Advance rulings and binding pre-entry tariff classification according to Article 3 TFA: Situation 2018—still a long way to go

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Abstract

Article 3 of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) requires each TFA member to issue advance rulings in a reasonable time that are binding on the applicant and the customs authorities of the issuing country. Such binding advance rulings cover, among other things, tariff classification information that is crucial for the calculation of import duties and tariffs. This paper investigates which countries are offering advance tariff classification rulings and which are still not offering such rulings and finds that, in 2018, 72 countries are offering binding pre-entry customs classification. However, without the European Union (EU) member states, only 44 harmonised system member states out of 157 are offering these binding pre-entry customs classifications. Fifty-nine countries that are offering advance rulings on tariff classification have ratified the TFA, but 16 countries are offering this service without having ratified the TFA.

1. Introduction

Article 3 of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) states that each TFA member shall issue an advance ruling in a reasonable time which is binding on the applicant and the customs authorities of the issuing country. The required binding advance information relates to origin and customs (tariff) classification information that is crucial for the calculation of import duties and tariffs. This paper investigates which countries are offering advance customs classification rulings and which are not.

2. The Harmonized Commodity Description and Coding System

The Harmonized Commodity Description and Coding System (Harmonized System Convention, Brussels 14 June 1983; in short, Harmonized System or HS) for the classification of goods into the tariff scheme of the HS nomenclature (also tariff classification) has resulted in the worldwide strengthening of tariff nomenclatures since its first usage in 1988. It is in use in 209 countries and economic regions of the world (WCO, 2018b), however, since May 2018, 157 countries have been contracting parties (Weerth, 2017a, 2017b; WCO, 2018e) and more than 98 per cent of all trans-border trade has been statistically and economically classified with the help of the HS nomenclature (Wind, 2007; WCO, 2018c). The customs classification of goods is complex and depends on numerous rules, in particular on the terms of 1,222 HS headings and 380 notes according to General Rule (GR 1), and on the terms of 5,387 HS subheadings, 9,528 subheadings and 56 subheading notes (within the EC) (Weerth, 2017a) according to GR 6 (Weerth, 2008a).

The HS nomenclature (HS 1988) has been revised in 1992, 1996, 2002, 2007, 2012 and 2017, and certain headings that are not in use any more have been cancelled. The HS is the most successful legally binding instrument of the WCO (Weerth, 2016a, 2017a), and has a membership that continues to grow (Weerth, 2008b, 2009b, 2011b, 2012, 2014, 2016a, 2017b).

In 2008, the WCO published, for the first time, background information on the usage of the nomenclature by the contracting parties of the HS, which shed new light on the issue of the introduction of pre-entry customs classification data, as was recommended by the WCO in 1996 (WCO, 2008). This resulted in the first study of the application of binding pre-entry customs classifications (Weerth, 2008).

Since then, the HS membership has grown from 133 contracting countries to 157 member states (Weerth, 2017a, 2017b; WCO, 2018e), and the TFA was signed in 2013 and entered into force in February 2017.

Article 3 of the TFA rules that advance rulings are to be introduced by the 137 TFA member states that have ratified the TFA (WTO, 2018b). Therefore, this paper examines the application of advance rulings on tariff classifications in the HS contracting parities according to the most recent WCO data available (WCO, 2018d). It also takes into account the TFA status (WTO, 2018b) and Revised Kyoto Convention (RKC) status of the countries (WCO, 2017, 2018e).

3. Recommendation for the introduction of binding pre-entry customs classification

On 18 June 1996, the WCO issued a recommendation on the introduction of national programs for binding pre-entry customs (or tariff) classification in order to provide higher levels of legal security on the complex issue of how to classify certain goods and commodities (WCO, 1996). This recommendation is not legally binding.

