



European
Commission

Administrative Guidance on the Binding Tariff Information Process



UCC

SIMPLICITY SERVICE SPEED

A MODERN FRAMEWORK
FOR CUSTOMS AND TRADE

*Taxation and
Customs Union*



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Customs
Customs Tariff

Brussels, 21 December 2018

Subject: Administrative Guidance on the Binding Tariff Information Process

Following the entry into force of Regulation (EU) No 952/2013, the Administrative Guidance on the Binding Tariff Information Process had to be re-visited.

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

The work of the project group has been resumed in 2017. The reasons for revision of the interim guidelines were two-fold: (i) to address changes in the EBTI-3 system applicable as from 1 October 2017 and (ii) to respond to Member States customs authorities' needs regarding clarification of certain legal provisions of the customs legislation.

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. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. 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 THE BINDING TARIFF INFORMATION PROCESS

Binding Tariff Information (BTI)	Binding Tariff Information is a decision issued by the customs authorities that is binding on all Member States' customs authorities 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 authorities, for the same goods by the same applicant.
CIRCABC	Communication and Information Resource Centre for Administrations, Businesses and Citizens is an application used to create online collaborative workspaces for the activities of the European Union's public administrations where they can work together over the web and share information and resources.
CJEU	Court of Justice of the European Union interprets EU law to make sure it is applied uniformly in all EU Member States.
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 Dissemination 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-3	EBTI-3 is the abbreviation used to refer to the European Binding Tariff Information-3 system by which applications are submitted and BTI decisions are issued. See also BTI above.
EORI number	Economic Operators Registration and Identification number (EORI number) means an identification number, unique in the customs territory of the Union, assigned by a customs authority to an economic operator or to another person, in order to register him for customs purposes.
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 of the 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 all measures relating to EU customs tariff, commercial and agricultural legislation are integrated. TARIC code numbers have 10 digits.
Tariff classification	All goods 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. Article 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 Community 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 GUIDANCE

The Guidance on the Binding Tariff Information process, although not legally binding, serves the following objectives:

- Offer a global overview to customs authorities and to traders of the Binding Tariff Information (BTI) process under the EBTI-3 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 BTI decisions, 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 28¹ 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)², 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, as well as 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 EBTI-3 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 2017 there were more than a quarter of a million valid BTI decisions stored in the EBTI-3 database. All BTI applications and BTI decisions are stored in a database (hereinafter the "EBTI-3 database") managed by the European Commission.

All valid BTI decisions can be consulted by the public on the web-site (DDS) of Directorate General for Taxation and Customs Union (hereinafter "DG TAXUD") under the following address: http://ec.europa.eu/taxation_customs/dds2/ebti/ebti_home.jsp?Lang=en.

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

² 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)

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

With the entry into effect of the Union Customs Code³ (hereinafter "UCC") on 1 May 2016, it was 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 authorities and economic operators. The interim guidelines were valid as from 1 May 2016 until the date of publication of the present version of this Guidance document.

Given the 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 this document for the benefit of users. Amongst them is a brief overview on the main changes which took 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 decision;
- Consultation of the EBTI-3 database;
- Dealing with differing views on classification;
- Issuing a BTI decision;
- Dealing with divergent BTI decisions;
- Annulment of a BTI decision;
- When BTI decisions cease to be valid or are revoked; and
- Appeal procedures, including the role of national tribunals.

3. PRE-APPLICATION PHASE

Article 14 of the UCC requires 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 decisions are binding in their entirety both on the customs authorities, and on the holder.

When informal advice is being provided outside the EBTI-3 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.

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

³ 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). This document 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 applications and BTI decisions until the EBTI-3 system is updated, in accordance with the UCC Work Programme (Commission Implementing Decision 2016/578/EU – OJ L 99/6 of 11.4.2016).

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

Charges may also be imposed where the customs authorities are 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 authorities 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

As of 1 October 2017, applications for a BTI decision shall be made using the format of the form "Application for Binding Tariff Information (BTI) Decision" set out in Annex 4 of the Transitional Delegated Act⁴ (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"⁵ 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 decisions are concerned. (**Article 22(1) 2nd subparagraph UCC**)

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-199/09⁶ has ruled on the meaning of what the phrase "one type of goods" means (**Article 16(2) IA**) (See Section 13).

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 16 boxes (both mandatory and optional) to be completed by the applicant or his customs representative, if appointed. Apart from the personal information related to the applicant (his EORI number, name and address (Box 1), the place where his main accounts for customs purposes are held or accessible (Box 2), the contact person responsible for the application (Box 4)) and the customs representative applying on behalf of the applicant (his EORI number, name and address (Box 3)), if appointed, the following information must be provided:

- whether the application concerns the reissue of a BTI decision (Box 5);
- the customs procedure for which the BTI decision will be used (Box 6);
- the customs nomenclature in which the decision should be issued (Box 7);

⁴ 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).

⁵ https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/binding-tariff-information-bti_en

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

- a detailed description of the goods, including their physical description, their function, composition, characteristics and the manufacturing process where appropriate (Box 9);
- whether the applicant has applied for or holds a BTI decision for identical or similar goods in the EU (Box 12);
- whether to his knowledge, a BTI decision for identical or similar goods has already been issued in the EU (Box 13);
- legal or administrative proceedings, or a court ruling concerning tariff classification of the goods subject to the application (Box 14);
- the applicant's acceptance that the information supplied is stored in the EBTI-3 database and that the non-confidential information is disclosed to the public via the internet (Box 15).

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

4.1. “Applicant”(Box 1):

The applicant for a BTI decision (Box 1 of the application form) shall automatically become the holder (Box 3 of the decision form) once the decision is issued. In fact, there are three possible ways to make the application:

1. The applicant has no customs representative (Box 3 of the application form will remain empty)
2. The applicant has a direct representative (Box 3 shall be filled in)
3. The indirect representative is the applicant (Box 3 will remain empty).

Pursuant to **Article 9(1) UCC**, economic operators established in the customs territory of the Union shall register with the customs authorities responsible for the place where they are established.

'Economic Operators Registration and Identification number' (EORI number) means an identification number, unique in the customs territory of the Union, assigned by a customs authority to an economic operator or to another person, in order to register him for customs purposes (**Article 1(18) DA**).

