Title: Tariff Precedents & Tariff Classification Guides

Purpose: To provide information on public advice products on the application of the Customs Tariff Act 1995 published as ‘Tariff Precedents’ and ‘Tariff Classification Guides’. This information includes their nature and scope, and procedures for their development, publication and review.

Owner: National Director Trade & Compliance

Category: Operational Procedures

Contact: Director Tariff 02 6275 5046

Summary of main points

Customs and Border Protection Practice Statements are endorsed policy and must be followed by all Customs and Border Protection employees. This Practice Statement outlines:

- What Tariff Precedents are;
- What Tariff Classification Guides are;
- Acceptable use of these products;
- Levels of protection provided by these products when relied on;
- The mechanisms for the development, publication and review of Tariff Precedents and Tariff Classification Guides;
- Mechanisms for industry and other stakeholders to have input into our public advice products

The electronic version published on the intranet is the current Practice Statement.
Introduction Statement
The Australian Customs and Border Protection Service publishes Tariff Precedents and Tariff Classification Guides to provide guidance to the public on the classification of goods under the *Customs Tariff Act 1995* (the Act).

These documents are public advice products and are the main mechanisms for providing general advice about the classification and classification issues. A range of classification issues may be addressed in addition to the classification of types of goods, for example, the meaning of a term, correct application of a Note or the use of Tariff Concession Orders.


Each Tariff Precedent is a statement by Australian Customs and Border Protection Service that gives specific advice about where to classify a type of good or how Customs and Border Protection deals with a classification issue.

Tariff Classification Guides provide general guidance on broader issues of tariff classification that relate to multiple areas of the tariff.

Scope
This document provides an overview of the role of Tariff Precedents and Tariff Classification Guides and the procedures for the development, publication, use and review of these products.

Advance rulings on tariff classification are outside of the scope of this document. An advance ruling is a private classification advice issued to a specific importer or their representative for their specific goods and for their use only. Customs and Border Protection advises that an advance ruling is the appropriate mechanism if an importer or their representative requires classification advice on a specific good they intend to import. The Practice Statement on Advance Rulings provides guidance on this product, including what an advance ruling is and how to apply for one.

This Practice Statement applies to staff in the following areas:

- Tariff
- Tariff Concessions
- Compliance

Policy Statement

Public Advice Products in relation to the Tariff (Schedule 3 of the Act)
Customs and Border Protection aims to assist importers and their representatives in correctly applying the Act to classify their goods.

The main mechanism for this is through the provision of advance rulings. However, advance rulings are private and limited in scope for use by the applicant for future imports of the specific good for which the ruling was given.

As an adjunct to advance rulings, Customs and Border Protection provides public guidance on classification to importers and their representatives through its Tariff Precedents and Tariff Classification Guides. These products are provided to the public free of charge and represent Customs and Border Protection’s view on the application of the Act to certain goods or under certain circumstances.
They are published as:

- they are designed to provide assistance to importers and their agents with classification of their goods; and
- to provide transparency in decision making as they may be relied upon by officers coming to a decision on the classification of goods.

Tariff Precedents and Tariff Classification Guides are not law. They are public statements about how Customs and Border Protection approaches the classification of certain commodities. They may also address other classification issues that may cause confusion, such as how a particular legal Note is understood or the meaning of a term.

Tariff Precedents and Tariff Classification Guides are not legally binding on Customs and Border Protection. However, Customs and Border Protection may, under certain circumstances, accept these as administratively binding if they later prove to be incorrect or the classification approach changes.

The circumstances under which Customs and Border Protection Service may consider these products as administratively binding are outlined in more detail under ‘Levels of Protection’ below.

**Tariff Precedents**

A Tariff Precedent is a statement designed to provide a public record of the considered decision Customs and Border Protection has reached about tariff classification in relation to a particular type of good or classification issue.

A Tariff Precedent is created to assist officers, importers and their representatives to make correct classification decisions. The purpose of Tariff Precedents is also to maintain consistency in classification decisions nationally.

Each Tariff Precedent consists of three parts or fields: Description, Classification, and Reason.

The ‘Description’ field describes the goods or issues covered. The description may be extended or restricted in the ‘Reason’ field, particularly where the Tariff Precedent has been created to discuss issues relating to the identification of goods.

The ‘Classification’ field states the tariff classification to which the Tariff Precedent is keyed. All Tariff Precedents are required to be keyed to a tariff classification.

The ‘Reason’ field explains the classification decision or position taken by Customs and Border Protection in relation to a classification issue. For example, the ‘Reason’ field may contain an explanation of how we identified the goods or why we have used a Note in the classification decision.

Further information on the fields used in Tariff Precedents can be found in the associated Instructions & Guidelines (I & Gs).

Tariff Precedents are published through the TAPIN system for internal use.

They are also provided to various software providers who develop and market trade related software for inclusion in those products.

All current Tariff Precedents are provided freely to the general public through the Customs and Border Protection internet site (www.customs.gov.au/tariff).

**Tariff Classification Guides**

Tariff Classification Guides are statements that discuss complex or frequently misunderstood classification issues. As such, the length and format of these documents varies dependent upon the issues being covered.
Tariff Classification Guides may also be used for simpler classification issues when they affect multiple tariff classifications or when advice is better communicated in a way that is not possible within the limitations of the TAPIN system, for example, by illustrations.

Tariff Classification Guides are not published under TAPIN. However, public access to these statements is provided freely through the Customs and Border Protection internet site, www.customs.gov.au/tariff.

