

**Interim Administrative Guidelines**  
**on the**  
**European Binding Tariff Information (EBTI) System**  
**and its operation**  
**(Effective from 1 May 2016)**



**EUROPEAN COMMISSION**

DIRECTORATE-GENERAL  
TAXATION AND CUSTOMS UNION  
Customs Policy, Legislation, Tariff

**Combined Nomenclature, Tariff Classification, TARIC and integration of trade measures**

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**Subject: Interim Administrative Guidelines on the European Binding Tariff  
Information (EBTI) system and its operation (effective from 1 May 2016)**

Following the entry into force of Regulation (EU) No 952/2013, the Administrative Guidelines on the European Binding Tariff Information (EBTI) system and its operation had to be re-visited.

A Customs 2020 Project Group was set up to assist the Commission services in drafting interim guidelines that will become effective as from 1 May 2016, and focus on the principal changes to the BTI process arising from the UCC.

The content of this document reflects the outcome of the discussions with Member States.

## **Disclaimer**

*It must be stressed that this document does not constitute a legally binding act and is of an explanatory nature. Legal provisions of customs legislation take precedence over the contents of this document and should always be consulted. The authentic texts of the EU legal instruments are those published in the Official Journal of the European Union. There may also exist national instructions or explanatory notes in addition to this document.*

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## Glossary of terms and abbreviations associated with EBTI

Art. or Arts.	Abbreviations used for Article or Articles
Binding Tariff Information (BTI)	Binding Tariff Information is a decision issued by the customs administration that is binding on all Member States' customs administration and on the holder of the decision
BTI shopping	BTI shopping is the term used to describe the illegal practice of submitting more than one application, usually to different Member States customs administrations, for the same goods.
CN	The Combined Nomenclature or CN is the customs goods classification nomenclature of the EU (Council Reg. 2658/87 of 23 July 1987). It is based on the Harmonized System. All goods imported or exported must be classified in accordance with the CN. CN code numbers have 8 digits.
Commercial denomination	Commercial denomination means the name by which the goods are known in commercial terms, i.e. trade name. The commercial denomination in BTI decisions is confidential information.
Common Customs Tariff (CCT)	The CCT is the tariff used by the 28 Member States of the EU, hence Common Customs Tariff.
Customs Union	A customs union is formed when a bloc of countries create a free trade area among themselves and apply a common tariff in external trade. The EU is a customs union.
DA	Delegated Act (Commission Delegated Reg. (EU) 2015/2446 of 28 July 2015)

DDS	Data Distribution System or DDS is the name given to the public database where all valid BTI decisions are stored and can be consulted by the public. Confidential information in the BTI decisions is not shown in the DDS.
EBTI	EBTI is the abbreviation used for the term European Binding Tariff Information and refers to the system by which applications are submitted and BTI decisions are issued. See also BTI above.
EU	European Union formerly known as the European Community and composed of the 28 Member States.
Explanatory Notes	Both the HS and CN are augmented by Explanatory Notes, which although not legally binding are considered as aids to the classification of goods in either nomenclatures.
HS	HS is the abbreviation used for the Harmonized Commodity Description and Coding System (also known as the Harmonized System). The CN is based on the HS Nomenclature. BTI decisions are not issued for HS Codes.
IA	Implementing Act (Commission Implementing Reg. (EU) 2015/2447 of 24 November 2015)
OJ	The Official Journal of the EU.
Reg.	Abbreviation for Regulation
TARIC	TARIC, the integrated Tariff of the European Union, is a multilingual database in which are integrated all measures relating to EU customs tariff, commercial and agricultural legislation. TARIC code numbers have 10 digits.

Tariff classification	All good imported or exported must be classified in the Combined Nomenclature. The tariff classification will determine customs duties and any other customs charges (e.g. anti-dumping duties) the goods attract. Art. 56 of the UCC states that import and export duty shall be based on the Common Customs Tariff.
Tariff code number	All goods either imported or exported from the EU must have a tariff code number assigned to them. The customs treatment of goods is determined by that code number and the trader can assess any duties or other charges the goods may attract. Tariff code numbers are assigned to goods on the basis of their objective characteristics and are set out in the CCT.
TDA	Transitional Delegated Act (Commission Delegated Regulation (EU) 2016/341 of 17 December 2015)
UCC	Union Customs Code, the successor to the Common Customs Code (CCC). It came into force on 1 May 2016 (Reg. (EU) No.952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Customs Code).



## 1. OBJECTIVES OF THE GUIDELINES

The Guidelines on the European Binding Tariff Information (EBTI) system and its operation, although not legally binding, serve the following objectives:

- Offer a global overview to customs authorities and to traders of the Binding Tariff Information (BTI) process under the EBTI system;
- Contribute to the harmonisation of national practices in the area of Binding Tariff Information; and
- Provide guidance to customs authorities on how to draft and issue BTIs, how to prevent BTI shopping and how to deal with divergent views and appeals.

## 2. INTRODUCTION

As well as being an economic union, the European Union (EU) is also a customs union which guarantees equal treatment of traders in their dealings with the Member States' customs authorities. That being the case there is a legal obligation on customs authorities to apply customs legislation in a uniform manner. In the absence of such uniformity, traders would be uncertain as to what charges they would have to pay as potentially these would differ from Member State to Member State. This could potentially lead to a situation where goods would be imported from third countries via the Member State applying the lowest - or zero - duty rate and they would then benefit from the principle of free circulation inside the EU. However Article 28<sup>1</sup> of the Treaty on the Functioning of the European Union, dealing with the free movement of goods between Member States, explicitly stipulates the adoption of “*a common customs tariff in their relations with third countries*”.

The customs nomenclature (i.e. the Combined Nomenclature or TARIC, as appropriate), which forms part of the Common Customs Tariff (CCT)<sup>2</sup>, is also used for purposes other than the levying of customs duties. Such purposes include the collection of external trade statistics, the identification of products subject to import and export restrictions, the identification of products for which export refunds or production aid are granted, the definition of products subject to excise duties or reduced rates of value added tax as well as the definition of rules of origin, etc.

Thus, it is obvious that classification and the uniform interpretation and application of customs nomenclatures play a key role in international trade.

In order to ensure legal certainty for economic operators when calculating the price of import or export transactions and to facilitate the work of the customs services as well as to secure a more uniform application of the Common Customs Tariff, the European Binding Tariff Information (EBTI) system was introduced.

Since BTI was introduced in 1991 there has been steady growth in the numbers of BTI decisions issued annually so that at the end of 2015 there were more than a quarter of a million valid BTI decisions stored on the EBTI database. All BTI applications and BTI decisions are stored on a database (hereinafter the "EBTI database") managed by the European Commission.

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<sup>1</sup> Consolidated version of the Treaty on the Functioning of the European Union published in OJ C326 of 26.10.2012, p.47

<sup>2</sup> Article 56 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 10 October 2013 laying down the Union Customs Code (OJ L269 of 10/10/2013 p29)

All valid BTI decisions can be consulted by the public on the web-site (DDS) of Directorate General for Taxation and Customs Union (here “DG TAXUD”) under the following address:

[http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/classification\\_goods/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/classification_goods/index_en.htm)

For an explanation of the DDS database please refer to the Glossary of Abbreviations and Terms at the start of the Guidelines.

With the entry into effect of the Union Customs Code<sup>3</sup> (hereinafter UCC) on 1 May 2016, it is necessary to reassess the Administrative Guidelines on the various procedures and stages concerned with issuing BTI decisions in the light of a number of new legal obligations imposed by the UCC both on the customs administration and economic operators. These Guidelines are valid as and from 1 May 2016 until further notice.

Given the radical changes to the legislation and the introduction of some new statutory rules connected to the treatment of BTI applications, issuing of decisions and legal obligations on applicants and holders, a number of annexes are attached to these Guidelines for the benefit of users. Amongst them are a brief overview on the main changes taking place from 1 May 2016 onwards and a number of correlation tables between the Common Customs Code and the Union Customs Code to assist officials and traders familiarise themselves with the new legal provisions.

The procedures and stages concerned with issuing BTI decisions can be summarised as follows:

- Pre-application phase;
- Application for BTI;
- Consultation of the EBTI database;
- Dealing with differing views on classification;
- Issuing a BTI;
- Dealing with divergent BTIs;
- Annulment of a BTI;
- When BTI decisions cease to be valid or are revoked; and
- Appeals procedures, including the role of national tribunals.

### **3. PRE-APPLICATION PHASE**

**Article 14 of the UCC** obliges the customs authorities to provide information on the application of customs legislation, including on the classification of goods. However, such advice is only legally binding if it is issued within the BTI framework. The binding nature of valid BTI decisions is such that all valid BTI are binding in their entirety both on the customs administrations and on the holder.

When informal advice is being provided outside the EBTI system, it is advisable to keep records of such advice. It is also important that the recipient of such informal advice is made aware of its non-binding nature. Legal certainty regarding tariff classification can only be obtained through a BTI decision.