In accordance with **Annex A DA**, the **EORI number of the applicant and of the customs representative**, if any, (in the application) and the **EORI number of the holder of the decision** (in the decision) is **mandatory information**.

In a paper-based application, the name and address of the person concerned (the applicant and the customs representative, if appointed) shall also be provided (**Annex A DA**).

The EBTI-3 system is able to **validate the EORI number and identify the person to whom it is assigned**, be it an applicant/holder of the decision or a customs representative. The information related to the person concerned, such as the name and address, **will be retrieved and filled in automatically**. A Member State user may overwrite this information.

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. **(Article 19(1) DA)**

According to **Article 16(1) IA**, when an application for a BTI decision is submitted in another Member State than the one in which the applicant is established, the customs authority to which the application was submitted shall notify the customs authority of the Member State where the applicant is established within 7 days from the acceptance of the application.

The EBTI-3 system is able to **compare the country in which an application is received to the country in which the applicant is established**. In case where the application is received in another Member State than the one in which the applicant is established, the system will send an **automatic notification message to the latter Member State**. The notification process will, thus become automatic not requiring any notification action from the Member States.

Provisions of **Article 16(1) IA**, stipulate that when the customs authority that receives the notification holds any information that it considers relevant for the processing of the application, it shall **transmit such information to the customs authority to which the application was submitted** as soon as possible, and at the latest, within 30 days from the date of the notification. 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.

Applications for a BTI decision may also be received from economic operators established outside the territory of the EU, provided they are registered with the customs authorities. In accordance with point (b) of Article 9(2) UCC and Article 5 DA and paragraph 6 thereof, registration shall be done with the customs authorities responsible for the place where the economic operator lodges a declaration or applies for a decision. Consequently, the BTI applications are generally submitted to the customs authority that has assigned the applicant's EORI number. However, it is not necessary as a general rule to have the EORI number and the BTI decision in the same Member State. If the economic operator plans to use his BTI decision issued in another Member State Article 19 DA applies, in accordance with which, the BTI application can be submitted to the competent customs authority of the Member State in which the BTI decision is to be used.

It should also be noted that an automatic notification will be sent to the customs authority that issued the EORI number informing them that an application has been submitted to another customs authority.

Customs authorities should be aware of the risk of "BTI shopping" when they receive a BTI application from an applicant 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 (See Section 5.1).

4.2. "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. (**Article 18(1) UCC**)

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. (**Articles 18(2) and (3) UCC**)

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

With the entry into force of the UCC on 1 May 2016, the use of the **EORI number for a customs representative** became **mandatory**. If the applicant indicated in Box 1 of the application for a BTI decision is represented, relevant information about the representative shall be provided in Box 3 "Customs representative" and the EORI number of the representative must be entered. Where the EORI number is provided, the name and address should not be provided, unless a paper-based application is used. (**Annex A DA**)

In a situation where a customs representative does not have an EORI number, he shall register with the customs authorities before engaging in operations for which an EORI number must be provided (**Article 6(1) DA**). A customs authority may assign the EORI number not only to an economic operator, but also to another person in order to register him for customs purposes.

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. Indirect representation means that the customs representative acts in his own name but on behalf of another person, i.e. the applicant. (**Article 18(1) UCC**)

It should be noted that in case of **direct representation**, Box 3 "Customs representative" and the EORI number of the representative must be filled in. In case where the customs representative acts in his own name but on behalf of another person (**indirect representation**), Box 3 will remain empty. In fact, in this specific situation, the indirect representative is the applicant, as he applies for a BTI decision in his own name, and, consequently, becomes the holder of the decision.

According to Article 19(1) UCC when dealing with the customs authorities, a customs representative shall state that he is acting on behalf of the person represented and shall specify whether the representation is direct or indirect. A person who fails to state that he is acting as a customs representative, or who states that he is acting as a customs representative but is not empowered to do so, shall be considered as acting in his own name and on his own behalf.

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. (**Article 19(2) UCC**)

4.3. “Description of goods” (Box 9):

The description of the goods must enable correct identification of the item being classified as it is the link between the BTI decision 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 the customs authorities 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 should 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 shall be notified accordingly (**Article 12(2) IA**). **The status of the application in the EBTI-3 database should be updated to 94 .**

Box 9 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 10 under '*commercial denomination*'.

4.4. “Other BTI Applications and other BTI held” (Box 12):

The applicant must state whether he has applied for, or is in possession of, any BTI decisions issued for the identical or similar products. Box 12 only concerns BTI applications or BTI decisions held by the applicant applying for the BTI decision. Box 13 concerns BTI decisions for traders other than the trader making the application.

If an applicant has made another BTI application for the same product in another Member State, this means that at least one of the applications was submitted to another Member State than the one in which the applicant is established.

In such a situation, the Member States should determine whether the two applications received concern the same goods and, if that is the case, establish which customs authority will proceed with issuing a BTI decision. 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 decision is going to be used and the language of the application.

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

If as a result of the contacts between the Member States (and/or the consultation of the EBTI-3 database), it is discovered that the applicant has already applied for a BTI decision in another Member State, the application must be uploaded in the EBTI-3 database to inform other customs authorities of its existence. **(point (a) of Article 33(1) UCC)** The applicant must be informed that the BTI decision will be issued by the first customs authority to which the application was submitted on the basis of that first application, or, otherwise, depending on the circumstances described above. That decision will be binding on its holder. In case of disagreement with the classification given therein, the holder of the decision has the right to lodge an appeal against it. If the applicant has already received a BTI decision, he should be informed that he has a valid BTI decision that should be used and the customs authority will not issue a new decision.

4.5. “BTI issued to other holders” (Box 13):

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 in 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.

Once an application has been submitted and it is clarified that all mandatory fields are filled in, **it should be uploaded in the EBTI-3 database without delay and at the latest within 7 days of its receipt (Article 21(1) IA). However, that does not mean that it is formally accepted.**

4.6. Harmonisation of the structure of the registration number of the application and the BTI decision reference number

Registration number of the application

The registration number of the application is a unique reference of the accepted application, assigned by the competent customs authority. This data is required both for the application and the decision relating to binding tariff information.