Recommendation of the Customs Co-operation Council (WCO) on the introduction of programmes for binding pre-entry classification information (18 June 1996)

The Customs Co-operation Council,

NOTING that the Harmonized System has been widely adopted by countries and Customs or Economic Unions,

NOTING that many Customs administrations have implemented or intend to implement programmes for binding pre-entry classification information on the basis of the Harmonized System,

RECOGNIZING the benefits of programmes for binding pre-entry classification information in facilitating international trade, in particular, by ensuring certainty and predictability in the application of the Harmonized System,

RECOGNIZING that such programmes are useful for promoting uniform classification in the Harmonized System,

TAKING ACCOUNT of the advisability of replacing, by a Recommendation, the Council Resolution of 25 June 1991 on the introduction of pre-entry classification information programmes,

RECOMMENDS that Members and Contracting Parties to the Harmonized System Convention take all appropriate action to introduce programmes for binding pre-entry classification information, as soon as possible, while respecting the basic principles set out in the Annex hereto, and

REQUESTS Members and Contracting Parties to the Harmonized System Convention to notify the Secretary General of their acceptance of this Recommendation and of the date of its application. The Secretary General will transmit this information to Members and to Contracting Parties to the Harmonized System Convention.

ANNEX

Basic principles of programmes for binding pre-entry classification information

4. Any person may make a request in writing to a duly designated authority for binding information on the classification of goods in the HS-based nomenclature in respect of an actually envisaged import or export operation. The request shall contain, in particular, a full description of the goods as well as any necessary additional details to enable their identification (brochures, samples, etc.) so that the authority is able to classify them.

5. The information shall be communicated in writing to the applicant as soon as possible.

6. The information thus communicated is binding, in accordance with the terms set out therein, on the Customs authorities as against the holder of such information in respect of the tariff classification of goods in the country or Customs territory to which the issuing authority belongs, for at least one year from the date of issue, subject to paragraph 4 or 5.

7. The information may be annulled if it was given on the basis of incorrect or incomplete details provided by the applicant.

8. The information ceases to be valid (i) where it becomes incompatible with new tariff measures or judicial decisions taken by the national authority or by the Customs or Economic Union concerned or (ii) where the holder of such information is notified in writing of its withdrawal, revocation or amendment because of, for example, further details that have been obtained and which affect such information.

9. A period of grace may be provided under this programme with respect to paragraph 5.

4. Article 3 TFA—Advance rulings in tariff classification and origin

Article 3 TFA governs advance rulings on customs classification and origin, such as the binding pre-entry information on customs classification. The TFA is legally binding and the ratifying countries are therefore bound to introduce advance rulings in tariff classification in the due time (WTO, 2018c).

Article 3 – Advance rulings

4. Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

5. A Member may decline to issue an advance ruling to the applicant where the question raised in the application:

   (a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or

   (b) has already been decided by any appellate tribunal or court.

6. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.

7. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

8. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.

9. Each Member shall publish, at a minimum:

   (a) the requirements for the application for an advance ruling, including the information to be provided and the format;

   (b) the time period by which it will issue an advance ruling; and

   (c) the length of time for which the advance ruling is valid.

10. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.

11. 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.

12. Definitions and scope:

   (a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:

      (i) the good's tariff classification; and

      (ii) the origin of the good.

   (b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on:

      (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;

      (ii) the applicability of the Member's requirements for relief or exemption from customs duties;

      (iii) the application of the Member's requirements for quotas, including tariff quotas; and

      (iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.

   (c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.

   (d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

5. Advanced rulings in General Annex Standard 9.9 of the Revised Kyoto Convention

It has also been argued that the advance rulings in tariff classification, origin or customs valuation are already part of the international customs law because of General Annex Standard 9.9 of the RKC, which requires signatory countries to introduce binding customs rulings (Wolffgang & Kafeero, 2014).

> **General Annex of the RKC**
>
> 9.9. Standard
>
> The Customs shall issue binding rulings at the request of the interested person, provided that the Customs have all the information they deem necessary.

The RKC is the second most successful legally binding instrument of the WCO (Weerth, 2016a), with 114 contracting parties in June 2018 (WCO, 2017, 2018e).

The WCO has published data on the implementation of the RKC (WCO, 2017), however the actual implementation of the General Annex is not reported. The wording of the RKC Standard 9.9 is vague. It has been argued that it is sufficient, but the wording of the HS recommendation and article 4 TFA are more precise regarding tariff classification.

