



税务快讯

海关改革再提速——企业可申请海关预裁定

海关总署于近期颁布《[中华人民共和国海关预裁定管理暂行办法](#)》（海关总署第 236 号令，以下简称“第 236 号令”），标志着中国海关正式引入涵盖海关估价、商品归类及原产地等有关事项的海关预裁定机制，对广大期盼就重要涉税要素事先获取具有法律效力的海关意见的进出口企业而言，具有相当重要的意义。该文件将于 2018 年 2 月 1 日起施行。

海关预裁定制度概览

- **申请人：**与实际进出口活动有关，并且在海关注册登记的对外贸易经营者
- **裁定事项：**进出口货物的商品归类、原产地或者原产资格、进口完税价格相关要素（例如，特许权使用费、佣金、运保费、特殊关系等）及估价方法
- **申请时限：**一般应在货物拟进出口 3 个月之前提出
- **受理海关：**申请人注册地直属海关
- **受理时限：**海关应当自收到申请材料之日起 10 日内审核决定是否受理该申请，自受理之日起 60 日内（不包括化验、检测、鉴定、专家论证或者其他方式确定有关情况所需时间）制发《预裁定决定书》。
- **效力时限：**预裁定决定自送达申请人之日起生效，有效期通常为 3 年，且对于其生效前已经实际进出口的货物没有溯及力。
- **是否公开：**海关可以对外公开预裁定决定的内容（涉及商业秘密除外）。

德勤评论

海关预裁定制度的正式引入，体现了中国海关为优化营商环境做出的努力，同时也体现了中国对世界海关组织《贸易便利化协定》的承诺。作为通关一体化改革中的一项重要配套举措，该项制度为企业创造了在通关环节之前，就相关涉税事项与海关进行事先沟通并达成共识的机会，

通过出具具备法律效力的《预裁定决定书》，给企业的运营带来确定性，从而提高通关效率，减少法律风险。

其实早在 2000 年版的海关法中，就已明确提出了与预裁定制度十分相似的“行政裁定”的概念；海关总署亦于 2001 年发布了行政裁定的管理暂行办法。从制度框架来看，两者都旨在货物进出口前，对有关海关事务作出具有约束力的决定，从而提高法规适用确定性，因此在内容和程序上都具有较高的相似度，但主要在以下方面存在部分差异：

	行政裁定(第 92 号令)	预裁定(第 236 号令)
裁定事项	不包括进口货物完税价格相关要素、估价方法	包括进口货物完税价格相关要素、估价方法
受理海关	海关总署或总署授权机构	申请人注册地直属海关
受理时限	自收到申请之日起 15 个工作日内审核决定是否受理申请	自收到申请之日起 10 日内审核决定是否受理申请
效力范围	自公布之日起在全国关境内统一适用，但并未明确规定有效期	自送达申请人之日起 3 年，但并未提及具体的适用关境范围
异议处理	申请人对于海关具体行政行为不服，并对该具体行政行为依据的行政裁定持有异议的，可以在对具体行政行为申请复议的同时一并提出对行政裁定的审查申请。	申请人对预裁定决定不服的，可以向海关总署申请行政复议；对复议决定不服的，可以提起行政诉讼。

总体而言，预裁定制度的申请门槛相对较低，相关规定更接地气。因此，预裁定制度有望得到更为广泛的运用。尤其值得关注的是，海关估价方面的海关事务系首次被纳入类似制度，这大大拓宽了其适用范围，预期对降低海关估价相关争议将发挥现实作用。

在海关实践中，海关估价、商品归类和原产地一直是海关关注的焦点，也是进出口人经常面临的难点痛点。自 2017 年 7 月 1 日全国通关一体化改革以来，在提高通关效率的同时，海关监管从进口通关环节后移，因此预计后续的审核与稽查力度会加大。在这一背景下，进出口企业可以积极考虑是否通过预裁定制度降低自身的关务风险。

对于有意申请预裁定的进出口企业而言，建议持续关注预裁定制度的后续动态。预计在 2018 年 2 月 1 日第 236 号令正式实施之前，海关将进一步颁布相关的操作细则。

德勤将陆续发布有关中国海关预裁定制度的系列出版物，与您及时分享相关进展与我们的见解。

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Tax Newsflash

Advance Ruling Regime Introduced for Customs Purposes

China's General Administration of Customs (GAC) recently published guidance announcing the introduction of an advance ruling regime for tariff classification, the origin of goods and customs valuation issues. The new ruling mechanism will apply as from 1 February 2018.