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<sup>3</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 10 October 2013 laying down the Union Customs Code (OJ L269 of 10/10/2013) and its Commission Delegated Regulation (EU) 2015/2446 (OJ L343 of 29.12.2015) and Commission Implementing Regulation (EU) 2015/2447 (OJ L343 of 29.12.2015). These guidelines also take account of Commission Delegated Regulation (EU) 2016/341 (OJ L 69 of 15.3.2016), which provides the transitional rules and data requirements that are to be used for BTI until the EBTI system is updated, in accordance with the UCC Work Programme (Commission Implementing Decision 2014/255/EU – OJ L134 of 7.5.2014 – currently under revision).

In accordance with the provisions of **Article 52 of the UCC**, customs administrations shall not charge for the performance of other customs activities carried out during the official working hours of the administration.

Customs do not charge for issuing a BTI decision, however, in accordance with **Article 52(2) (b)** customs may impose charges or recover costs relating to analyses or export reports on goods and postal fees for the return of good to an applicant.

Charges may also be imposed where the customs administration is requested by the applicant to undertake translations of documentation into the language of the Member State. Translations should only be done at the request of the applicant. If the applicant fails to provide a translation or does not request customs to undertake it, the application should not be accepted on the grounds of insufficient information.

The customs authorities may accept any documents and information accompanying or supporting the application in a language acceptable to them, or require a partial or total translation of these documents or of this information into such a language, in accordance with their national laws, regulations or administrative practice.

#### **4. APPLICATION FOR BTI**

Applications for BTIs must be submitted on the Application for Binding Tariff Information form at Annex 2 of the Transitional Delegated Act<sup>4</sup> (TDA). The application form must be correctly completed in accordance with the relevant legal provisions and the “General information on the completion of the application for binding tariff information”<sup>5</sup> which is available on the DG TAXUD web-site.

Since no specific conditions have been elaborated in the legislation for allowing a BTI decision to be applied for by, or taken with regard to, several persons, no practical effect has been given to this provision as far as BTI are concerned. (**UCC Art.22 (1) 2<sup>nd</sup> subparagraph**)

Applicants should be encouraged to add their EORI number to their applications.

BTI applications shall relate to one product. Goods which have similar characteristics can be accepted as one product, provided any differences are irrelevant for the purposes of determining their tariff classification, for example terracotta flower pots of different dimensions. The Court of Justice of the European Union in Case C-199/09<sup>6</sup> has ruled on the meaning of what the phrase "one type of goods" means. (**IA Art.16 (2)**)

It must be stressed that it is **the applicant’s responsibility to provide all the information necessary to classify the goods.**

The BTI application form contains 13 boxes (both mandatory and optional) to be completed by the applicant. Apart from the names and addresses of the applicant and the holder of the BTI (who are the same person, since the applicant will become the holder once the decision is issued), the following information must be provided or indicated (as appropriate):

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<sup>4</sup> Commission Delegated Regulation (EU) 2016/341 as regards transitional rules for certain provisions of the Union Customs Code where the relevant electronic systems are not yet operational and amending Delegated Regulation (EU) 2015/2446 (OJ No L 69 of 15.3.2016).

<sup>5</sup> [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/classification\\_goods/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/classification_goods/index_en.htm)

<sup>6</sup> Judgement of the Court of 2 December 2010 in Case C-199/09, Schenker SIA v Valsts ieņēmumu dienests

- the customs nomenclature in which the decision should be issued;
- a detailed description of the goods, including their physical description, their function, composition, characteristics and the manufacturing process where appropriate;
- additional information, e.g. samples, photographs, plans, catalogues, etc., that may assist the customs determine the classification;
- the tariff classification envisaged by the applicant;
- those particulars to be treated as confidential;
- whether the applicant has applied for or holds a valid BTI decision for identical or similar goods in the EU;
- whether to his or her knowledge a BTI decision for identical or similar goods has already been issued in the EU;
- his or her acceptance that the information supplied is stored on the EBTI database and that the non-confidential information is disclosed to the public via the internet.

In relation to the different boxes on the BTI application, customs administrations should pay particular attention to the following points:

- **“Applicant”(Box 1) / “Holder” (Box 2):**

The applicant for a BTI decision shall automatically become the holder of that decision. All applicants must have an EORI number and they should be encouraged to insert it on their applications.

An application for a BTI decision shall be submitted to the competent customs authority in the Member State where the applicant is established or to the customs authority of the Member State in which the BTI decision is going to be used. Sometimes (multinational) companies may choose to centralise their import/export transactions in one place which may be situated in a Member State different to the one in which they are established. **(DA Art. 19 (1))**

A Member State receiving an application for an applicant/holder established in another Member State shall notify the other Member State within 7 days from the acceptance of the application. The notified Member State has a maximum of 30 days from the date of the notification to transmit any information it considers relevant for the processing of the application. If no reply to the notification is received within that statutory time-limit, the Member State that received the application may proceed with its processing. **(IA Art. 16 (1))**

Applications may also be received from economic operators established outside the territory of the EU. Such applications should be submitted to the competent customs authority that has assigned the applicant's EORI number.

Customs authorities, however, should be aware of the risk of “BTI shopping”<sup>7</sup> when they receive a BTI application from an applicant/holder established in another Member State. It is obligatory to consult the database as to whether the same applicant/holder has also applied for, or received, a BTI decision for identical or similar goods in another Member State. Furthermore, the Member State where the applicant/holder is established should always be informed about the receipt of the application.

During the interim period starting on 1 May 2016, only the pre-UCC BTI application shall be available until the appropriate electronic systems are in place when a specific place for recording searches in the EBTI database will become available. Consequently, in order to fulfil the obligation to retain records of such searches, Member States administrations are advised to use the "for Official Use" box on the application form for that purpose. The minimum information required is the registration numbers of those BTI decisions (both valid and invalid) upon which the administration has relied upon when taking the BTI decision.

- **"Representative" (Box 3)**

Any trader has the right to appoint another party to represent him in his dealings with the customs authorities. However, there are certain criteria and obligations that persons fulfilling that role must comply with. **(UCC Art. 18 (1))**

Customs representatives must be established within the territory of the EU and each Member State may determine the conditions under which services may be provided by a customs representative established within its territory. **(UCC Arts.18 (2) and (3))**

However, a representative may provide services in a Member State other than the one in which he or she is established provided the representative fulfils the conditions set out in UCC Article 39 (a) to (d) inclusive. **(UCC Art. 18 (4))**

Representation may be either direct or indirect. Direct representation means that the representative acts in the name of and on behalf of another person, i.e. the applicant/holder. Indirect representation means that the customs representative acts in his or her own name but on behalf of another person, i.e. the applicant/holder. **(UCC Art. 18 (1))**

A person who fails to state that he or she is acting as a customs representative or who states that he or she is acting as a customs representative but is not empowered to do so shall be considered as acting in his or her own name and on his or her own behalf. **(UCC Art. 19 (1))**

In cases where the services of a representative are employed, the customs authorities have the right to request proof of empowerment of any person claiming to be a customs representative working on behalf of the applicant/holder. If he or she does not fulfil the statutory conditions that person is to be considered as working on his or her own behalf. **(UCC Art. 19 (1))**

- **"Description of goods" (Box 8):**

The description of the goods must enable correct identification of the item being classified as it is the link between the BTI and the goods being declared. Quoting the text of the nomenclature is only allowed in exceptional cases if the given quotation fully corresponds to the description of the product, entailing all necessary information to classify the product. For the majority of goods, besides stating what those goods are, the applicant should also provide information regarding their physical description, their

function or use, the composition of the goods and describe their characteristics, e.g. size, colour, packaging or other features and manufacturing process, where they are appropriate, and would assist customs in identifying the goods. (See Section 7.3.1)

Should any of those elements be insufficiently described or missing and are deemed necessary by the customs authority to allow it to determine the classification of the goods or if additional information is required, the customs authority must request **the applicant to provide the missing information within a reasonable time which shall not exceed 30 days**. Should the applicant fail to provide the requested information within that time limit the application will not be accepted and the applicant must be notified accordingly. **The application nevertheless should be uploaded on the EBTI database. (IA Art. 12(2))**

This box should not contain any confidential information, e.g. the commercial denomination. Such information, e.g. trade names, article number etc. should only be included in box 9 under “commercial denomination”.

- **“Other BTI applications and other BTI held” (Box 11):**

The applicant must state whether he has applied for, or is in possession of, any valid BTI decisions issued for the identical or similar products. In the case of large or multinational companies, in particular, one would expect an awareness of BTIs issued to related companies.

Box 11 only concerns applications or BTI held by the applicant applying for, or the future holder of, the BTI decision. Box 12 concerns BTI decisions for traders other than the trader making the application.