According to **Annex A IA**, the **registration number of the application is composed of the following elements:**

- 1) Country code: a2
 - 2) Decision code type: an..4
 - 3) Reference number: an..29.
-
- 1) The **country code** shall have a fixed length of two characters and these characters shall be alphabetic.
 - 2) In case of the application and the decision relating to binding tariff information, the **decision code type shall always be 'BTI'**.
 - 3) The **reference number** shall have up to 29 characters and these characters shall be either alphabetic or numeric.

BTI decision reference number

The BTI decision reference number is a unique reference attributed by the competent customs authority to the decision.

In the application, the BTI decision reference number may be indicated in different fields:

- In the field '*Other BTI Applications and other BTI held*' the BTI decision reference number means the reference number of the BTI decision which the applicant has already received. This part is mandatory if the applicant has received BTI decisions following his application.
- In the field '*BTI decisions issued to other Holders*', the BTI decision reference number means the reference number of the BTI decision of which the applicant is aware.

Regardless of the field in which the BTI decision reference number is used, its **format follows the same structure as the registration number of the application**:

- 1) Country code: a2
- 2) Decision code type: an..4
- 3) Reference number: an..29.

4.7. Structure of the commodity code

In the application, the commodity code is optional data for the applicant: data which the applicant may decide to supply but which cannot be demanded by the Member States. It is the customs nomenclature code under which the applicant expects the goods to be classified.

In the decision, the customs nomenclature code is mandatory data. It is the customs nomenclature code, under which the goods must be classified in the customs nomenclature and which will be indicated on the BTI decision.

According to **Annex A IA**, the **commodity code is composed of the following elements**:

- 1) 1st subdivision (Combined Nomenclature code): an..8
 - 2) 2nd subdivision (TARIC subheading): an2
 - 3) 3rd subdivision (TARIC additional code(s)): an4
 - 4) 4th subdivision (national additional code(s)): an..4.
- 1) In case of the application and the decision relating to binding tariff information, the **Combined Nomenclature code** shall have a fixed length of **eight numeric characters**.
 - 2) In case of the application and the decision relating to binding tariff information, the **TARIC subheading** shall have a fixed length of two **numeric characters**.
 - 3) The **TARIC additional code(s)** shall have a fixed length of four characters and these characters shall be either alphabetic or numeric. In EBTI-3, there is a possibility to enter two TARIC additional codes.
 - 4) The **national additional code(s)** shall have up to four characters and these characters shall be either alphabetic or numeric.

4.8. Status of the application

The provisions of **Article 21(5) IA** stipulate that when processing an application for a BTI decision, the customs authorities **shall indicate the status of the application in the EBTI-3 database**.

To better follow up BTI applications, the following status codes (71, 72, 73, 81, 82, 83, 89, 91, 92, 93, 94, 99, 100 and 110) are available in the EBTI-3 database (see **Annex 2 'Lifecycle of an application'**).

The **status code 71** should be regarded as the **initial state** of the application.

Both status **codes 72 and 81** refer to a request for additional information from the applicant: code 72 in the application acceptance phase and code 81 in the BTI issuing phase.

Both status **codes 73 and 83** refer to applications being subject to (bi/multi)lateral consultation between Member States: code 73 for applications in another Member State than the one where the applicant is established during the consultation of that Member State; and code 83 for applications subject to consultation between Member States in case of possible divergence.

The **status codes 72, 81, 82 and 89** refer to a possible **extension**, or **delay**, in:

- application acceptance phase (codes 72 and 89) or
- BTI issuing phase (codes 81, 82 and 89).

The **status codes 91–94 and 99** refer to possible **non-issuance** of a BTI decision in:

- application acceptance phase (codes 91-94 and 99) or
- BTI issuing phase (codes 93, 94 and 99).

Based on the explanation of the **status codes 91–94 and 99**, any of them can be the **final state** of the application in cases **where a BTI decision is not issued**.

In **status code 100** the application is considered to be officially accepted and the issuing period is running. It should be noted that the **status code 100** may be used **more than once** in the lifecycle of a BTI application.

Example: It is used, for the first time, when the application contains all the information required, it is accepted and the BTI issuing phase starts. It could then happen that the issuing process is extended, or delayed, due to different reasons:

- additional information is requested from an applicant. The application should then be updated with the status code 81;
- pending the outcome of discussions at the Customs Code Committee. The application should then be updated with the status code 82.

When the above mentioned conditions are fulfilled, the issuing process will be resumed. The application should then be updated with the status code 100.

The **status code 110** is the **final state** of the applications resulted in BTI decisions.

The **Annex 2 'Lifecycle of an application'** describes different possible scenarios of the status codes that an application may have throughout its lifecycle.

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 authorities to take that decision. **(Article 22(1) UCC)**

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 in the EBTI-3 database without exception, even if additional information may be required or the application is withdrawn at a later stage. **There is no circumstance that permits derogation from this obligation.**

When uploading the application in the EBTI-3 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.

The customs authorities 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 behalf, but that some customs authorities 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 behalf. The terms and conditions associated with carrying out such an analysis, including charges that may be imposed on the applicant as a result of it, must be clearly indicated in the notification. **(Article 52(2) UCC)**

The time frame for issuing BTI decisions is governed by the legislation. Once the customs authority considers that it has in its possession all elements required to determine the tariff classification, it must inform the applicant without delay, and at the latest within 30 days from the date of receipt of the application, that his application is formally accepted and the date from which the issuing period starts running. **(Article 22(2) UCC)** (See Section 7.1) Where the customs authority asks the applicant to provide additional information, the time-limit for acceptance of the application is extended with the time-limit to provide additional information (Article 12(2) IA). This means that the time limit to accept the application can be maximum 30 days + 30 days.

5. CONSULTATION OF THE EBTI-3 DATABASE

Article 17 of the Implementing Act enshrines in law the obligation on customs authority to consult the EBTI-3 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.

When consulting the EBTI-3 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.

5.1. BTI shopping

Consulting the EBTI-3 database is a necessary action to prevent the practice of "BTI shopping". (**Article 16(4) IA**)

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 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. BTI shopping occurs when an application for the **same goods**, and on behalf of the **same applicant**, is submitted to more than one customs authority (see Section 4.4). The practice shows that the applicant will not necessarily wait for a BTI decision to be issued before applying in another Member State. He hopes to receive two BTI decisions classifying his goods under different headings and thus use the one with the more attractive duty rate.