6. Examination of WCO and TFA data regarding the introduction of binding advance rulings

This study examines published data from the WCO (WCO, 2018a–m) and WTO (WTO, 2018a, 2018b) websites regarding the implementation of the WCO recommendation, the RKC ratifications and the ratifications of WTO member states regarding the TFA.

A very early paper on this topic was published in 2008, but this paper only focused on the introduction of the binding advance rulings on tariff classification according to the WCO recommendation (Weerth, 2008e).

The WCO background paper of February 2008 (WCO, 2008) showed the application of the nomenclature in each of the then 133 HS contracting parties and whether or not the above said recommendation was applied. Not all of the 133 HS contracting parties were issuing binding pre-entry information on the customs classification of goods; this result was rather unexpected since this information is vital to legal security in global trade—economic operators strongly rely on customs classifications for calculating their prices and therefore certainty is of the utmost importance. This topic had not been subject to research before, since no data was available prior to the first background paper of the WCO in 2008. Since then, the WCO has published background papers on a yearly basis. This study has been undertaken using the 2018 version of the WCO background paper (WCO, 2018d, data updated with new WCO data, see WCO, 2018e).

Table 1 shows all HS contracting parties that are applying advance rulings on tariff classification in 2018 and their TFA and RKC status.

Table 1: HS contracting parties with binding advance rulings on tariff classification and their TFA and RKC status

No	HS contracting party	TFA	RCK
1	Angola	–	+
2	Argentina	+	+
3	Australia	+	+
4	Austria	+	+
5	Azerbaijan	–	+
6	Belarus	–	+
7	Belgium	+	+
8	Brazil	+	–
9	Bulgaria	+	+
10	Canada	+	+
11	China	+	+
12	Columbia	–	–
13	Croatia	+	+
14	Cuba	+	+
15	Cyprus	+	+
16	Czech Rep.	+	+
17	Congo, Democratic Republic	–	+
18	Denmark	+	+
19	Ecuador	–	–
20	Egypt	–	+
21	Estonia	+	+
22	European Union	+	+
23	Fiji	+	+
24	Finland	+	+
25	France	+	+
26	Germany	+	+
27	Ghana	+	–
28	Greece	+	+
29	Hungary	+	+
30	India	+	+
31	Iran	–	+
32	Ireland	+	+
33	Italy	+	+
34	Japan	+	+
35	Kazakhstan	+	+
36	Korea, Republic	+	+
37	Kuwait	–	+
38	Latvia	+	+
39	Lebanon	–	–

Table 1: continued

No	HS contracting party	TFA	RCK
40	Lithuania	+	+
41	Luxemburg	+	+
42	Macedonia/FYROM	+	+
43	Madagascar	+	+
44	Malaysia	+	+
45	Maldives	–	–
46	Malta	+	+
47	Mexico	+	–
48	Mongolia	+	+
49	Netherlands	+	+
50	Norway	+	+
51	Pakistan	+	+
52	Poland	+	+
53	Portugal	+	+
54	Qatar	+	+
55	Romania	+	+
56	Russia	+	+
57	Serbia	–	+
58	Slovakia	+	+
59	Slovenia	+	+
60	South Africa	+	+
61	Spain	+	+
62	Sri Lanka	+	+
63	Sweden	+	+
64	Switzerland	+	+
65	Syria	–	–
66	Tanzania	–	–
67	Tunisia	–	+
68	Turkey	+	+
69	Ukraine	+	+
70	United Kingdom	+	+
71	USA	+	+
72	Uzbekistan	–	–
73	Vietnam	+	+

Only 72 HS contracting parties out of 157 (and the EU that is not considered as Country) have introduced the WCO recommendation on binding advance rulings on tariff classification in their national customs legislations. Of these, 56 have ratified the TFA, while 16 have not, and 62 have ratified the RKC, while 10 have not.

In 2008 the picture was different, with only 64 HS contracting parties out of 133 HS member states having introduced the WCO recommendation (Weerth, 2008e). All 28 European Union (EU) member states (and the EU itself, which is also a HS contracting party) are applying the advance rulings on tariff classification.