If an administration discovers that an applicant has made another BTI application for the same product in another Member State, the administration is to contact the other Member State within 7 days of accepting the application in order to establish who is going to issue a BTI. In principle the Member State that has received the first application will process it but in exceptional circumstances other elements may be taken into account, e.g. the place where the holder is established, the Member State where the BTI is going to be used and the language of the application. The Member State being contacted should provide the enquiring Member State with any relevant information as soon as possible but no later than 30 days from the date of the enquiry. **(IA Art. 16 (1))**

A record of all such contacts should always be retained by the Member States concerned. It is advisable that such records be retained for at least three years after the end date of validity of the BTI decision to which they pertain. **(IA Art.13)**

The Member State being contacted should reply as soon as possible to the Member State making the enquiry but certainly within 30 days after the contact is launched. If no reply to the enquiry is received by the enquiring Member State within that statutory time-limit the Member State that received the application may proceed with its processing. **(IA Article 16)**

If as a result of the contacts between the Member States it is discovered that the applicant has applied for or received a BTI decision, the applicant must be informed that the customs authorities will not issue a BTI and if he or she already has a valid BTI decision

that it should be used. In any event, the application must be uploaded in the EBTI database. **(UCC Art. 33 (1)(a))**

- **“BTI issued to other holders” (Box 12):**

The applicant should indicate in this box any BTI decisions that he is aware of that have been issued to other holders for identical or similar goods. Such information is available to traders on the DDS database. However, it must be remembered that although BTI decisions may exist for similar goods, traders may not in fact be familiar with them or may not be able to find them when searching in the database. Therefore, the information provided in this box should not normally be used as a reason for not accepting a BTI application or annulling a BTI decision.

Once an application has been submitted and it is clarified that all mandatory fields are filled in, **it should be uploaded on the EBTI database without delay but that does not mean that it is formally accepted.**

The time frame for issuing BTI decisions is governed by the legislation. Once the customs administration has in its possession all elements required to permit the tariff classification to be determined, it must inform the applicant without delay and at the latest within 30 days from the date of receipt that his application is formally accepted and the date from which the issuing period starts running. **(UCC Art. 22 (2))**

The BTI decision should be issued at the latest within 120 days from the date of the acceptance of the application. If the customs is unable to issue the decision within the specified time limit they should notify the applicant of that fact before the expiry of the 120 days from the date the issuing period started running. The notification should explain the reasons for the delay and inform the applicant of the additional period of time the customs consider necessary to issue the BTI decision. That additional time limit shall not exceed 30 days, unless otherwise stated elsewhere. **(UCC Art. 22 (3))**

When uploading the application on the EBTI database it is recommended that images of the goods are added with a view to reducing the risk of divergent BTI being issued. Images also play a major part in the combat against BTI shopping. Images attached to applications need not necessarily be attached to BTI decisions, although it is recommended that they are unless there are reasons for not doing so.

When an application for a decision regarding the customs legislation is submitted, the applicant assumes responsibility for providing all information required to allow the customs to take that decision. **(UCC Art. 22 (1))**

In the case of BTI decisions, the customs may require additional details or a sample of the goods to which the application refers. However, it must be borne in mind that the applicant may not be in possession of the required information and may have to obtain it from another source. That being the case it may not be readily available and consequently the applicant may require time to provide the necessary information or a sample.

Certain information might only be available as a result of an analysis performed by a laboratory. The applicant should be aware that there is no obligation on the customs authorities to undertake a laboratory analysis on his/her behalf but that some customs may decide to do so, in particular

where the classification is dependent on the composition of the goods. In those cases, the applicant should be notified that an analysis is required and that the customs laboratory is willing to perform it on his or her behalf. The terms and conditions associated with carrying out such an analysis, including any charges the applicant may incur as a result of it, must be clearly indicated in the notification. **(UCC Art. 52 (2))**

It must be stressed that all BTI applications that have been correctly completed i.e. all mandatory boxes have been filled in, must be uploaded on the EBTI database without exception, even if the data is incomplete or the application is withdrawn at a later stage. **There is no circumstance that permits derogation from this obligation.**

## **5. CONSULTATION OF THE EBTI DATABASE**

**Article 17 of the Implementing Act** enshrines in law the obligation on customs administration to consult the EBTI database and to keep a record of those consultations. The purpose of this stipulation is to ensure the uniform tariff classification of goods in the EU and thus reduce the potential for issuing divergent BTI decisions. Furthermore, it is a necessary action in the combat against the practice of "BTI shopping". **(IA Art. 16 (4))**

Risk indicators for BTI shopping may include:

- More than one tariff heading merits consideration;
- Significant differences in the duty and/or tax rates that the different tariff headings which merit consideration attract;
- Other EU measures (e.g. import licensing, tariff quotas or anti-dumping duties) are involved.

As many BTI applications relate to goods where there are doubts about which one of a number of tariff headings is correct, the temptation to indulge in BTI shopping is always present. Therefore searches in the EBTI database aim to verify that the applicant has not submitted an application in any other Member State for identical or similar goods, and that neither the applicant nor holder are in possession of valid BTI decisions for identical or similar goods. Such searches must encompass BTI applications submitted to, and BTI decisions issued by, all Member States of the EU. It is not advisable to restrict such searches to BTI decisions issued by a limited number of Member States.

Consultations in the EBTI database can be conducted using a number of search criteria, both separately and together. Amongst those criteria are the customs ID/EORI number, applicant's name, the holder's name, the goods description, the commercial denomination, the tariff code number envisaged by the applicant, possible alternative code numbers and the validity period. In addition, images and keywords also play an important role in such searches in the database and consequently it is in the interest of all customs administration to make sure that they correctly index their BTI decisions, and where feasible they attach at least one image to applications and the BTI decisions they issue.

Administrations are advised to undertake a reasonable amount of research that should be recorded in order to demonstrate that they have complied with IA Arts. 16 (4) and 17.



The more criteria used when conducting searches in the database, the more precise the results will be.

Such searches serve a number of purposes. They

- Ensure uniformity of classification for a given product
- Promote equal treatment of traders regardless of where they are established in the EU
- Reduces the potential for BTI shopping
- Assist officials in classifying goods and issuing uniform BTI decisions.

Searches in the database should not be limited to BTI decisions issued by the official's own Member State or to a limited number of Member States. In the case of BTI shopping it is essential that searches are carried out among the BTI issued by all Member States, and not just a few.

Even if the applicant indicates on his application that he is aware of other valid BTI decisions, checks should still be made to verify that there are no additional decisions the applicant has not listed. It must also be borne in mind that the range of knowledge concerning tariff classification will inevitably vary among traders with some having very basic knowledge and others having a high degree of practical experience in the field. Therefore, total reliance on what the applicant indicates in boxes 11 and 12 is not good practice.

In compliance with IA Art. 17, a record of the results of searches in the database should be kept by the administration. **It is recommended that such records be retained for at least 3 years following the end date of validity of the BTI decision.**

If a Member State is uncertain about any aspect of an existing BTI decision, it should contact the issuing Member State to clarify the situation and if the matter cannot be resolved bilaterally it should be referred to the European Commission. (See Section 6 "Dealing with different views etc.")

When consulting the EBTI database it is very important that the search results are up-to-date at the time of the consultation. In order to ensure that such results reflect the latest situation in the EU it is of supreme importance that all applications and BTI decisions are entered in the database without delay. Even a delay of 24 hours has the potential to create a divergence in classification or facilitate a case of BTI shopping if more than one Member State is processing a BTI application for an identical product simultaneously.

If it is found that another Member State has issued a BTI for the **same product** and for the **same holder**, the application should, of course, be entered into the system. However, a BTI should not be issued, but rather the applicant should be told that the holder is to use the BTI that he already holds. Cases of this kind, especially when the BTI application indicates another customs nomenclature code than the one in the BTI issued, should be reported to the Commission as BTI shopping (e.g. via e-mail). **(UCC Art. 33 (1)(a))**

If it is found that another Member State has issued a BTI for the **same product**, but for a **different holder**, the application should be entered into the system. The classification code notified on this first BTI should be followed unless it is considered to be erroneous. In such cases the other Member State should be contacted in order to agree on a uniform classification. (See under "*Dealing with differing views on classification*".)

If no BTI decisions have been issued for the goods described in the BTI application but the Member State has doubts about the classification, it should consult the other Member States for their views. Member States are recommended to reply to such consultations as soon as possible but no later than 30 days following the launch of the consultation. It is also recommended that such consultations be carried out in a language common to both parties and if that should not be possible in one of the more widely spoken languages, preferably English. A record of such consultations should be retained. Alternatively, the matter could also be submitted to the Commission.

If **no BTIs** have been found and the Member State has **no doubt** about the correct classification, it should **issue** a BTI.

## **6. DEALING WITH DIFFERENT VIEWS ON CLASSIFICATION**

Differences of opinion on the tariff classification of specific goods can arise, particularly when new products are put on the market. Such different views can impact on BTI decisions either before or after they are issued. The two situations that can give rise to differing opinions are described below.