Levels of Protection

Tariff Precedents and the Tariff Classification Guides are public advice products and are provided for general information purposes only. Importers are at all times legally responsible for the correct classification of their goods.

Many factors can influence classification. Before relying on a public advice product, the specific goods being imported must be correctly identified on their own merits to ensure that they are the same as those covered by the public advice product.

As Tariff Precedents and Tariff Classification Guides offer general guidance only, they do not provide the levels of protection that an advance ruling for specific goods provides. However, if a public advice product is subsequently found to have given incorrect guidance, Customs and Border Protection will normally stand by the guidance given when it has:

- been reasonably and in good faith relied upon by the importer at the time of the importation of the goods; and
- the goods are the same in all material particulars to the goods covered in the Tariff Precedent or Tariff Classification Guide.

The level of protection that may be applicable where a public advice product was relied upon would depend on Customs and Border Protection’s assessment, in accordance with any relevant statute, common law and judicial precedence, of whether the reliance on the product occurred at the time of the import of the goods and if, given the content of the product, the circumstances and the goods, that reliance was reasonable and in good faith.

Under such circumstances, Customs and Border Protection would, in the interests of sound administration, normally treat Tariff Precedents as administratively binding on itself and would not normally seek recovery of short paid (under-paid) revenue or the imposition of penalties.

Similarly, reliance on a Tariff Classification Guide under such circumstances would normally give protection against Customs and Border Protection imposing penalties. If the Tariff Classification Guide made a statement that clearly applied to the goods at issue and gave a classification, it may also protect against short paid revenue recovery.

Circumstances where protection is not given by a public advice product include where:

- there have been legislative changes since the advice was given which preclude such protection being given;
- the advice was not relied upon at the time of importation;
- the reliance was not reasonable and/or in good faith; or
- the goods are materially different from those described within the public advice product.
For example, if the public advice product has been exploited in an abusive and unintended way, this would not be considered to be reliance that was “reasonable and in good faith”.

It is important to note that where a refund is gained on the basis of a public advice product, the refund is repayable if the public advice is subsequently found to be incorrect.

Development of Tariff Precedents and Tariff Classification Guides

Customs and Border Protection will consider developing a public advice product if it is satisfied that an area of interpretation or application of the Act has caused, or has the potential to cause, significant difficulty in classification.

Tariff Training and Standards is responsible for researching the issue, deciding whether to proceed, and the subsequent drafting of the advice product.

The choice between a Tariff Precedent and a Tariff Classification Guide is made on the basis of:

- whether the issue relates to a single or multiple classifications across wide areas of Schedule 3; and
- the complexity of the issue.

Prior to publication of a Tariff Precedent or Tariff Classification Guide, Customs and Border Protection Service will publish exposure drafts on its internet site. Notice of exposure drafts will be available through a subscription service.

These mechanisms will provide interested parties with advance notice of a public advice product and will allow time for comments to be received prior to its publication.

The Publication of Tariff Precedents and Tariff Classification Guides

Publication of these products is through TAPIN and/or the internet site as detailed in the description of the individual products.

In order to facilitate interested parties accessing both exposure drafts and final products in a timely manner, a notification of updates to a public advice product will be provided through the opt-in subscription service on Customs and Border Protection’s internet site.

Contact Points for Public and Industry Responses

Customs and Border Protection’s internet site has an email address link for interested parties to:

(a) provide feedback on exposure drafts of public advice products;
(b) seek clarification of a particular public advice product; or
(c) propose classification issues or types of goods which may need a Tariff Precedent or Tariff Classification Guide.

This email address is for use in relation to Tariff Precedents or Tariff Classification Guides.

Where correspondence is received via this email address from the internet website, it will be acknowledged by Customs and Border Protection Service. Acknowledgement by return email will generally be provided within one working day.

Review and Withdrawal of Tariff Precedents and Tariff Classification Guides

In order to maintain the integrity of the public advice products, a review process has been implemented.
All Tariff Precedents will be reviewed five years from the date of publication. These reviews commence in the July of the relevant year. The timeframes for completion of reviews are dependent upon operational requirements in the particular year.

Tariff Classification Guides will be reviewed two years from the date of publication. These reviews commence in the July of the relevant year. The timeframes for completion of reviews are dependent upon operational requirements in the particular year.

Tariff Precedents and advance rulings are also reviewed where:

- relevant legislation is altered or relevant new legislation passed;
- a final decision is handed down by a court or tribunal on the same or like goods;
- an error or inconsistency is discovered;
- there is a change to the Customs and Border Protection’s interpretation of the tariff; or
- another related public advice product is being prepared.

A reviewed product will be withdrawn where it is identified that:

- it is incorrect;
- a substantial change is required; or
- its application may lead to unintended consequences.

A notice withdrawing a public advice product will be published on the Customs and Border Protection internet site and will include reasons for withdrawal.

Where there are minor errors that do not affect the decision or the reasons for the decision, the public advice product will be amended. Minor errors include, for example:

- spelling, punctuation or grammatical errors, or
- an error is discovered in a citation which does not alter the decision or the reasons for decision.

Related Instructions and Guidelines

- Tariff Precedents & Tariff Classification Guides: Instructions and Guidelines

Related policies and references

Customs Practice Statements:

- Advance ruling reviews
- Advance rulings

Key roles and responsibilities

The Policy Owner for this Practice Statement is the National Director, Trade & Compliance

Consultation

External Consultation

To be completed after conclusion of external consultation
**Internal Consultation**
The following internal stakeholders have been consulted in the development of this Practice Statement:
- Regional Tariff Sections
- Tariff Review Section
- Tariff Policy Section

### Approval

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