Only 44 HS contracting parties are applying the binding advance rulings on tariff classification which are not EU member states (Table 2). Of these, 27 have ratified the TFA, while 17 have not, and 34 have ratified the RKC, while 10 countries have not.

In 2008 only 36 HS contracting parties that were not EU member states were applying the binding advance rulings on tariff classification (Weerth, 2008e).

Table 2: HS contracting parties that are applying the binding advance rulings on tariff classification but that are not EU member states and their TFA and RKC status

No	HS contracting party	TFA	RKC
1	Angola	–	+
2	Argentina	+	+
3	Australia	+	+
4	Azerbaijan	–	+
5	Belarus	–	+
6	Brazil	+	–
7	Canada	+	+
8	China	+	+
9	Columbia	–	–
10	Cuba	+	+
11	Congo, Democratic Republic	–	+
12	Ecuador	–	–
13	Egypt	–	+
14	Fiji	+	+
15	Ghana	+	–
16	India	+	+
17	Iran	–	+
18	Japan	+	+
19	Kazakhstan	+	+
20	Korea, Republic	+	+
21	Kuwait	–	+
22	Lebanon	–	–
23	Macedonia/FYROM	+	+
24	Madagascar	+	+
25	Malaysia	+	+
26	Maldives	–	–
27	Mexico	+	–
28	Mongolia	+	+
29	Norway	+	+

No	HS contracting party	TFA	RKC
30	Pakistan	+	+
31	Qatar	+	+
32	Russia	+	+
33	Serbia	–	+
34	South Africa	+	+
35	Sri Lanka	+	+
36	Switzerland	+	+
37	Syria	–	–
38	Tanzania	–	–
39	Tunisia	–	+
40	Turkey	+	+
41	Ukraine	+	+
42	USA	+	+
43	Uzbekistan	–	–
44	Vietnam	+	–

When only 72 HS contracting parties (and the EU) are using the binding advance rulings on tariff classification this means that 83 HS contracting parties of the HS are not using this advance tariff classification ruling system (Table 3).

Table 3: HS contracting parties without binding advance rulings on tariff classification and their TFA, and RKC status

No	HS contracting party	TFA	RKC
1	Albania	+	+
2	Algeria	–	+
3	Andorra	–	–
4	Armenia	+	+
5	Bahamas	–	–
6	Bahrain	+	+
7	Bangladesh	+	+
8	Benin	+	+
9	Bhutan	–	+
10	Bolivia	+	–
11	Bosnia and Herzegovina	–	–
12	Botswana	+	+
13	Brunei Darussalam	+	–
14	Burkina Faso	–	+
15	Burundi	–	–
16	Cambodia	+	+
17	Cameroon	–	+
18	Cape Verde	–	+

Table 3: continued

No	HS contracting party	TFA	RKC
19	Central African Republic	+	–
20	Chad	+	–
21	Chile	+	–
22	Comoros	–	–
23	Congo, Republic of	+	+
24	Costa Rica	+	–
25	Côte d'Ivoire	+	+
26	Djibouti	+	–
27	Dominican Republic	+	+
28	Eritrea	–	–
29	Ethiopia	–	–
30	Gabon	+	+
31	Georgia	+	–
3 32	Guatemala	+	–
33	Guinea	–	–
34	Guinea Bissau	–	–
35	Haiti	–	–
36	Iceland	+	+
37	Indonesia	+	+
38	Israel	+	–
39	Jordan	+	+
40	Kenya	+	+
41	Kyrgyzstan	+	–
42	Lesotho	+	+
43	Liberia	–	–
44	Libya	–	–
45	Malawi	+	+
46	Mali	+	+
47	Mauritania	–	–
48	Mauritius	+	+
49	Moldova	+	–
50	Montenegro	+	+
51	Morocco	–	+
52	Mozambique	+	+
53	Myanmar	+	–
54	Namibia	+	+
55	Nepal	+	+
56	New Zealand	+	+
57	Niger	+	+
58	Nigeria	+	+

