



税务快讯

海关预裁定操作细则落地——2月1日起取代“三预”

海关总署于2018年1月31日发布[公告2018年第14号](#)（关于实施《中华人民共和国海关预裁定管理暂行办法》有关事项的公告，以下简称“14号公告”），对2月1日起实施的海关预裁定制度提供具体操作指引。14号公告同时规定，自生效日（即2月1日）起，海关将不再受理原先的“三预”（即原产地预确定、价格预审核、预归类）申请，这意味着“三预”正式退出舞台。

海关总署于去年末颁布《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“《暂行办法》”或“236号令”），明确自今年2月1日起正式实施海关预裁定制度（参见[德勤税务快讯](#)）。此次发布的14号公告对《暂行办法》的相关规定进行了细化和补充，并对涉及的文书格式进行了统一规范。

14号公告重要内容

- **预裁定申请人：**进口货物收货人或出口货物发货人

236号令对申请人的规定为——**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**。14号公告进一步明确为**进口货物收货人或出口货物发货人**，这与《海关法》的关税“纳税义务人”的规定相衔接，统一了上述两者的权利、义务和责任。实践中，“收发货人”多数情况下也是进出口货物在跨境交易环节的“买方或卖方”，对货物进出口情况会有一些的计划和预期，确实最合适在规定时间内提出预裁定申请。然而，在某些情形下，进出口货物的“消费使用或生产销售单位”可能才是真正的“买方或卖方”，即进出口货物的所有权人。

- **允许在进出口前3个月内提出预裁定申请的特殊情况：**（一）因不可抗力或政策调整原因造成申请时间距实际进出口时间少于3个月的；（二）申请企业在海关注册时间少于3个月的。

预裁定申请一般应在货物拟进出口 3 个月前提出，14 号公告对于例外情形的限定仍然比较严格。因此，拟申请预裁定的进出口人需把握时间点，做好提前规划。

- **预裁定申请书：**分为商品归类、价格、原产地三类，表样同时包含备注、保密声明、填报说明等。

从申请书格式来看，申请人须填报的信息较多。以《预裁定申请书（价格）》为例，填报信息几乎涵盖了审价办法的主要技术方面，部分信息需要申请人提前做出技术判断，因此对申请人提出了较高的专业要求。

- **申请提交渠道：**申请人应当通过电子口岸“海关事务联系系统”（QP 系统）或“互联网+海关”提交《预裁定申请书》以及相关材料。
- **预裁定决定书：**与申请书呼应，同样分为商品归类、价格、原产地三类，并标注“本预裁定决定书自作出之日起 3 年内有效”。

上述标注的描述与 236 号令第十一条“《预裁定决定书》应当送达申请人，并且自送达之日起生效”的规定略有差异，未来或有待澄清。

- **预裁定决定公开方式：**除涉及申请人商业秘密的，海关将通过网站等方式公开预裁定决定内容。

236 号令明确了预裁定公开的普遍原则，公开的预裁定有望成为指导同类事项的参照性行政意见。另外，为了保护申请人的商业秘密，《海关预裁定申请书》中加入了保密声明，申请人须勾选确认是否同意海关对外公布预裁定决定，有关商品归类的应说明需要保密的理由和期限。

- **预裁定决定的使用：**申请人进出口与《预裁定决定书》列明情形相同的货物时，应当按照《预裁定决定书》申报，并在报关单备注栏内填写：“预裁定+《预裁定决定书》编号”（例如：某份预裁定决定书编号为 R-2-0100-2018-0001，则应当在备注栏内填写“预裁定 R-2-0100-2018-0001”），海关予以认可。

上述“与《预裁定决定书》列明情形相同的货物”在 14 号公告中并未给予具体的定义。结合 14 号公告后附的相关文书，这一概念可以理解为：

- 对于归类预裁定，指同一货物；
- 对于价格预裁定，指申请价格预裁定合同项下的进口货物；
- 对于原产地预裁定，指同一厂商使用相同材料生产的同一型号货物。

- **原产地预裁定的特别规定：**申请享受协定税率或者特惠税率的，进口人应当在货物进口时按照规定方式提交原产地证书或者原产地声明。

原产地预裁定以申请人提交的《预裁定申请书（原产地）》所列商品税则号列为基础作出。货物进口时，海关认定商品归类与《预裁定决定书（原产地）》不符的，该《预裁定决定书（原产地）》不予适用。

上述规定表明，在申请原产地预裁定时，确保相关商品的海关编码使用正确尤为重要。若申请人使用的海关编码不为海关认可，可能导致相关的原产地预裁定不予适用，无法发挥预期的作用。

WTO《贸易便利化协定》向成员国提出了设立预裁定机制的要求。236号令的颁布标志着中国海关在现有法律框架体系范围内确立了预裁定制度，体现了中国对《贸易便利化协定》的承诺。预裁定制度对于推动营商环境优化，为海关通关的可预测性、可确定性提供法律保障，起到了积极作用。

14号公告对236号令的内容进行了细化和补充，同时明确将原来的海关预归类、价格预审核、原产地预确定等“三预”事项予以取消，避免了法规冲突，统一了执法标准，理顺了申请流程。

归类、价格、原产地三项内容具有较强的技术性和专业性，对海关受理审核机构的效率、专业性、一致性也提出了挑战。目前，除预裁定受理机构已明确为申请人注册地海关之外，关于进出口人非常关心的预裁定审核机制、审核依据尚未公布。

与此同时，预裁定申请对企业填报信息的准确性，披露信息的完整性，申请材料提交的及时性都提出了很高的要求。为确保预裁定申请的顺利进行，申请人需理顺相关信息，对需申请事项及披露信息进行全面评估，把握申请关键时间节点。

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

GAC Publishes Implementation Guidance on New Customs Advance Ruling Regime

On 31 January 2018, China's General Administration of Customs (GAC) published Bulletin 14, which contains guidance for implementation of the new customs advance ruling regime that became effective on 1 February 2018.