- a) An application is submitted for a specific product but before issuing the BTI decision the Member State consults with other Member States. However, a unanimous opinion regarding the classification cannot be reached. Such a situation can lead to the issuing of the BTI decision taking longer than it normally would have if there had been a consensus.

If no agreement can be reached, the enquiring Member State should request consultation at Union level by sending a substantial and complete submission to the Commission. In this case, the procedures and deadlines set out under point 8 “Divergent BTIs” apply. Once an opinion on the classification of a specific type of goods or a specific product has been rendered at Union level, no BTI should be issued contrary to that opinion and that opinion should be respected by all Member States.

- b) Member State (B) has received a BTI application for a specific product. Upon consulting the EBTI database it discovers that Member State (A) has issued a BTI for the identical product. However, Member State B does not agree with the classification given in the BTI decision issued by Member State A. The potential consequences of such a situation are that either the existing BTI decision will be revoked or the issuing of the BTI shall take longer than it normally would have if there was no difference of opinion.

If Member State A agrees with the argumentation of Member State B and accepts that the BTI decision is incorrect, it will revoke the BTI and issue a new BTI upon application with the classification suggested by Member State B. All Member States and the Commission should also be informed of that decision, via CIRCABC.

On the other hand, if Member State B accepts that the BTI issued by Member State A is in fact correct, it can proceed to issue a BTI decision in conformity with the existing BTI issued by Member State A.

However, if the two Member States cannot come to an agreement, Member State B should formally inform both Member State A and the Commission that it wishes to submit the matter to consultation at Union level.

In all cases where there are differing opinions between Member States with regard to the classification either to be attributed to goods or in valid BTI decisions, the **first step** should be that the enquiring Member State **consults the other Member State** in order to seek further information on the product and to try to find a solution between them. This could be done by any means, e.g. CIRCABC, telephone, email and a record of it should be retained.

No Member State should issue BTI for the disputed product until the matter has been finalised and the applicant should be informed accordingly.

When a disputed classification matter is subject to consultation at Union level, the customs authorities of the Member State in which the BTI application has been lodged, should notify the applicant that the issue of the correct classification has been referred to consultation at Union level for a decision and inform him or her that a BTI decision will be issued as soon as a decision has been rendered and published.

## **7. ISSUING A BTI**

Under this heading the following subjects will be addressed:

- Issuing periods;
- The role of laboratories;
- Drafting a BTI
  - General remarks;
  - The description of goods;
  - The classification justification;
  - Confidential information;
  - “Indexation” (adding keywords); and
  - Images.
- Final issue of the BTI.

### **7.1 Issuing periods**

One of the new features of the UCC is that the legislation imposes strict deadlines on the actions connected to the handling of applications, consultations between Member States and the issuing of BTI decisions.

The time limits associated with the handling of applications and consultations between Member States are dealt with in Sections 4 and 5 (respectively) of these Guidelines.

When the customs administration are satisfied that it has at its disposal all the elements required to take a decision it should notify the applicant without delay and also inform him of when the issuing period has begun. Whereas in the past there was no specific deadline set of the issuing of BTI decisions, the UCC lays down that a decision should be taken as soon as possible and in any case within 120 days of acceptance of the application, unless otherwise specified. **(UCC Art. 22 (3))**

However, if the customs cannot issue the decision within the 120 days deadline, the applicant should be notified of that fact before the 120 days period has expired and told when he can expect the decision to be taken. The customs in such a situation has an additional 30 days in which to issue the decision, unless otherwise specified. **(UCC Art. 22 (3))**

In cases where laboratory analyses are required, the application can only be considered complete when the reports of those analyses are available and the time limit for issuing the BTI only starts running from that moment on. Therefore, it is important that the administrations determine as soon as possible after the application has been received if they require a sample. **(IA Art.12 (1))**

If, after formally accepting an application the customs authority determines that additional information is required, it may request it from the applicant and the applicant shall be given a period of no longer than 30 days to furnish the required information. The time limit for taking the decision shall be extended by the time given to the applicant to provide the required information. **(DA Art.13 (1))**

Administrations are advised that applicants should be informed of any charges attached to performing an analysis required by the customs. Should the applicant decline to pay those charges the customs is unable to issue a BTI decision on the grounds that all the information required to make a decision is not available.

## **7.2 The role of laboratories**

Although it is generally the responsibility of the applicant to provide all information, laboratory analysis may be used to determine the correct classification of a given product, due to the technical and complex nature of the composition of a number of products.

Laboratory analysis contributes to reaching the following objectives:

- Determining the composition of a product;
- Confirming information coming from the applicant and concerning sensitive products (agricultural products, chemical products, textiles, shoes, ...); and
- Specifying the justification of classification.

Monitoring actions have shown that Member States consult laboratories in a very large number of cases to determine or check the composition of the goods which are the subject of the BTI application. Analyses are particularly relevant for BTI applications concerning goods the tariff classification of which depends on their precise composition (e.g. agricultural products, food products, beverages, mineral oils, etc.).

It is recommended that when an analysis is required the sample should be forwarded to the laboratory as soon as possible so as to allow the chemists to perform the necessary tests and report the results back to the customs authority. This advice is aimed at giving both the laboratories and officials sufficient time to carry out their respective tasks within the statutory deadline for issuing a decision.

In cases where analysis has been conducted the BTI should indicate the existence and results of a laboratory analysis. If, for reasons of confidentiality, the result of the analysis cannot be included in the “description of goods” in box 7, it should be indicated in box 8 “commercial denomination and additional information”.

It should be noted that the legislation governing BTI allows for the applicant to be charged the costs of the analysis.

### 7.3 Drafting a BTI

A BTI is a decision made by the competent authorities of one Member State and binding on the customs authorities of all other Member States and on the holder.

The quality of the drafting is essential for the use of the BTI:

When drafting the BTI, special attention must be paid to the following points:

- The description of goods;
- The justification for the classification;
- Confidentiality;
- Indexation (adding keywords); and
- Images.

#### 7.3.1 *The description of goods*

BTI decisions are only issued for one type of goods. The term "one type of goods" has been interpreted by the Court of Justice of the EU as goods that have similar characteristics and whose distinguishing features are completely irrelevant for the purposes of their tariff classification. (**IA Art. 16 (2) and Case C-199/09 Schenker SIA vs. Valsts ieņēmumu dienests**)

Examples of one type of goods would be:

- Undecorated terracotta flowerpots of various dimensions for horticultural use of heading 6914;
- Non-folding table knives regardless of the constituent material of their handles of heading 8211.

The description of the specific goods should:

- be sufficiently detailed so as to allow the goods to be recognised without any doubt;
- include details other than quotes from customs nomenclatures that have led to the classification;
- follow a similar structure regardless of the Member State issuing it.

It is obvious that the quality of the description is vital in helping achieve the purpose of a BTI, namely to facilitate trade *and* customs controls. Only when customs officers are able in all cases to relate the goods described in a BTI easily to the goods presented for customs clearance, will a BTI serve its purpose. Thus, the legal impact of the BTI is largely based on the quality of the description.

If the description is imprecise or ambiguous, the coverage of the BTI decision can be called into question at the moment of customs clearance if the customs officer has doubts that the goods presented are the same as those described in the decision.

If the description of the goods is clear and there is no doubt that the goods presented to customs correspond to the goods described in the BTI decision, then that BTI must be accepted irrespective of the tariff classification assigned to the goods. (UCC Art.33 (4) (a))

**A BTI decision does not replace the customs controls.** It should facilitate and accelerate customs clearance.

Careful thought has to go into how best to describe a product. If a description is either too detailed or too vague there is the potential for problems when the BTI decision is being used. A good description finds a balance between the two extremes.

Examples of vague descriptions would be simple generic terms such as "paint", "ground nuts" or "pasta". While there is no doubt about what those products are, their correct tariff classification depends on additional details concerning their composition, presentation, etc. While a customs officer can visually determine that a liquid is orange juice, he would not be able to tell if it has added sugar or what its Brix value is for example. It is even more important that goods classified at residual headings ("other") are carefully described.

An actual example of the other extreme is

*"This positive opening sealed position switch is a dependent action, changeover, double gap, contact element which is connected by means of a cable directly over moulded into the housing. Nominal switching capacity 6A 250v AC frequency of operation 3600 operations per hour. Complete with actuator."*

From that description it is not at all clear what the product is, what it does or what it is going to be used in. While there is a lot of information given, it does not explain the basic details in a logical or structured manner.

Vague and unclear descriptions may lead to a situation that the trader is unable to use the BTI when declaring the goods to the customs.

To ensure the best possible description of goods in BTI decisions there are 5 major questions that should be answered.