If another Member State has already received an **application for the same product** and on behalf of the **same applicant**, the application should be entered into the system to inform other customs authorities of its existence. However, a BTI decision shall not be issued and the application should be attributed status code 91. The applicant should be informed that the BTI decision will be issued by the first customs authority to which the application was submitted on the basis of that first application respecting the conditions set out in Article 19 (1) UCC DA. (See Section 4.1.).

However, BTI shopping can also occur when a second application is submitted only when a BTI decision has been issued to a code which is unattractive to the applicant. The applicant, who may or may not have challenged the original BTI decision, then applies for a BTI decision in another Member State. In this, and the above mentioned cases, the applicant will probably not refer to the original BTI decision in his application form (box 12). Therefore, total reliance on what the applicant indicates in box 12 is not a good practice.

If it is found that another Member State has issued a **BTI decision for the same product** and for the **same holder**, the application should be entered into the system.

However, the application shall not be accepted (**point (a) of Article 33(1) UCC**). Therefore, a BTI decision will not be issued and the application should be attributed status code 92. The applicant should be told that the holder is to use the BTI decision that he already holds. Both this, and the above mentioned (another application for the same product and on behalf of the same applicant) cases, especially when the BTI application indicates another customs nomenclature code (resulting in a more attractive duty rate) than the one in the BTI decision issued, should be reported to the Commission as BTI shopping (e.g. via e-mail).

5.2. Searches in the EBTI-3 database

Consultations in the EBTI-3 database can be conducted using a number of search criteria, both separately and together. The more criteria used when conducting searches in the database, the more precise the results will be. Amongst those criteria are the applicant's name or his EORI number, the holder's name or his EORI number, 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. Consequently, it is in the interest of all customs authorities 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.

Such searches serve a number of purposes. They

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

Customs authorities are advised to undertake a reasonable amount of research that should be recorded in order to demonstrate that they have complied with Article 16(4) and Article 17 IA. To confirm searches for similar BTI applications and indicate their results customs authorities can use the '*Remark*' field under the box '*For Official Use*' of the application form in the EBTI-3 database. Moreover, appropriate status codes should be attributed to the application: 91 – in case of another application for the same goods on behalf of the same applicant and 92 – in case of a BTI decision issued for the same goods and for the same holder.

In case of searches for BTI decisions already issued in the name of the same or different holder for the same goods, in order to assist customs authorities to keep the search record and make it accessible to other Member States' customs authorities, a checkbox is introduced in the decision form in the EBTI-3 database. The ticking of checkbox '*Searches performed*' for similar BTI decisions is **mandatory** requiring the customs authority to indicate that the search was performed. Not ticking the checkbox will result in blocking a successful insertion of the decision.

In addition to the checkbox, a specific field where the customs authority should indicate the **result of the searches** is available. This can be done, for example, by providing the list of those existing or expired BTI decisions upon which the customs authority has or has not relied upon when taking the BTI decision, in other words, the decisions that

have influenced the classification being given, either positively or negatively. Or, alternatively, in a descriptive way, for example, by indicating the Thesaurus keywords used for the search or stating that the searches by the EORI number of the applicant or by the composition of the goods have been performed. The purpose is to provide some examples of the searches performed and the results found. The reference to BTI decisions or any other information provided in this respect should not be regarded as an exhaustive list of the search results.

Neither the checkbox, nor the information on the BTI decisions checked will be visible on the printed decision form, it will only be **accessible through the user interface** (available to the customs authorities in the Member States that issue BTI decisions and to a small number of authorised officials in the European Commission). This information is kept in the system for further reference and will not be communicated to the holder of the decision or the general public.

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.

If it is found that another Member State has issued a **BTI decision for the same product**, but for a **different holder**, the application should be entered into the system. If a Member State is uncertain about any aspect of an existing BTI decision, it should contact the issuing Member State. The classification code notified on the first issued BTI decision should be followed unless it is considered to be erroneous. In such cases, the other Member State should be contacted to clarify the situation and in order to agree on a uniform classification. If the matter cannot be resolved bilaterally, it should be referred to the European Commission. (See Section 6)

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

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) Member State (B) has received a BTI application for a specific product. Upon consulting the EBTI-3 database, it discovers that Member State (A) has issued a BTI decision for the identical product. However, Member State (B) does not agree with the classification given in the BTI decision issued by Member State (A). Such a situation can result in a delay in the processing of the BTI application.

If Member State (A) agrees with the argumentation of Member State (B) and accepts that the BTI decision is incorrect, it will revoke the decision and issue a new one upon application, following 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 decision issued by Member State (A) is, in fact, correct, it can proceed to issue a BTI decision in conformity with the existing decision 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.

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, e-mail. A record of such consultation should be retained.

If no agreement can be reached, the enquiring Member State should request consultation at Union level by sending a substantiated and complete submission to the Commission. In this case, the procedures and deadlines set out under point 8 "Divergent BTI decisions" 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 decision should be issued contrary to that opinion and that opinion should be respected by all Member States.

No Member State should issue BTI decisions 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 submitted to consultation at Union level for a decision, the submission has been accepted by the Commission and a notification has been sent to all Member States' customs authorities of the suspension of the issuing of BTI decisions for the goods concerned (See Section 8). The applicant should be informed that a BTI decision will be issued as soon as a decision has been rendered and published.

- b) An application is submitted for a specific product, but before issuing the BTI decision, in case of doubts on the classification, the Member State may consult other Member States, either directly or through CIRCABC before taking the decision.

7. ISSUING A BTI DECISION

Under this heading, the following subjects will be addressed:

- Issuing periods;
- The role of laboratories;
- Drafting a BTI decision
 - 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).

When the customs authority 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 for 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. (**Article 22(3) UCC**) (See Annex 3 'Overview of timelines related to the BTI process')

In cases where **laboratory analyses are required**, the application can only be considered complete when the reports of those analyses are available. The time limit for issuing the BTI decision is suspended for the time needed for the analysis.

