2022

DATE