- a) **What are the goods?** (Denomination of the goods) *A woven anorak for men*
- b) **What do the goods look like?** (Physical description of the goods) *It has a complete front opening with a zip and left over right press-stud fastening. It has a collar which has a concealed hood and has long sleeves with Velcro tightening at the cuffs. It is padded and lined*
- c) **What do the goods do or how are they used?** (Function) *to cover the upper part of the body from the shoulders to mid-thigh.*
- d) **What are the goods made of?** (Composition of the goods) *It is constructed from a woven fabric that is considered visibly coated to the naked eye. 100% nylon.*
- e) **Any distinguishing features?** *Drawstring toggle tightening at the waist.*

The complete description would then read:

*"A woven anorak for men. It has a complete front opening with a zip and left over right press-stud fastening. It has a collar which has a concealed hood and has long sleeves with Velcro tightening at the cuffs. It is padded and lined. It covers the upper part of the body from the shoulders to mid-thigh. It is constructed from a fabric that is considered visibly coated to the naked eye. 100% nylon. It has a drawstring toggle tightening at the waist."*

In addition to a physical description of the goods, account must also be taken of packaging and if they are presented for classification as a set. For example, the goods may be packaged for retail sale with other items, indicating that the individual packages are sold as a set. However, the customs may decide that the different items do not constitute a set **for customs purposes** and each item is then classified separately, and consequently a BTI decision is also issued for each of the items.

In such a circumstance, it is important that each BTI decision is associated with the other items in the package. A reference to the other BTI decision(s) should be included in the description of goods.

In addition to an exhaustive description the attachment of an image would greatly enhance the efficacy of a structured description.

### ***7.3.2 Justification for the classification***

All BTI decisions issued must be in conformity with EU legislation. When a BTI decision is issued it should be clearly explained in Box 9 of the BTI form how the classification decision was reached. The justification should be structured logically so as to allow the holder of the decision and custom officials to clearly understand the reasons both for rejecting specific headings as well as for reaching the heading in the decision.

A correctly formulated justification should be complete and contain no unexplained abbreviations. It should be structured in the following order to indicate:

- General rules for the interpretation of the Combined Nomenclature;
- Section and Chapter notes and sub-heading notes;
- Additional notes;
- Classification Regulations;
- Harmonized System and Combined Nomenclature Explanatory notes;
- Harmonized System Classification decisions and opinions;
- EU Classification opinions;
- Rulings of the Court of Justice of the European Union; and
- National tribunal rulings.

It is important that the reasons both for including and excluding goods from particular tariff headings are clearly indicated. Such information promotes transparency and not only helps economic operators understand why their goods are classified in a particular heading but also provides customs administrations in other Member States with an insight as to how the issuing administration reached the decision in the BTI.

### 7.3.3 Confidentiality

An important aspect in the framework of the EBTI system is confidentiality. Articles 12 and 13 of the UCC impose a legal obligation on Member States to treat information acquired by customs or exchanged with traders to be treated as confidential.

The matter of confidentiality arises in three areas:

- Information submitted by the applicant;
- Information added by the issuing Member State; and
- Information exchanged between Member States and the Commission.

The following information submitted by the applicant shall always be considered confidential:

- the details concerning the holder (name etc.);
- the commercial denomination;
- supplementary information (e.g. composition of chemical products, laboratory analysis);
- logos on samples.

The important notice on the BTI application form informs the applicant that when he/she signs the BTI application form he/she also accepts that any information provided to the customs may be stored on an electronic database managed by the Commission and may be divulged to the public with the exception of information concerning the holder (box 2) and the commercial denomination and additional information (box 9).

That being said, the administrations are still obliged to use their discretion especially when attaching images to BTI. Even if the applicant fails to indicate information he/she would wish to be treated as confidential, the following information should always be treated as confidential:

- Commercial trademarks;
- Product references;
- Results of analyses of laboratories;
- Containers or other features, where their characteristic are synonymous with a specific product.

Images of the goods with a label or with other distinguishing features (e.g. container shape) should be treated as confidential by the customs without exception.

It is also possible to attach images in both the public and confidential fields if the administration believes that this would be beneficial to those with access to those fields.

Information exchanged between administrations and the Commission:

Administrations have access to all BTIs stored on the EBTI database, including those issued by other Member States. This includes access to confidential information. It is important to protect the integrity of this information and of the EBTI system. Accordingly, the EBTI system contains a tracking system which records the details of those accessing the system and the actions carried out on a specific BTI.



### 7.3.4 “Indexation” (adding keywords)

When the EBTI system was established, it was decided that BTIs would be stored in the language of the author only. However, it was recognised that there was a need to identify relevant BTIs issued by other customs authorities and the solution found was that BTIs should be indexed. Thus, adding relevant keywords from the EBTI Thesaurus is a key element in the EBTI system. Keywords are essential for finding BTIs which have been issued by other Member States and in languages different from the national one as they are “automatically” translated into the other Community languages.

Good indexation is, therefore, just as important as an exhaustive and meaningful description of goods.

However, indexation presents, by its nature, a certain degree of subjectivity. The same indexer will not necessarily use the same descriptors after an interval of two days. The same BTI processed by two different indexers will not bear the same descriptors.

Given the subjective nature of indexing, a degree of standardisation is required to ensure that the same structure is followed irrespective of the type of product. The general indexing methodology should follow the same structure as the description and would, therefore, be:

- Keywords defining the type of product;
- Keywords qualifying the physical state of the product;
- Keywords defining or qualifying the function or uses made of a product;
- Keywords qualifying packing where this is relevant;
- Keywords defining or qualifying the factors on which classification is based;
- Keywords defining each of the elements of which a product is composed;
- Keywords qualifying each of the elements of which products are composed.

Apart from the structure, some general rules on indexing should be observed:

- Indexation must imperatively start with a concrete descriptor, i.e. with a noun like “coat”, “earphones”, “metal joints”, “carp”;
- The structure of the indexation must be the same as the one of the description;
- Confidential data cannot be mentioned either in the description or in the indexation;
- Indexation must be the reflection of the description and of nothing else; particularly not of the tariff customs classification; and
- Indexation must not include information which does not appear in the description.

Furthermore it is paramount that keywords be taken from the Thesaurus. It is recommended that **at least 5 keywords** be entered on each BTI.

### 7.3.5 Images

While a clear and precise description is the most important element in a BTI decision after the tariff classification, the description can be further enhanced by the addition of an image of the goods concerned. Images can immediately clarify the nature and characteristics of the goods and make it much easier for officials clearing goods through customs.

While it is not obligatory to attach images to BTI decisions, it makes for best practice to attach at least one image where practical to each decision. Images of certain types of products do not add

anything to a good description. This is true especially of powders and liquids, although it may sometimes occur that such products have sufficiently distinct characteristics to merit an image being attached to the decision.

In general, images should refer to samples submitted by the applicant. However, relevant extracts from brochures or other manufacturers literature, datasheets and, where relevant, formulae and contents as displayed on packaging can also be attached as images.

Confidentiality must always be a consideration when attaching images to BTI decisions. It is recommended that where it is not possible to obscure trade names or logos, or where the packaging of the product is distinctive and synonymous with a brand, the image should always be made confidential in the BTI. It is also possible to attach images that are confidential alongside others that are not confidential. The important thing is that any image attached to a BTI decision is placed in the appropriate category and adds to the understanding of the product being described.

Ideally an image should be attached to both the application and the resulting BTI decision. That automatically creates a connection between both documents. However, if neither an image nor a sample is submitted with the application, the administration can make an image to add to the application at a later date.

It is recommended that at least one image attached to the application is carried over to the final BTI decision, thus creating a visual link between the two documents. Given that many initial searches in the database are conducted on the basis of images, such a link could be important to the official making the search.

Furthermore, it is also recommended that images attached to BTI decisions are unique as far as that is possible. If the image is derived from manufacturers' brochures it may not always be possible to make a unique image (e.g. motor vehicles being a case in point).

Image information can occur in different forms:

- Digital photos;
- Scanned texts (e.g. product descriptions, lists of ingredients);
- Scanned illustrations (e.g. drawings or a construction or circuit diagram); and
- Mixed documents (e.g. printed brochures).

Images attached to BTI applications and BTI decisions should always be of sufficient standard or relevance to the goods. Care must be exercised to ensure that images are correctly placed in the BTI decision; i.e. in the confidential field if identifying marks or logos, etc., cannot be obscured or in the field available to the general public if no confidentiality issues are involved.

It is also possible to attach a public and a confidential image of the same product in the same BTI if it is deemed beneficial for the customs. Given that BTI applications are not divulged to the public, there is no reason to exclude images in applications that otherwise would be confidential in a decision.

The number of images attached to a BTI application or a decision is a matter for the issuing administration to decide. Some goods may be straight forward and a single image will suffice whereas other goods may have unique or special characteristics, etc., that would justifiably merit a number of images.

JPG images exceeding 300KB will automatically be resized by the system whereas PDF attachments will be rejected by the system if they exceed 500KB.