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. (**Article 13(1) DA**)

In case the **customs authority cannot issue the decision within the 120-day deadline**, the applicant should be notified of that fact before this period has expired. The notification should explain the reasons for the delay and inform the applicant of when he can expect the decision to be taken. The customs authority in such a situation has an additional period of 30 days in which to issue the decision. (**point (3) of Article 22 UCC**)

7.2. The role of laboratories

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

Monitoring actions have shown that Member States consult laboratories in a very large number of cases. Laboratory analyses contribute to reaching the following objectives:

- Determining the composition of a product (particularly relevant for goods the tariff classification of which depends on their precise composition (e.g. agricultural, chemical and food products, beverages, mineral oils, textiles, shoes, etc.));
- Confirming information coming from the applicant; and
- Specifying the justification of classification.

It is important that customs authorities determine as soon as possible after the application has been received if they require a sample. (**Article 12(1) IA**) 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 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 a laboratory analysis has been conducted, the BTI decision should indicate its existence and results. 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 **special costs incurred by the customs authorities** as a result of analysis or expert reports. Customs authorities should, therefore, inform applicants of any charges attached to performing an analysis or obtaining a report that are required to be paid. Should the applicant decline to pay those charges, the customs authority is unable to issue a BTI decision on the grounds that all the information required to make a decision is not available.

Also costs incurred by the customs authorities as a result of the return of samples may be charged to the applicant (box 11 "*Samples etc.*" of the application form). The practice in some Member States' customs authorities shows that the overall administrative burden of charging the costs of returning samples is not proportionate. The samples are, therefore, not returned by mail/courier service, but only if they are collected by the applicant.

7.3. Drafting a BTI decision

A BTI decision 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 decision. When drafting the BTI decision, special attention should be paid to the following points:

- Description of goods (box 7);
- Justification of the classification of the goods (box 9);
- Confidentiality;
- "Indexation" (adding keywords) (box 11); and
- Images (box 12).

7.3.1. Description of goods (Box 7)

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. (**Article 16(2) IA** 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 (see Section 13).

It is obvious that the quality of the description is vital in helping achieve the purpose of a BTI decision, namely, to facilitate trade and **customs controls**. Only when customs officials are able to easily relate the goods described in a BTI decision to the goods presented for customs clearance, a BTI decision will serve its purpose. Thus, the legal impact of the BTI decision 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 official 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 decision must be accepted irrespective of the tariff classification assigned to the goods. **(point (a) of Article 33(4) UCC)**

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

Careful thought is needed 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 official 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 in residual (sub)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 for. 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 decision when declaring the goods to 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.

In box 7 'Description of goods' of the BTI decision, a structured template with specific sub-fields (concerning the physical description, function and use, composition, as well as characteristics of the components/ingredients) is introduced to help drafting of the decision.

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 the goods 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 authorities may decide that the different items do not constitute a set **for customs purposes** and each item is then classified separately. Consequently, a separate BTI decision will be issued for each of the items. In such a circumstance, it is important that each BTI decision is associated with the other items of 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 comprehensiveness of a structured description (See Section 7.3.5).

7.3.2. Justification of the classification of the goods (Box 9)

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 decision form how the classification decision was reached.

A correctly formulated justification should be complete, logically structured and contain no unexplained abbreviations. In box 9 '*Justification of the classification of the goods*' of the BTI decision, a structured template with below sub-fields is introduced to help drafting of the decision:

- General rules for the interpretation of the Combined Nomenclature (including heading and subheading text);
- Section and Chapter notes and subheading notes;
- Additional notes;
- Classification Regulations;
- Classification opinions (including statements and conclusion of the CCC);
- Harmonized System and Combined Nomenclature Explanatory notes;
- Rulings of the Court of Justice of the European Union;
- National tribunal rulings;
- Other.

As the case may be, conclusions and reasoning, such as reflected in the minutes of the Customs Code Committee, can also be used.

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 authorities in other Member States with an insight as to how the issuing customs authority reached its classification decision in the BTI decision.

7.3.3. Confidentiality

An important aspect in the framework of the EBTI-3 system is confidentiality. **Articles 12 and 13 of the UCC** impose a legal obligation on Member States to treat information acquired by customs authorities or exchanged with traders 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:

- details concerning the applicant (boxes 1, 2 and 4 of the application form);
- commercial denomination (box 10);
- supplementary information (e.g. composition of chemical products, laboratory analyses) (provided in box 10);
- logos on samples.

The important note in box 15 on the BTI application form informs the applicant that when he signs the BTI application form, he also accepts that any information provided to the customs authority 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 applicant (boxes 1, 2 and 4) and the commercial denomination and additional information (box 10).

That being said, customs authorities should still use their discretion, especially when **attaching images to BTI decisions**. Images of the goods with a label or with other distinguishing features (e.g. container shape) should be treated as confidential by customs authorities without exception.

Even if the applicant fails to indicate information he would wish to be treated as confidential, the **following information should always be treated as confidential**:

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

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

Information exchanged between customs authorities and the Commission:

Customs authorities have access to all BTI decisions stored in the EBTI-3 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-3 system. Accordingly, the EBTI-3 system contains a tracking system which records the details of those users accessing the system and the actions carried out on a specific BTI decision.

7.3.4. Indexation (adding keywords) (Box 11)

When the EBTI-3 system was established, it was decided that BTI decisions would be stored in the language of the author only. However, it was recognised that there was a need to **identify relevant BTI decisions issued by other customs authorities and in different languages**. The solution found was that decisions should be indexed. Thus, **adding relevant keywords from the EBTI-3 Thesaurus** is a key element in the EBTI-3 system, as they are "automatically" translated into the other official languages of the EU. 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 BTI decision processed by two different indexers will not necessarily bear the same descriptors. Given the subjective nature of indexing, a degree of standardisation is required to ensure that the same approach and 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 defining and/or qualifying:

- Type of a product;
- Physical state of a product;
- Function or uses made of a product;

- Each of the elements of which a product is composed;
- Packaging, if relevant; and
- Factors on which classification is based.

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

- Indexation should start with a concrete descriptor, i.e. with a noun like "*coat*", "*earphones*", "*metal joints*", "*carp*";
- It should be the reflection of the description and of nothing else (particularly not of the tariff customs classification) and, thus it should not include information which does not appear in the description; and
- Confidential data cannot be mentioned either in the description or in the indexation.