Table 3: continued

No	HS contracting party	TFA	RKC
59	Oman	+	+
60	Palestine	–	–
61	Panama	+	–
62	Papua New Guinea	+	+
63	Paraguay	+	–
64	Peru	+	–
65	Philippines	+	+
66	Rwanda	+	+
67	Sao Tome and Principe	–	+
68	Saudi Arabia	+	+
69	Senegal	+	+
70	Sierra Leone	+	+
71	Singapore	+	–
72	Sudan	–	+
73	Swaziland	+	+
74	Tajikistan	–	–
75	Thailand	+	+
76	Togo	+	+
77	Uganda	–	–
78	United Arab Emirates	+	+
79	Uruguay	+	–
80	Venezuela	–	–
81	Yemen	–	+
82	Zambia	+	+
83	Zimbabwe	–	+

Eighty-three HS contracting parties are not applying the WCO recommendation on binding advance rulings on tariff classification in 2018. Many of these are major trade partners of the EU, the US, China and Japan, such as Algeria, Chile, Morocco, New Zealand, Indonesia, Iceland, Israel, Saudi Arabia, Singapore, Thailand and the United Arab Emirates. Of this group of 83 countries, 56 are party to the TFA, while 27 are not, and 48 are party to the RKC, but 35 are not.

However, there are also countries, economic regions and customs unions that are using the HS nomenclature but are not signatory states to the HS.

Table 4 lists countries that are applying the HS nomenclature and binding advance rulings on classification but are HS non-contracting states, and shows the TFA and RKC status.

Table 4: Countries and economic regions that are applying the HS nomenclature and binding advance rulings on tariff classification but that are HS non-contracting states, and their TFA and RKC status

No	HS non-contracting party	TFA	RKC
1	El Salvador	+	–
2	Liechtenstein	+	–

Table 5 lists countries and economic regions that are applying the HS nomenclature but not the binding advance rulings on tariff classification and are HS non-contracting parties. It also shows the TFA and RKC status of these countries and regions.

Table 5: Countries and economic regions that are applying the HS nomenclature but that are HS non-contracting states, are not issuing advance rulings on tariff classification and their TFA-, and RKC-status

No	HS non-contracting party	TFA	RKC
1	Afghanistan	+	–
2	Antigua and Barbuda	+	–
3	Barbados	+	–
4	Belize	+	–
5	Bermuda	–	–
6	Cook Islands	–	–
7	Curacao	–	–
8	Dominica	+	–
9	Equatorial Guinea	–	–
10	Gambia	+	–
11	Grenada	+	–
12	Guyana	+	–
13	Honduras	+	–
14	Hong Kong, China	+	–
15	Iraq	–	–
16	Jamaica	+	–
17	Kiribati	–	+
18	Laos	+	+
19	Macao, China	+	–
20	Marshall Islands	–	–
21	Micronesia	–	–
22	New Caledonia (French Territory)	–	–
23	Nicaragua	+	–
24	Niue	–	–
25	Palau	–	–
26	Polynesia (French Territory)	–	–
27	Saint Kitts and Nevis	+	–

Table 5: continued

No	HS non-contracting party	TFA	RKC
28	Saint Lucia	+	–
29	Saint Pierre and Miquelon (French Territory)	–	–
30	Saint Vincent and the Grenadines	+	–
31	Samoa	+	+
32	Seychelles	+	–
33	Solomon Islands	–	–
34	Somalia	–	–
35	South Sudan	–	–
36	Suriname	–	–
37	Timor–Leste	–	–
38	Tonga	–	–
39	Trinidad and Tobago	+	–
40	Turkmenistan	–	–
41	Tuvalu	–	–
42	Vanuatu	–	–
43	Wallis and Futuna Islands (French Territory)	–	–
44	Andean Community (CAN)	–	–
45	Caribbean Community (CARICOM)	–	–
46	Common Market for Eastern and Southern Africa (COMESA)	–	–
47	Commonwealth of the independent States (CIS)	–	–
48	Economic and Monetary Community of Central Africa (CEMAC)	–	–
49	Economic Community of Western African States (ECOWAS)	–	–
50	Gulf Co-operation Council (GCC)	–	–
51	Latin American Integration Association (LAIA)	–	–
52	Southern Cone Common Market (MERCOSUR)	–	–
53	West African Economic and Monetary Union (UEMOA)	–	–

Chinese Taipei/Taiwan has also ratified the TFA but it is not a WCO member and therefore not listed in official WCO documents—however, it applies the HS nomenclature.