When making images the following points should be taken into consideration:

- Shoot the image of the object against a neutral background. Avoid decorated backgrounds as they increase the size of the image. Furthermore, neutral backgrounds are less distracting, especially when the object in the image is also decorated.
- Image resolution should not be increased unless it is necessary for the production of a clear image. Instead, consider making an overall view of the object and complementing it with close-up images of significant details, all at lower resolution. Such a solution is better than one high resolution image.
- Consider how best to convey the important characteristics of the object being pictured. Aspects such as colour tone, texture and light and shade can be important to conveying meaning to the image.
- Consideration should be given to how best to convey the nature and important characteristics of the object. For example, the size of an object may be important but how best to convey that in an image should be considered. While such a detail may have no significance for the classification, it may be important for identification purposes when clearing goods through customs.
- There is no limit on the number of images that can be attached to an application or a BTI decision. The justification for attaching any image to an application or BTI decision is that it conveys important information and provides a better understanding of the object.

#### **7.4 Issue of BTI decision**

When the Member State is satisfied that the application is complete and accurate, and that there are no divergent BTI decisions for the classification that it intends to state, it should issue the BTI decision and make it available for consultation by the other Member States in the EBTI database.

It should be noted that once a BTI is published on the EBTI database, it can only be amended with regard to three aspects: its end date of validity, the code indicating why it has ceased to be valid and a potential “period of extended use”<sup>7</sup>.

In case of technical problems regarding the transmission of BTI decisions to the EBTI database, the competent units at the Commission (currently TAXUD/A4 and A5) have to be informed without delay about the nature of the problem and indicating possible solutions.

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<sup>7</sup> See under point 12.

## 8. DIVERGENT BTI DECISIONS

The primary reason for the introduction of Binding Tariff Information was to ensure the uniform application of the customs legislation, and that aim has remained constant. The customs administrations of all Member States have a responsibility to avoid issuing divergent BTI decisions. However, given the human element in issuing BTI decisions, it is inevitable that very occasionally a divergence will occur and when discovered every effort must be made to resolve it as quickly as possible.

Following these Guidelines should minimise the number of such divergences. However, it is important to address the question on how to deal with BTIs once they are found to be in contradiction with other BTIs.

A divergence occurs, for whatever reason, when two or more BTI decisions for identical or very similar products classify it at different tariff code numbers. Such a situation creates an imbalance in the treatment accorded to traders in the EU. Divergences can occur within administrations and between Member States. However, regardless of the circumstances, once a Member State discovers what appears to be a divergence in classification, that Member State should contact the Member State(s) that issued the potentially divergent BTI decision(s).

If both sides can agree, they should resolve the matter and inform the other Member States via CIRCABC.

Divergences may be identified by the Commission or by Member States and both situations merit different responses.

In the event that:

- the Commission has identified divergence in classification
  - the Commission shall notify the customs authorities of the Member States, via CIRCABC, that the issuing of BTI for the goods in dispute is suspended until the correct and uniform classification for the goods is ensured. (IA Art. 23 (1))

or

- if Member States have contacted each other and have failed to resolve a divergence within a maximum period of 90 days and consequently have referred the matter to the Commission
  - a complete and substantiated submission containing all the information (including details of the arguments posed during the bilateral/multilateral contacts) relevant to the matter must be submitted to the Commission.

Upon reception of the substantiated submission the Commission shall assess the case and send the notification to all Member States customs authorities suspending the issuing of BTI decisions for the goods concerned. **(IA Art. 23 (1))**

Once the substantiated submission has been received by the Commission it will be uploaded in CIRCABC in the original language. DG TAXUD will prepare a document in three working languages containing the substantiated submission and the opinion of the Commission. That document will also be uploaded on CIRCABC.

The matter will be submitted to consultation at Union level at the earliest opportunity and **no later than 120 days** from the date that the Commission notified the customs authorities of the suspension of the issuing of BTI for the goods concerned. **(IA Art. 23 (2))**

In the event that BTI decisions cannot be issued within the period specified in **UCC Art.22 (3)** due to the suspension referred to in **UCC Art. 34 (10) (a)**, the time-limit for taking a decision may be **extended for a period of 10 months** and in exceptional circumstances the period may be **further extended by a period not exceeding 5 months. (DA Art. 20 (1))**

Once the divergence has been resolved and the correct and uniform classification agreed the Commission will notify the customs authorities of the Member States that the suspension has ended and they may resume issuing BTI for the goods.

## **9. THE LEGAL NATURE OF A BTI**

The Customs Code decreed that the validity period of a BTI was 6 years. However, under the UCC the statutory validity period for a decision has been reduced from 6 years to 3 years. (**UCC Art. 33 (3)**)

Any BTI decision issued after 1 May 2016 shall have a validity period that does not exceed 3 years but decisions issued before that date have a 6 years validity period and shall as of 1 May 2016 be binding both on the customs authorities and on the holder. (**DA Art. 252**)

This implies that from 1 May 2016 onwards, the holders of a BTI issued before that date will also be obliged to declare their BTI decisions and use them when importing or exporting the goods concerned. (**DA Arts. 252 and 254**)

BTI decisions may not be amended. (**UCC Art. 34 (6)**)

**BTI decisions cannot enter into effect, or be issued, retroactively.** BTI decisions shall be binding on the customs authorities and the holder, only in respect of goods for which customs formalities have been completed after the date on which it takes effect. Similarly, such decisions shall only be binding on the holder and the customs authorities, only with effect from the date on which the holder has received, or is deemed to have received, notification of the decision. (**UCC Art. 33 (2)(a) and (b)**)

When BTI was introduced in 1991, the decisions were binding on the customs authorities but the holder was not obliged by the legislation to declare or use his/her decision in the course of completing customs formalities. However, with the entry into force of the UCC, there is a legal obligation on traders to declare their BTI decisions and to use them when importing or exporting the goods concerned. (**UCC Art. 33 (2)(b)**)

Furthermore, responsibility for correctly declaring the goods to customs falls on the economic operator who is importing or exporting the goods. Economic operators who appoint representatives must ensure that those representatives are fully aware of any BTI decisions they hold.

Customs authorities shall monitor compliance with the obligations that result from that decision, including the obligation for the holder to declare and use the BTI. (**UCC Art. 23(5)**)

## 10. ANNULMENT OF BTI DECISIONS (EX TUNC)

The customs authorities that have issued a decision may at any time annul it where it does not conform to the customs legislation (**UCC Art. 23(3)**). The conditions under which a favourable decision, other than a BTI decision, may be annulled are set out in **UCC Art. 27(1)**. However, in the context of BTI decisions the only criterion applicable is that they are based on inaccurate or incomplete information from the applicants. (**UCC Art. 34(4)**)

Annulment of a BTI decision takes effect from the date on which the initial decision took effect (i.e. the start date of its validity period). (**UCC Art. 27 (3)**)

The holder of the BTI must be notified in writing of the decision to annul his BTI, either by letter or electronic message. (**UCC Art. 27 (2)**)

The administration must also enter the appropriate invalidation code number (in the case of annulments the invalidation code is 55)<sup>8</sup> in the EBTI database. The system will automatically insert the date from which the annulment has taken effect.

In the case of annulments, **the option of a period of extended use (period of grace) is not available** to the holder. As the decision was taken on the basis of incorrect or incomplete information a period of extended use cannot be granted for a tainted decision. (See Section 12 of the Guidelines)

## 11. BTI DECISIONS THAT CEASE TO BE VALID OR ARE REVOKED (EX NUNC)

The statutory validity period of a BTI decision is 3 years. However, in certain circumstances that 3 year period may be cut short and the BTI will cease to be valid or revoked before the statutory period has been completed. (**UCC Art. 33(3)**)

**A BTI decision shall cease to be valid** where it no longer conforms to the law in the following circumstances:

- As a result of the Commission adopting a measure to determine the tariff classification of goods.  
(**UCC Art. 34 (1)(b) and Art. 57(4)**)
- As a result of the adoption of amendments to any of the nomenclatures referred to in **UCC Art. 56 (2) (a) and (b)**. (**UCC Art. 34 (1)(a)**)

The customs authorities shall **revoke BTI decisions** in the following circumstances:

- Where it is no longer compatible with the interpretation of any of the nomenclatures referred to in UCC Art. 56 (2) (a) and (b) (**UCC Art. 34 (7)(a)**) resulting from:
  - Amendments to Explanatory Notes to the Harmonized Commodity Description and Coding System or the Explanatory Notes to the Combined Nomenclature;
  - A judgment of the Court of Justice of the European Union;
  - Classification decisions and opinions of the World Customs Organization;
- Where the Commission has issued a decision directing a Member State to revoke specific BTI decisions; (**UCC Art.35 (11)**)

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<sup>8</sup> The list of invalidation codes is to be found at Annex 3 to the Guidelines.