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 (Box 12)

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.

Some goods may be straight forward and their images will not add anything to a good description. This is true, especially of powders and liquids. However, other goods may have sufficiently distinct or unique characteristics to merit image(s) being attached to the decision.

The number of images attached to a BTI application or a decision is a matter for the issuing customs authority to decide. The justification for attaching any image is that it conveys important information 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**. It is recommended that at least one image attached to the application is carried over to the final BTI decision. That automatically creates a connection between the two documents.

Confidentiality must always be a consideration when attaching images to BTI decisions. Where it is not possible to obscure identifying elements (e.g. trade names, logos, packaging of the product which is distinctive and synonymous with a brand), the image should always be placed in the confidential field. If no confidentiality issues are involved, the image should be placed in the field available to the general public.

It is possible to attach a public and a confidential image of the same product in the same decision. 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.

It should be borne in mind that images and keywords are attached to BTI decisions in order to assist customs authorities when searching the EBTI-3 database for similar BTI decisions. Queries including images and keywords are used the most, as they help to prevent divergences even in those cases where a BTI decision is issued in a language not familiar to the customs official performing the search. Given that many initial searches in the database are conducted on the basis of images, attaching a wrong image can lead to divergent BTI decisions being issued.

In general, images should refer to samples submitted by the applicant. Image information can occur in **different forms**:

- Digital photos;
- Scanned texts (e.g. product descriptions or lists of ingredients) and illustrations (e.g. drawings or circuit diagrams) from brochures or other manufacturers' literature; and
- Other documents (e.g. datasheets or, where relevant, formulae and contents as displayed on packaging).

It is 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.

If neither an image nor a sample is submitted with the application, the customs authority can make an image to add to the application at a later date. Images attached to BTI applications and decisions should always be of sufficient standard or of relevance to the goods. **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.
- Do not increase image resolution 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 nature and important characteristics of the object being pictured. Aspects such as colour tone, texture, light and shade can be important to conveying meaning to the image. 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.
- JPG images exceeding 300KB will automatically be resized by the system, whereas PDF attachments will be rejected by the system if they exceed 500KB.

7.4. Issue of a BTI decision

When the application is complete and accurate, and there are no divergent BTI decisions for the classification, the Member State should issue the BTI decision and make it available for consultation by the other Member States by uploading it in the EBTI-3 database without delay and at the latest within 7 days of its issuance (**Article 21(1) IA**).

It should be noted that once a BTI is published in the EBTI-3 database, it can only be amended with regard to three aspects: its end date of validity, the invalidation code and a potential “period of extended use” (See Section 12).

In case of technical problems regarding the transmission of BTI decisions to the EBTI-3 database, the competent units at the Commission (currently DG TAXUD A4 and B3)

have to be informed without delay about the nature of the problem and indicating possible solutions.

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. Customs authorities of all Member States have a responsibility to avoid issuing divergent BTI decisions.

A divergence occurs when two or more **BTI decisions for identical or sufficiently similar products are issued with classifications under different tariff code numbers**. Such a situation creates an imbalance in the treatment accorded to traders in the EU. Divergences can occur within customs authorities and between Member States. Given the human element in issuing BTI decisions, it is inevitable that very occasionally a divergence may occur and, when discovered, every effort must be made to resolve it as quickly as possible. Following this Guidance should minimise the number of such divergences.

It is important to address the question on how to deal with those BTI decisions that are found to be in contradiction with other BTI decisions. 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. In the event that:

- **the Commission has identified a 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. (**Article 23(1) IA**)

or

- **Member States have contacted each other and have failed to resolve a divergence within a maximum period of 90 days⁷**
 - 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, if accepted, send the notification to all Member States' customs authorities **suspending the issuing of BTI decisions** for the goods concerned (**Article 23(1) IA**) **for a period of up to 10 months** (**Article 23(2) IA** and **point (a) of Article 34(10) UCC**). In exceptional circumstances, an **additional extension not exceeding 5 months** may be applied (**Article 20(1) DA**).

A document containing the substantiated submission and other relevant information will 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 decisions for the goods concerned. (**Article 23(2) IA**)

⁷ This maximum period of 90 days should be included in the 120 days deadline of issuing the BTI decision.

The customs authority shall issue a BTI decision at the latest within 120 days of the date of acceptance of the application, except where otherwise provided (**Article 22(3) UCC**). Where the taking of BTI decisions is suspended, the 120-day period for the issue of BTI decisions will be extended by the 10 (or 15) month suspension of the issue of BTI decisions (**Article 23(1) IA**).

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 decisions for the goods concerned (**Article 23(3) IA**).

9. THE LEGAL NATURE OF A BTI DECISION

The Customs Code decreed that the validity period of a BTI decision was 6 years. However, under the UCC, the statutory validity period for a decision has been reduced from 6 to 3 years. (**Article 33(3) UCC**) This means that any BTI decision issued after 1 May 2016 shall have a **validity period that does not exceed 3 years**, whereas decisions issued before that date have a 6-year validity period.

As of 1 May 2016 BTI decisions are **binding both on the customs authorities and the holder**: (i) only in respect of goods for which customs formalities have been completed after the date on which the decision takes effect and (ii) only with effect from the date on which the holder has received, or is deemed to have received, notification of the decision (**points (a) and (b) of Article 33 (2) UCC**). **BTI decisions cannot enter into effect, or be issued, retroactively.**

With the entry into force of the UCC, there is a **legal obligation on traders to declare their BTI decisions and use them when importing or exporting the goods concerned**. (**Article 20 IA**) This implies that from 1 May 2016 onwards, the holder of a BTI decision issued before that date is also obliged to declare and use his BTI decision when importing or exporting the goods concerned (**Articles 252 and 254 DA**).

Responsibility for correctly declaring the goods to customs falls on the economic operator. Economic operators who appoint representatives should 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 his BTI decision. (**Article 23(5) UCC**)

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

10. ANNULMENT OF BTI DECISIONS (EX TUNC)

By way of derogation from Articles 23(3) and (27) UCC (articles relating to the application of the customs legislation in general), BTI decisions shall be annulled where they are based on **inaccurate or incomplete information from the applicants** (**Article 34(4) UCC** – article relating to BTI specifically). Consequently, under the special rule of Article 34(4), incorrect or incomplete information submitted by the applicant is the only condition that can lead to an annulment of a BTI decision.