Snapshot of advance ruling regime

- **Applicant:** Foreign trade business operators that are registered with the customs authorities and engaged in import/export activities.
- **Scope:** Tariff classification, origin of goods, customs valuation on pricing elements of imports (e.g. inclusion of royalties, commissions, freight and insurance, whether the special relationship has influenced the price, etc.) and customs valuation methods.
- **Timing of application and place of filing:** An application for an advance ruling generally will have to be submitted at least three months before the date of the proposed import or export of the relevant goods. The application will have to be filed with the customs authorities in the place where the applicant is registered.
- **Timing of processing:** The customs authorities must decide whether to accept or reject the application within 10 days of receipt of the application package. If the application is accepted, the authorities must decide on the matters and issue the ruling within 60 days (however, time spent on tasks, such as testing and seeking the opinion of experts, will not be considered in counting the 60-day period).
- **Validity period and retroactive effect:** An advance ruling will become effective on the day the ruling is delivered to the applicant, and it generally will be valid for a three-year period. An advance ruling cannot be applied to the import or export of goods before the ruling becomes effective.

- **Publication of rulings:** The customs authorities may publish a ruling, except where trade secrets are involved.

Comments

The introduction of the advance ruling regime signals the intent of the Chinese customs authorities to foster a business-friendly environment and fulfill the country's commitment to implement the WTO Trade Facilitation Agreement. The regime provides importers and exporters with an opportunity to better understand how China's customs laws and regulations will apply to prospective imports or exports. Because advance rulings will be legally binding on customs authorities, they should result in more transparency and certainty for taxpayers.

However, the regime is not entirely new in Chinese customs rules. An "administrative ruling" regime was introduced in 2000, with guidance issued by the GAC in 2001. Many aspects of the administrative ruling appear similar to the new advance ruling mechanism, except for the following:

	Administrative ruling	Advance ruling
Scope	Excluding valuation issues for import dutiable price	Including valuation issues for import dutiable price
Place where application is filed	GAC or its designated parties	Local customs office where the applicant is registered
Timing to decide whether to accept or reject the application	Fifteen business days following receipt of the application	Ten days following receipt of the application
Validity period and jurisdiction	Ruling becomes effective on the day it is published but no validity period is specified, and the ruling is binding on all local customs offices	Ruling becomes effective on the day it is delivered to the applicant, and generally will be valid for three years; it is unknown whether the ruling will be binding on all local customs offices
Administrative/ judicial review	Applicant may apply for a review of the ruling only if it disagrees with both the customs' assessment and the ruling on which an assessment is made, and already applied for an administrative review of the assessment	Applicant may apply for an administrative review with the GAC if it disagrees with the ruling. If the applicant disagrees with the results of the administrative review, it may appeal to court

Overall, the threshold to apply for an advance ruling is relatively lower and the new regime should be more accessible by businesses. It also is noteworthy that valuation issues are included within the scope of a ruling for the first time, so it is likely that the advance ruling regime will be used more widely and result in benefits to more importers.

Tariff classification, the origin of goods and customs valuation have been the primary focus areas of the Chinese customs authorities and are the most challenging for taxpayers. Following the national reform launched in mid-2017 to improve customs clearance procedures, the Chinese customs authorities now place more emphasis on post-clearance audit and investigation. Affected enterprises may wish to consider using the advance ruling regime to obtain certainty and help to

mitigate the risks of challenges in a post-clearance audit and investigation.

Enterprises that are considering applying for an advance ruling should closely monitor regulatory developments, since more implementation guidance is likely to be issued before the regime is formally launched on 1 February 2018.

We will publish a series of publications regarding the advance ruling regime and share more information and insights soon.

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