

Customs rulings (publication)

Operational Policy

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Customs and Excise Act 2018	Error! Bookmark not defined.

About this policy

Introduction

1. This policy outlines situations when Customs is required to publish rulings, and provides criteria for Customs to decide whether to publish rulings in other situations when publication is not mandatory.

Related documents

2. Use this operational policy in conjunction with the following documents:

Document name	Document type
Customs ruling (valuation of imported goods)	Operational policy
Disclose information	Process and procedures
Generic process for publication of media on Customs external website and/or The Gazette.	Process (to be developed)
Guide: Public Interest	Guide
OPS PRO 082 Customs rulings	OPS PRO

Overview

3. Customs provides rulings on a range of matters including the tariff and excise classification of goods, the origin of goods, whether goods are subject to a duty concession, and the correct method to use to value goods. Rulings provide importers with certainty about how to meet Customs' requirements.
4. Information contained in a ruling, such as principles or rationale, can be of interest to other importers, even though a ruling is only binding on the applicant and Customs. For example, information about how a particular product is classified could be relevant to other importers of similar products.
5. The direction taken by international trade law is that customs administrations should endeavour to publish rulings. Several international and free trade agreements either encourage or require New Zealand Customs to publish rulings. The World Trade Organization Agreement on Trade Facilitation states that "Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information".

6. The overall aim of the legislation is to support the publication of rulings in the interests of facilitating trade, unless there are reasons to prevent publication such as information being commercially sensitive or private.

Publication of rulings

Documents Customs produces

7. Customs produces two types of documents when making rulings:
 - a **ruling document** is a summary that contains the name of the applicant, a description of the goods, the decision, and any conditions
 - a **ruling report** contains the reasoning and analysis for the decision. A ruling report is more likely to contain commercially sensitive or private information.

When Customs must publish rulings

8. Customs is required to publish a ruling if it is necessary to comply with an international agreement to which New Zealand is a party. The only international agreement that requires publication is the Korea-New Zealand Free Trade Agreement (KNZFTA).
9. To meet KNZFTA obligations Customs must publish, subject to domestic confidentiality requirements, ruling documents on the:
 - classification of goods imported under KNZFTA
 - origin of goods imported under KNZFTA.
10. It is not necessary to publish other types of rulings to meet KNZFTA requirements, because KNZFTA only requires rulings to be made on the tariff classification and the origin of goods.

When Customs should consider publication

11. If publication of a ruling is not required under an international agreement, Customs has discretion over whether to publish.
12. Section 323 sets out criteria used to decide whether to publish. Customs will decide whether it is in the public interest to publish the ruling or part of a ruling, and must then determine whether one of the following situations apply:
 - the applicant consents to the publication
 - the information is already in the public domain
 - commercial or private information has been removed. The disclosure of any information must be subject to information disclosure rules.

See: Process: **Disclose information.**

Definition of public interest

13. Whether publication is likely to be in the public interest should be assessed on a case-by-case basis. Factors that could be relevant include (without limitation):

- how many traders the information would be relevant to
- the size of the benefit or other effect on the trader from having access to the information
- the nature of the information (e.g. is it an abstract fact or a common principle that is likely to be relevant in many other situations?)
- whether publication would unreasonably impact on the commercial position of the person to whom the ruling was given.

Allowing for the right of appeal

14. The legislation gives an applicant the right to appeal a ruling. An applicant must notify the Customs Appeal Authority of their intention to appeal within 20 working days after the date on which the ruling is given.
15. Customs practice should be to publish ruling documents or ruling reports after the 20 working day period. This will avoid the possibility of publishing a ruling that is then appealed.

REFERENCES

Customs and Excise Act 2018

- Section 333: Application for Customs ruling
- Section 334: Time when application may be made
- Section 335: Making application
- Section 336: Making of Customs ruling
- Section 337: When chief executive may decline to make ruling
- Section 338: Notice of Customs ruling
- Section 339: Effect of Customs ruling
- Section 340: Confirmation of basis of Customs ruling
- Section 341: Amendment of Customs ruling
- Section 342: Effect of amendment to Customs ruling
- Section 343: Cessation of Customs ruling, etc.
- Section 344: Appeal from decisions of chief executive
- Section 345: No liability where Customs ruling relied on
- Section 346: Publication of Customs rulings