With regard to the date from which the annulment shall take effect, the general rule of Article 27(3) applies and, therefore, it shall take effect from the date on which the initial BTI decision took effect. In case of annulment of the BTI decision, imports of goods concerned by the

annulled BTI decision could be subject to ex post recovery of any uncharged amounts of customs duties, as of the day of effect of the annulment of the BTI decision.

The holder of the decision must be notified in writing of the decision to annul his BTI decision, either by letter or electronic message. (**Article 27(2) UCC**) The customs authority should also enter the appropriate invalidation code number (in this case – 55) in the EBTI-3 database (The list of invalidation codes is to be found in Annex 5). The system will automatically insert the date from which the annulment has taken effect.

In the case of annulment, a **period of extended use cannot be granted**. (See Section 12)

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 decision will cease to be valid or revoked before its end. (**Article 33(3) UCC**)

11.1. BTI decisions that cease to be valid

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

There is no legal obligation on the customs authorities to inform the holder of the BTI decision when his decision ceases to be valid. However, it is advisable to do so when the decision ceases to be valid as a result of the adoption of measures referred to in point (b) of Article 34(1) UCC.

In accordance with **Article 34(1) UCC**, BTI decisions shall cease to be valid with effect from the date of entry into force of amendments to the nomenclatures (**point (a) of the Article**) or the date of entry into force of Commission implementing regulations concerning classification (classification regulations) (**point (b) of the Article**).

BTI decisions shall not cease to be valid with retroactive effect. (Article 34(3) UCC).

11.2. BTI decisions that are revoked

Provisions specific to revocation of BTI decisions are laid down in Articles 34(7) and (11) UCC. Customs authorities shall revoke BTI decisions in the following circumstances:

- Where they are no longer compatible with the interpretation of any of the nomenclatures referred to in points (a) and (b) of Article 56(2) UCC (**point (a) of Article 34(7) UCC**) resulting from:
 - explanatory notes to the Combined Nomenclature;

- a judgment of the Court of Justice of the European Union;
- classification decisions and opinions or amendments of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System of the World Customs Organization;
- In other specific cases (**point (b) of Article 34(7) UCC**);
- Where the Commission has issued a decision directing a Member State to revoke specific BTI decisions; (**Article 34(11) UCC**).

Besides specific provisions applicable to revocation of BTI decisions (points (a) and (b) of Article 34(7) UCC), there are **general provisions applicable also to BTI decisions**. These are laid down in **Articles 23(3) and 28 UCC** referred to in Article 34(5) UCC.

In the context of BTI decisions, customs authorities which took a decision may at any time revoke it where it does not conform to the customs legislation or where one or more of the conditions for taking the decision were not or are not fulfilled, for example in the following situations:

- As a result of bilateral discussions between Member States and where one of the parties revokes specific BTI decisions;
- Following an administrative review where the customs authority decides an error has been made in the classification;
- Where guidance classifying goods at a specific heading is adopted at Union level, e.g. as a result of the conclusions of the Customs Code Committee. However, in classification cases, such a revocation should not be based on the decision of the Customs Code Committee itself, but rather on the legal reasoning behind its decision, i.e. the interpretation of the legal provisions applicable to the tariff classification of the goods concerned in the BTI decision.

In accordance with the general provisions of **Article 22(4) UCC**, the date on which the revocation decision takes effect is the date on which the applicant receives it, or is deemed to have received it. However, the Article does not apply to the revocation of a BTI decision in the specific cases provided for in **sub-points (i)–(iii) of point (a) of Article 34(7) UCC**. As specified therein, the date on which the revocation of a BTI decision becomes effective is the date of the publication in the Official Journal of the European Union of explanatory notes to the CN, a judgment of the CJEU or classification decisions, opinions or amendments of the explanatory notes to the HS.

A BTI decision shall be revoked in cases of clerical error (i.e. errors that do not affect the classification of the goods, such as errors or omissions in the holder's name or address, wrong image attached, etc.). In cases where a clerical error occurred (e.g. a wrong image was attached to the BTI decision), the decision should be revoked using the invalidation code 65 (invalidated for reasons other than classification). A new BTI decision may then be issued (without a need for the applicant to resubmit a new BTI application). The date of start of validity of the new decision should be equal to or greater than the date on which the existing BTI decision is revoked.

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. (**Article 28(3) UCC**)

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

Attention should be drawn to the importance of a careful assessment whether a classification measure (a classification regulation or decision, additional notes or explanatory notes to the Combined Nomenclature) is really required to invalidate a BTI decision.

In order to speed up the resolution of differences in classification and avoid unnecessary delays, Member States' customs authorities can use the possibility offered by the Timmermans ruling⁸ when revoking BTI decisions for reasons other than a measure.

In Joined Cases C-133/02 and C-134/02 Timmermans Transport and Logistics BV, the CJEU ruled that "*where, on more detailed examination, it appears to the customs authorities that that interpretation [of the Combined Nomenclature given by customs in a BTI] is wrong, following an error of assessment or evolution in the thinking in relation to tariff classification, they are entitled to consider that one of the conditions laid down for the issue of a BTI is no longer fulfilled and to revoke that BTI with a view to amending the tariff classification of the goods concerned*".

The invalidation code appropriate to the circumstances of the case (e.g. 62, 63, 64 and 65) has to be set in the EBTI-3 database and a new end date of validity needs to be entered, i.e. the date on which the decision ceases to be valid or is revoked.

In case BTI decisions cease to be valid or are revoked, imports of goods concerned by the BTI decision that ceases to be valid or is revoked could be subject to ex post recovery of any uncharged amounts of customs duties, as of the day the decision ceases to be valid or the day of effect of the revocation of the BTI decision.

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

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

A period of extended use may be granted and a BTI decision may still be used in respect of binding contracts which were based upon that decision and were concluded before it ceased to be valid or was revoked (**Article 34(9) UCC**). 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 will not be systematically granted in all situations where a BTI decision ceased to be valid or was revoked, but it may only be granted under certain conditions and in specific situations.