Out of this group (that is applying the HS but not the pre-entry classification information), 20 states have ratified the TFA and only three have ratified the RKC.

6. Discussion

Advance rulings on tariff classification prior to import is an important issue for economic operators (as well for the customs authorities) in order to calculate the costs of international trade and as an instrument for legal security.

The WCO issued a non-binding recommendation in 1996 (WCO, 1996), which recommended the introduction of binding pre-entry customs classifications.

In 2018, of the 157 HS contracting parties, only 72 (and the EU as a whole) have introduced the WCO recommendation on binding pre-entry customs classification in their national customs legislations (Table 1).

In 2008 the picture was different, with only 64 HS contracting parties out of 133 HS member states (Weerth, 2008e). All 28 EU member states (and the EU itself, which is also a HS contracting party) are applying the advance rulings on tariff classification.

In 2018 only 44 HS contracting parties that are applying the binding advance rulings on tariff classification are not EU member states (Table 2). In 2008 only 36 HS contracting parties that were not EU member states were issuing binding advance rulings on tariff classification according to the WCO recommendation (Weerth, 2008e).

The WCO recommendation is very similar to the EU Customs Code binding tariff information (BTI); however, the WCO binding advance rulings on tariff classification shall be valid for at least one year whereas the EU BTI is valid for three years under the Customs Code of the EU.

Most industrialised nations are applying the WCO recommendation on binding advance rulings on tariff classification, but major trade partners of the EU, China, Japan and the US are not applying the WCO recommendation on binding pre-entry information. In particular, very few developing countries have decided to introduce the binding customs information.

Apparently the WCO has not yet had the means to urge HS contracting parties to apply this useful and rather important recommendation (Weerth, 2008e).

The RKC entered into force in 2006 and governs binding advance customs rulings in General Annex Standard 9.9. Currently, 114 contracting states have ratified this convention on the simplification and harmonisation of customs procedures, but the recommendation of the HS on binding pre-entry customs classification is more specific. However, for the issue of customs valuation and origin information the RKC is an adequate choice, next to the TFA.

The TFA that entered into force in February 2017 is changing the game considerably, since now the ratifying nations are legally bound to introduce such necessary binding advance rulings on tariff classification (valuation and origin information).

There is still a long way to go for most nations because the introduction of binding advance tariff classification rulings is not an easy task. It is not only about customs laboratories or capacity building. The introduction of binding advance rulings on tariff classification requires sound training and an infrastructure that ensures that the requests are answered in an adequate timeframe and binding information is issued (and possibly revoked) according to current HS rules and classification decisions. The WCO has issued a fact sheet on the introduction of a binding advance ruling system for tariff classification (WCO, 2014a, 2014b), because the WCO is helping in the implementation of the WTO TFA (WCO, 2014d, 2016).

Under Article 5 HS, contracting parties from developed countries are asked to assist developing countries by technical (and financial) support on issues of the application of the HS and its nomenclature, when this help is required and asked for. Currently, the WCO is actively supporting, in particular, the least developed countries (WCO, 2014c).

The introduction of binding advance rulings on tariff classification in all developing countries should be assisted by the WCO—the HS council and its developed nations. The implementation of article 3 of the TFA will also be supported by the WCO (WCO, 2016).

The EU and the US (along with other major world trade nations, such as Australia, Brazil, Canada, China, India, Japan, Russia and South Africa) are issuing binding pre-entry information on customs classification and are facilitating global trade by issuing legal security on the tariff rate for their customs services and economic operators.

However, apart from the 28 member states of the EU, only 44 countries are issuing binding pre-entry customs classification rulings, which is a rather low number considering the WTO membership of 164 (WTO, 2018a) and the HS membership of 157 (WCO, 2018d, 2018e).

This legal instrument should also be available for exporters of these countries when importing into other HS contracting parties.