- Where guidance classifying goods at a specific heading is adopted at Union level; (UCC Arts. 23 (3) and 34 (5))
- As a result of bilateral discussions between Member States and where one of the parties revokes specific BTI decisions; (UCC Arts. 23 (3) and 34 (5))
- Following an administrative review where the administration decides an error has been made in the classification; (UCC Arts. 23 (3) and 34 (5))
- In cases of administrative error (i.e. errors that do not affect the classification of the goods such as errors in the holders name or address or errors or omissions in the description of goods, etc.);
- Where one or more of the conditions for taking the decision were not or are not fulfilled. (UCC Arts. 28 and 34 (5))

It should be noted that BTI decisions cannot be revoked upon application by the holder. (UCC Art. 34 (5))

Regardless of the circumstances under which a BTI decision is **revoked**, the holder must always be notified in writing without exception, either by letter or electronic message. (UCC Art. 28 (3))

The invalidation code appropriate to the circumstances of the case has to be set in the EBTI database and the date on which the decision ceases to be valid corrected.

BTI decisions shall not cease to be valid or be revoked with retroactive effect. (**UCC Arts. 28 (4) and 34 (3)**)

In certain cases the holder of a BTI decision that has ceased to be valid or is revoked may avail of a period of extended use under certain conditions. (See Section 12)

## **12. PERIOD OF EXTENDED USE (“PERIOD OF GRACE”)**

When a BTI decision is revoked or invalidated the holder of that decision **may** be entitled to request a period of extended use. The purpose of this concession is to avoid traders being adversely affected by circumstances over which they have no control. However, a period of extended use may only be granted under certain conditions and in specific situations.

### **A period of extended use shall not be granted for:**

- **BTI decisions that have been annulled** due to inaccurate and incomplete information being provided by the applicant.
- **BTI decisions that cease to be valid as a result of changes to the Nomenclature of the Harmonized System and Combined Nomenclature.** Changes to both those nomenclatures are published at least 2 months in advance of them coming into effect and holders have the opportunity to obtain replacement BTI decisions that will be in conformity with the law. Similarly, BTI issued at TARIC-level that cease to be valid as a result of changes to the TARIC codes (e.g. because of the introduction of tariff suspensions, tariff quota, trade defence instruments, or other measures) are not entitled to a period of extended use either.
- BTI decisions revoked because one or more of the conditions for taking the decision were not or are no longer valid.
- **Revoked BTI decisions for goods that are identical to those that have been the subject of a judgment of the Court of Justice of the EU.** BTI decisions for similar

goods may not actually be concerned by the ruling and consequently would not be revoked. However, each case has to be assessed on a case by case basis.

- **BTI decisions revoked due to administrative errors.** As the classification in such decisions is unaffected by the error there is no reason to grant a period of extended use.

The conditions attached to granting a period of extended use are the following:

- The economic operator is actually entitled to request a period of extended use;
- He has entered into binding contracts based on the classification in the invalidated decision; (UCC Art. 34 (9))
- The period of extended use has been applied for within 30 days of the BTI decision being invalidated; (UCC Art. 34 (9))
- The request has been submitted to the customs authority that issued the original decision; (UCC Art. 34 (9))
- The measure that has led to the BTI decision being invalidated does not exclude a period of extended use being granted. (UCC Art. 34 (9), and UCC Art. 57 (4))

A request for a period of extended use must be submitted to the customs authority **within 30 days** of the date on which the BTI decision ceased to be valid or was revoked. The economic operator must also provide details concerning the quantities for which the extended use is being requested and indicate the Member State or Member States in which the goods shall be cleared during the period of extended use. **(UCC Art.34 (9))**

The customs authority of the Member State shall take a decision on whether or not to grant the requested period of extended use and shall notify the holder as soon as possible and no later than 30 days from the date on which they had all the information necessary to take the decision. The period of extended use shall not exceed 6 months but may be limited to a shorter period if it is so laid down in a measure. **(UCC Art.34 (9))**

Where the customs authorities decide to grant a period of extended use they shall specify the date on which the decision on extended use expires and they shall also specify the quantity of goods that may be cleared during that period. **(IA Arts. 22 (1) and (2))** In case the contract does not include specific quantities, the customs authorities should determine the quantity of goods that may be cleared during the period of extended use on the basis of a reasonable forecast provided by the holder. Any other Member States in which the goods shall be cleared during the period of extended use should be informed bilaterally about the decision granting the extended use, including all relevant details.

When clearing goods under the period of extended use, the holder shall use the tariff classification referred to in the BTI that ceases to be valid or is revoked.

The customs authorities that have decided to grant a period of extended use shall monitor compliance by the holder with the obligations resulting from that decision. This implies in particular the monitoring of the quantity of goods that have been cleared during that period. **(UCC Art. 23 (5))**

A period of extended use cannot be used beyond the date of expiration or once the quantities of goods specified in the conditions have been reached, whichever occurs first. **(IA Art. 22 (2))**



### **13. ROLE OF NATIONAL TRIBUNALS**

It happens that national tribunals in Member States do not always hold the same views on classification resulting from consultation between Member States and the Commission. Sometimes national tribunals in different Member States will reach different conclusions. If such national judgements go against established classification practice or create divergence, those judgments should be referred to the Commission.

It should also be clarified that judgments of national tribunals are only legally binding at national level.

National tribunals should not issue rulings that conflict with EU legislation. In matters relating to the interpretation of EU law, Art. 267 of the Treaty on the Functioning of the EU lays down that national courts or tribunals shall refer such matters to the Court of Justice of the EU.

If, however, a national tribunal does issue a ruling that is in conflict with EU law, the authorities of the Member State in question should, if possible, appeal the decision.

A copy of all relevant final National tribunal rulings should be sent electronically to the Commission with a brief summary in English, French or German.

Member States should notify the Commission of national court decisions unfavourable to the customs concerning tariff classification matters. In any event, Member States should not issue a BTI on the basis of a national tribunal decision conflicting with tariff classification measures established at European level, unless directed to do so by the Tribunal.

During the consultation at Union level, the Commission gives priority to discussion and resolution of cases where national court rulings might lead to divergent BTIs on a European level.

### **14. CHECKLIST**

As an aid to officials in customs administrations who are concerned with the drafting and issuing of BTI decisions, this final section of the Guidelines presents a general checklist which outlines the major steps to be taken when issuing BTI.

1. Check application to ensure all mandatory boxes have been filled
2. Upload application on EBTI database, preferably with an image attached
3. Consult EBTI database for applications for the same goods and the same holder
4. Thoroughly examine the application to assess completeness of the information submitted
5. If applicant is established in another Member State, notify the Member State concerned
6. If additional information or sample required request it from applicant
7. Once all necessary information received, notify applicant the 120 days issuing period has commenced
8. Consult EBTI database to check if holder has other BTI for identical goods and to avoid issuing divergent BTI decisions
9. If in doubt about an existing BTI classification, contact the other Member State
10. Structure the description of goods
11. Structure the justification as advised in Guidelines
12. Use of at least 5 keywords from the Thesaurus per BTI in compliance with the structure of the description
13. Add images to the BTI paying attention to confidentiality
14. Notify applicant when decision issued
15. If potential divergence discovered contact other Member State or Member States
16. If bi/multilateral contacts fail, submit substantiated submission to the Commission

## **Annex 1**

### **Principal changes to the BTI process arising from the UCC**

#### **1. Application phase**

- The person indicated on the BTI application form as the applicant shall automatically become the holder of the BTI decision issued.
- The person appointed as the representative shall only act on behalf of the applicant insofar as the application is concerned.
- Traders should be encouraged to insert their EORI number on their BTI applications.
- Traders established outside the EU may apply for, and be issued with, a BTI decision provided they have an EORI number.
- Traders established outside the EU should address their applications to the competent authorities in the Member State where they obtained their EORI number.
- Customs administrations must publish the application within 7 days of receiving it.
- The customs administration has a maximum of 30 days from the date of reception to notify the applicant of the formal acceptance of the application.
- Failure to notify the applicant within 30 days of receiving the application will mean that the application is automatically accepted.
- Additional information requested from the applicant must be furnished within 30 days of the request being made. Failure to do so will mean the application will not be accepted.
- The applicant does not have the right to be heard before the BTI decision is issued.
- The applicant does have the right to be heard if the customs decide not to issue a BTI decision, to annul or revoke the BTI decision, or not to grant a period of extended use.

#### **2. Issuing phase**

- BTI decisions are not issued for HS codes.
- The administration must issue the BTI decision within 120 days of formally accepting the application.
- The applicant must be informed when the 120 days starts running.
- Further additional information may be requested from the applicant during the 120 days.
- The applicant can be given a maximum period of 30 days to provide that information.
- The 120 days period is suspended for the length of time it takes the applicant to furnish the additional information and will resume upon its receipt.
- Administrations are obliged to make searches in the EBTI database and to record the results of those searches.
- If the administration is unable to issue the BTI decision within 120 days, it has an additional 30 days to issue its decision.
- The validity period of BTI decisions is 3 years.