The customs advance ruling regime was introduced via [Order No. 236](#) on 26 December 2017. Bulletin 14 further clarifies various aspects of the order and provides template forms (e.g. ruling application, ruling decision letter, etc.) that are to be used for the new regime.

Highlights of Bulletin 14

Applicant for advance ruling: The applicant can be the consignee of imports or the consignor of exports.

Order No. 236 provides that the applicant must be a foreign trade business operator that is registered with the Chinese customs authorities and relevant to import/export activities. To align the rules for the regime with the Customs Law, Bulletin 14 specifies that the applicant must be a consignee of imports or a consignor of exports. Practically speaking, a "consignee/consignor" typically is the "buyer/seller" in an import/export transaction and, therefore, is better positioned to apply for an advance ruling, since it is the party that created the import/export plan and relevant arrangements. However, this may not always be the case and in certain situations the real "buyer/seller" (or the owner) of the goods is the party that uses or manufactures the goods rather than the consignee/consignor for customs purposes.

Exceptional circumstances to allow an application within three months before the import/export: Exceptions to the "three-month" rule apply in cases of force majeure or where government policy changes are made or where the applicant is registered with the customs authorities for less than three months.

Normally, an application for an advance ruling must be submitted at least three months before the goods actually are imported/exported. Bulletin 14 provides very limited exceptions to the filing deadline, so potential applicants should plan well in advance of the planned import/export.

Application forms: Three different forms are to be used to apply for an advance ruling: a tariff classification, a dutiable price and an origin of goods form. The template forms accompanying Bulletin 14 also contain form notes, filing instructions and a confidentiality statement.

The applicant appears to be required to provide various types of information in the application. For instance, information required for a dutiable price advance ruling includes most key technical aspects of customs valuation (e.g. royalties, special relationships, etc.). An applicant may need to make some preliminary technical assessments to complete the form.

Submission of application package: The application package must be submitted through the electronic customs system (QP system) or "Internet + Customs" (<http://online.customs.gov.cn>).

Decision letter of advance ruling: Three types of advance ruling decision letters - tariff classification, dutiable price and origin of goods

The template form indicates that a decision will be valid for three years from the date it was made. This statement somewhat conflicts with article 11 of Order No. 236, which provides that the validity date of a decision starts on the date the letter is delivered to the applicant. As a result, the GAC may need to issue further clarifications.

Publication of decisions: The customs authorities generally will publish ruling decisions on its website, except for confidential information relating to the business. The published ruling decisions should be a useful reference for importers and exporters.

To protect trade secrets, an applicant must specify on the application form whether it agrees to publication of the relevant decision. If an applicant indicates it does not want a ruling relating to tariff classification published, it must provide the reasons and the period of confidentiality.

Use of advance rulings: When the "goods in the same condition as specified in the advance ruling" are imported or exported, the applicant must declare the goods in accordance with the ruling and indicate the code for the decision letter in the remark column of the declaration form.

Although Bulletin 14 does not further define the term, "goods in the same condition as specified in the advance ruling," it should mean the goods that are intended to be imported or exported at the time the ruling application was made. When applying for a ruling relating to the origin of goods, the applicant must provide information on the product model, materials and the name of the manufacturer. If any of this information differs from the actual features of the goods that subsequently are imported, the ruling cannot be used.

Special rule for advance rulings on origin of goods: When applying for an advance ruling on the origin of goods, the applicant must provide the HS code for goods. However, if after the goods are imported and declared, the customs authorities believe the applicant used the wrong HS code, the ruling issued based on the wrong code cannot be used to support the origin of the goods. Therefore, applicants that are seeking advance rulings on the origin of goods should take steps to ensure they use the correct HS code.

Comments

Order No. 236 is a landmark policy shift for Chinese customs by establishing a comprehensive advance ruling regime and demonstrating the government's commitment to the WTO Trade Facilitation Agreement. The new regime is expected to play an important role in optimizing the business environment and enhancing the predictability of customs declarations. Bulletin 14 should be welcomed by the business community since it provides needed clarifications.

Customs classification, valuation and the origin of goods are three areas requiring significant technical capabilities, and the introduction of an advance ruling regime process in these areas may present challenges for the Chinese customs authorities. The government has not yet released details on the review mechanism for rulings so it remains to be seen whether the regime will be implemented efficiently and whether different local customs offices will take a consistent view in rulings on various matters.

Importers and exporters that wish to apply for a customs advance ruling should be aware that they are responsible for ensuring the accuracy and completeness of the information. They should carry out a thorough review and analysis of the information to be disclosed and plan in advance of the actual import/export so that the application is submitted in a timely manner.

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

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