7. Conclusion

1. Application of binding advance rulings on tariff classification

In 2018, binding advance rulings on tariff classification prior to import are being issued by 73 out of the 157 HS contracting countries (46.50%) (Table 1). Of these 72 countries, 56 have ratified the TFA, but 16 have not, and 62 have ratified the RKC, but 10 have not.

In 2008, 64 out of 133 HS contracting parties were issuing binding advance rulings on tariff classifications (48.12%) (Weerth, 2008e).

All 28 EU member states and the EU itself (which is also a HS member state) are issuing binding advance rulings on tariff classification. Therefore, only 44 HS contracting parties that are not EU member states are applying the WCO recommendation and are issuing binding advance rulings on tariff classification (Table 2). Of this group, 27 countries have ratified the TFA but 16 have not, and 34 have ratified the RKC, but 10 have not.

In 2008 only 36 HS contracting parties that were not EU member states were applying binding advance rulings on tariff classification (Weerth, 2008e), and only 34 HS contracting parties that were not EU member states were applying the WCO-recommendation and were issuing binding advance rulings on tariff classification (Weerth, 2008e).

Most major global trade nations are applying this recommendation: USA, Australia, Brazil, China, EU, Japan, Canada, India, South Africa, Russia, Mexico, Norway and Switzerland. Furthermore, two countries that are HS non-contracting parties but WTO member states and TFA ratifying countries are applying binding advance tariff classification rulings: El Salvador and Liechtenstein (Table 4).

2. No Application of binding advance rulings on tariff classification

Of the 157 HS contracting parties, 83 are not applying the WCO recommendation on binding advance rulings on tariff classification in 2018 (Table 3), including major trading partners of the EU, US, China and Japan, such as Chile, New Zealand, Indonesia, Iceland, Israel, Saudi Arabia, Singapore, Thailand and the United Arab Emirates. Of this group of 83 countries, 56 have joined the TFA while 27 have not, and 48 have joined the RKC while 35 have not.

In 2008 advance rulings on tariff classification prior to import were not being issued by 68 of 133 HS contracting parties (Weerth, 2008e), the majority of these being developing countries.

Other recent research has shown that the application of the HS nomenclature differs throughout the HS membership since waivers for developing countries according to Article 4 HS are allowing them to introduce new versions of the HS nomenclature later or not at all (Weerth, 2017b).

3. Implementation of Article 3 TFA by TFA ratifying states

In June 2018, 137 WTO member states have ratified the TFA (WTO, 2018b).

This study has shown that binding advance rulings on tariff classification is being applied by 56 TFA ratifying states (Table 1) and two states that are WTO members but not WCO member states (Table 4)—a total of 58 states (42.34% of 137 TFA member states). Another 56 states that have ratified the TFA are HS contracting parties but are not applying the advance rulings on tariff classification (Table 3) and 20 countries that have signed the TFA are HS non-contracting parties and are also not applying the binding advance rulings on tariff classification (Table 5)—a total of 76 countries.

All in all, 114 countries have ratified the RKC, which governs binding customs information in General Annex Chapter 9.9. The RKC is an adequate legal choice for customs valuation information and customs origin information, but the HS recommendation on binding advance rulings on tariff classification is more specific.

The overall aim should be the application of advance rulings on tariff classification by all 209 countries and economic regions that are applying the HS nomenclature (WCO, 2018d). Many small steps are necessary, and there is still is a long way to go, but Article 3 of the TFA is a game changer in this story—the TFA ratifying countries are forced to introduce these binding advance rulings within the specified time. And the WCO will be supporting them to achieve this (WCO, 2014d, 2016). New introduction projects of binding advance-classification rulings are under way by help of the WCO since the TFA entered into force in February 2017, for example in Bahamas (WCO, 2018h), Costa Rica (WCO, 2018i), Cuba (WCO, 2018j), Ethiopia (WCO, 2018k), Jordan (WCO, 2018l), Botswana (WCO, 2018m), Bhutan (WCO, 2018n), Malawi (2018o), Papua New Guinea (WCO, 2018p), Nepal (WCO, 2018q) and Burkina Faso (WCO, 2108r). More and more countries will introduce binding advance rulings in the near and middle future.

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WCO, see World Customs Organization.

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