#### **3. When BTI decisions are annulled**

- There is a single condition for annulling BTI decision. A BTI decision shall be annulled where it is based on inaccurate or incomplete information from the applicant.

#### **4. Period of extended use (Period of Grace).**

- A period of extended use can only be granted for a specific quantity of goods.
- If the holder is established outside of the EU, the administration that issued his EORI number shall also handle any request for a period of extended use.

## Annex 2

### Overview of timelines related to the BTI process

#### Standard application and issuing process

- Receipt of the application  
↓
- Within maximum 7 days of receipt:
  - publication of the application if all mandatory boxes are filled in (**IA Art. 21(1)**)↓

#### Application acceptance phase

- Within maximum 30 days of receipt :
  - request for additional information where necessary (e.g. laboratory reports)
  - notification of acceptance of the application to the applicant (**UCC Art. 22(2)**)
- Absence of a request for additional information or of a notification within 30 days means that the application is deemed to be accepted.  
↓

#### BTI issuing phase

- Within maximum 120 days from the date of acceptance + 30 days extension where necessary:
  - issuing of the decision (**UCC Art.22(3)**)
    - Within 120 days the customs may ask for additional information. The issuing phase stops for a maximum of 30 days (the time limit for the trader to provide the information). The issuing phase will resume upon receipt of all necessary information.  
**(DA Art. 13(1))**  
If the trader fails to provide the requested information within 30 days, the administration will notify the trader of its refusal to issue a BTI decision.
    - Any consultation between Member States should take place within the time limit set for the issuing phase.  
**(IA Arts. 16(1) and 23(1)(b))**
    - When it is not possible to complete a laboratory analysis considered necessary by the customs authorities within the time limit of the issuing phase, that time limit may be extended.  
**(DA Art. 20(2))**

## **Application and issuing process in cases when the applicant is established in another Member State**

The following actions should be taken in addition to the standard process:

- Within 7 days from the date of acceptance of the application:
  - notification to the MS where the applicant is established
  - ↓
- Within 30 days from the notification:
  - Reply by the notified MS. If no reply received, the processing of the application continues. **(IA Art. 16(1))**

## **Issuing process in cases when the Commission suspends the issuing of BTI**

- Commission notifies Member States of the suspension **(UCC Art. 34(10)(a) and DA Art. 20(1))**
  - ↓
- Without delay:
  - Member State notifies applicant(s) of the suspension of the issuing process where applicable
  - ↓
- As soon as possible and within maximum 120 days + 10 months extension where necessary + 5 months additional extension where necessary:
  - Commission notifies Member States of the withdrawal of the suspension **(UCC Art. 34(10)(b) and IA Art. 23(3))**
  - ↓
- Without delay:
  - Member State resumes issuing process

### Annex 3

#### List of invalidation codes and their meanings

INVALIDATION CODE	MEANING OF THE CODE	EXPLANATION OF THE CODE
55	Annulled	This code is to be used in case a BTI has been annulled (e.g. on the basis of UCC Article 34(4)).
61	Invalidated due to nomenclature code changes	<p>Every nomenclature code has a start date and an end date. This information is provided by the TARIC system. On a regular basis the EBTI system checks all active BTIs to verify if on a particular day the nomenclature code of a BTI is still valid. If, in the case of CN codes, TARIC codes, Export Refund codes, it is found that the code is no longer valid, the system will automatically set the BTI to “invalid” indicating code 61 and send a warning to the Member State concerned.</p> <p>As other additional codes than export refunds are not checked by the system, code 61 can be used by a Member State to indicate the invalidation reason if a BTI has become invalid due to a change in the validity of an additional code.</p>
62	Invalidated due to EU measure	This code is to be used if a BTI has to be invalidated following a classification regulation, amendments of the CN and HS explanatory notes, HS classification opinions, classification guidance adopted at Union level, Commission decisions, rulings by the Court of Justice of the EU.
63	Invalidated due to national legal measure	This code is to be used if a BTI has to be invalidated due to the ruling of a national court in a Member State.
64	Invalidated due to incorrect classification	This code is used when an error in the classification is found, e.g. after an internal review, consultations with other Member States, etc.
65	Invalidated for reasons other than classification	This code is used in cases of an error/change in the file which is not linked to the classification (e.g. new address of the holder).
66	Invalidated due to limited validity of the nomenclature code at the time of issue.	This code is used when the nomenclature code is due to expire and the expiration date is already known at the time the BTI is issued.

## Annex 4

### Correlation Table between the CCC and the UCC and its Implementing and Delegated Acts

CCC Regulation 2913/92	Regulation 450/2008	UCC Regulation 952/2013	Implementing Act Regulation 2015/2447	Delegated Act Regulation 2015/2446
Article 6	Article 16 (1)	Article 22 (1) subparagraphs 1&2	Articles 11, 14, 16, 29, 31, 32, 172, 175, 191, 195, 196, 229, 260, 261, 262, 319	Article 12, 19, 27, 92, 186, 194, 201
	Article 16 (2)	Article 22 (3) subparagraphs 1&2	Articles 14, 17, 29, 31, 32, 175, 191, 195, 196, 229, 246, 247, 260, 261, 319	Article 13, 20, 28, 156, 171,
	Article 16 (3)	Article 22 (2)	Articles 12, 14, 29, 31, 32, 175, 195, 196, 229, 258, 260, 261, 319	Article 5, 11, 26
	Article 16 (4) subparagraph 1	Article 22 (6) paragraph 1, 1 <sup>st</sup> sentence	Articles 8, 9, 14, 29, 31, 31, 175, 191, 195, 196, 229, 260, 261, 319	Article 8
	Article 16 (4) subparagraph 2	Article 22 (6) paragraph 1, 2 <sup>nd</sup> sentence & Article 22 (7)	Articles 8, 9, 14, 29, 31, 32, 175, 191, 195, 196, 229, 260, 261, 319	Article 8
	Article 16 (5)(a)	Article 22 (6), subparagraph 2 Article 24 (g)	Articles 8, 9, 14, 29, 31, 32, 175, 191, 195, 196, 229, 319	Article 8
	Article 16 (5)(b)	Article 24 (f)		
	Article 16 (6)	Article 23 (3)		
	Article 16 (7)	Article 29		

CCC Regulation 2913/92	Regulation 450/2008	UCC Regulation 952/2013	Implementing Act Regulation 2015/2447	Delegated Act Regulation 2015/2446
Article 7	Article 16	Articles 22 (1), (2), (3), (6) &(7) 23 (3), 24 (f) & (g) and 29	Articles 8, 9, 11, 12, 14, 16, 17, 29, 31, 32, 172, 175, 191, 195, 196, 229, 258, 260, 261, 262, 319	Article 8, 11, 12, 19, 20, 26, 28, 92, 156, 171, 194, 201
Article 8	Article 18, paragraphs 1 to 3	Article 27		
	Article 18, paragraph 4	Article 32		
Article 9	Article 19 (1)	Article 28 (1)(a)	Articles 15, 34	
	Articles 19 (2) & (3)	Articles 28 (2) and (3)	Articles 15, 34	
	Article 19 (4)	Article 24 (4), 1 <sup>st</sup> subparagraph and 1 <sup>st</sup> sentence of subparagraph 2		
	Article 19 (5)	Article 31(a)		
Article 10	Article 16	Articles 22 (1), (2), (3), (6) &(7) 23 (3), 24 (f) & (g) and 29	Articles 8, 9, 11, 12, 14, 16, 17, 29, 31, 32, 172, 175, 191, 195, 196, 229, 258, 260, 261, 262, 319	Articles 8, 12, 19, 20, 26, 28, 92, 156, 171, 194, 201
Article 11	Article 8	Article 14		
	Article 30	Article 52		

CCC Regulation 2913/92	Regulation 450/2008	UCC Regulation 952/2013	Implementing Act Regulation 2015/2447	Delegated Act Regulation 2015/2446
Article 12	Articles 20 (1) to (4)	Article 33		
	Article 20 (5)	Article 34 (4)		
	Article 20 (6), 1 <sup>st</sup> subparagraph	Article 34 (5), 1 <sup>st</sup> sentence		
	Article 20 (6), 2 <sup>nd</sup> subparagraph	Article 34 (6)		
	Article 20 (7)	Articles 22, 23, 24, 25 and 32	Articles 8, 9, 11, 12, 14, 16, 17, 21, 31, 32, 175, 191, 195, 196, 229, 260, 261, 262, 319	Articles 8, 11, 12, 19, 20, 26, 28, 92, 156, 171, 194, 201
	Article 20 (8)(a)	Articles 34 (1) to (3)		
	Article 20 (8)(b)	Articles 34 (9) and 37 (1)(a)	Article 22,	
	Article 20 (8)(c)	Articles 34 (11) and 37 (2)		
	Article 20 (9)	Articles 35, 36(b) & 37 (1)(c) & (d)		
Article 243	Article 23	Article 44		