⁸ Joined cases C-133/02 and C-134/02 Timmermans Transport and Logistics BV:
<http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130d533c0d1561c5b48d78461e2e91a826954.e34KaxiLc3eQc40LaxqMbN4Oc3mRe0?text=&docid=48861&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=364307>

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

- The economic operator has entered into **binding contracts** based on the classification in the decision that ceased to be valid or was revoked and those contracts were concluded before that (i.e. the date indicated in point (a) of Article 34(7) where applicable);
- The period of extended use has been applied for **within 30 days** of the date on which the BTI decision ceases to be valid or is revoked. For revocations the starting point of the 30-day period is the date on which the applicant receives or is deemed to have received the decision of the customs authorities to revoke the BTI decision;
- The request has been submitted to the **customs authority that issued the original decision**;
- The **measure** that has led to the BTI decision ceasing to be valid or being revoked does not exclude a period of extended use being granted; (Articles 34(9) and 57(4) UCC)
- The **quantities** for which a period of extended use is requested and the **Member State(s)** in which goods will be cleared under the period of extended use are indicated in the application;

A period of extended use may be granted for

- BTI decisions that cease to be valid as a result of **measures adopted by the Commission to determine the tariff classification of goods** (e.g. classification regulations) (point (b) of Article 34(1) UCC).
- BTI decisions revoked where they do not conform to the customs legislation or where **one or more of the conditions for taking the decision were not or are no longer fulfilled (Articles 23(3) and 28 referred to in Article 34(5) UCC).**⁹
- BTI decisions revoked as a result of **amendments of the CN explanatory notes** (point (a)(i) of Article 34(7) UCC).
- BTI decisions revoked following a **judgment of the Court of Justice of the European Union** (point (a)(ii) of Article 34(7) UCC).
- BTI decisions revoked following **classification decisions, classification opinions or amendments of the explanatory notes to the Nomenclature of the HS, adopted by the WCO** (point (a)(iii) of Article 34(7) UCC).

A period of extended use shall not be granted for:

- **BTI decisions that have been annulled** due to inaccurate or incomplete information being provided by the applicant (Article 34(4) UCC).
- BTI decisions that cease to be valid as a result of **changes to the Nomenclature of the Harmonized System and Combined Nomenclature** (point (a) of Article 34(1) UCC). Changes to both those nomenclatures are published at least 2 months in advance of them coming into effect. Thus, their holders have the opportunity to obtain replacement BTI decisions that will be in conformity with the law. Similarly, BTI decisions 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 due to **clerical errors**. As the classification in such decisions is unaffected by the error, there is no reason to grant a period of extended use.

⁹ An amendment to Article 34(9) UCC has been published in the Official Journal on 25 March 2019. It enters into force on 14 April 2019. [Article 1\(2\) of Regulation \(EU\) 2019/474 of the European Parliament and of the Council of 19 March 2019.](#)

- BTI decisions revoked following a **Commission decision requesting the Member State(s) to revoke a BTI decision**, to ensure a correct and uniform tariff classification (Article 34(11) UCC).

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 it had all the information necessary to take the decision.

The period of extended use **shall not exceed 6 months** from the date on which the BTI decision ceases to be valid or its revocation took effect (**point (b) of Article 34(1) and Article 34(7) UCC**). It may be limited to a shorter period, if it is so laid down in a measure.

In cases where the customs authority grants a period of extended use of the BTI decision, the goods quantity is mandatory information in the BTI decision (**Annex A DA**). The following information shall be specified:

- **end date of the period of extended use**
- **quantities of the goods** that may be cleared during this period
- **units** expressed in supplementary units within the meaning of the Combined Nomenclature (Annex I to Council Regulation (EEC) No 2658/87).

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.

It should be recalled that the use of a decision for which a period of extended use has been granted shall cease (i) **at the date on which the period of extended use of the decision concerned expires** or (ii) as soon as the **quantities of the goods that may be cleared during this period have been reached**, whichever of the two conditions is fulfilled first (**Article 22(2) IA**). The Commission shall inform customs authorities as soon as those quantities have been reached.¹⁰

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. (**Article 23(5) UCC**)

13. SUFFICIENTLY SIMILAR GOODS

In the context of Binding Tariff Information, goods which have similar characteristics and between which the differences are irrelevant for the purposes of their tariff classification (the same CN code) should be regarded as sufficiently similar to those covered by a Commission Regulation. Account should also be taken of the 'Reasons' (Column (3)) of a Commission Regulation.

¹⁰ It should be noted that such monitoring will only become possible when all the Member States' customs authorities will have adapted their national declaration processing systems to the UCC requirements, so that they can transmit the full declaration data to SURV-RECAPP.

The Court of Justice of the EU (CJEU) has expressed its view on the scope of when Commission Regulations can be applied to goods considered to be "sufficiently similar".

General views of the CJEU

Case C-376/07 Kamino International Logistics BV (Paragraphs 63–67):

The Court said it was apparent from case-law that a classification 'regulation is of general application in so far as it does not apply to an individual trader but, in general, to products identical to the one thus classified' (Paragraph 63). The Court added 'although the application by analogy of a classification regulation to goods similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders', 'it is still necessary, in such a case, for the goods to be classified and those covered by the classification regulation to be sufficiently similar.'

Case C-119/99 Hewlett Packard BV (Paragraph 19):

'A classification regulation is of general application in so far as it does not apply to an individual trader but, in general, to products which are the same as that examined by the Customs Code Committee'

Case C-130/02 Krings (Paragraph 35):

'the application by analogy of a classification regulation, such as Regulation No 306/2001, to products similar to those covered by that regulation facilitates a coherent interpretation of the CN and the equal treatment of traders.'

The CJEU expressed its view in the following cases that **goods may be considered to be sufficiently similar** to the goods covered by a Regulation, and would therefore be classified by analogy:

Grofa GmbH, GoPro Cooperatief (Joined Cases C-435/15 and C-666/15): The **action cameras** at issue used the same technology as the action camera covered by Commission Regulation 876/2014 (Paragraphs 46–48).

The Court noted that the products were not identical, as the product covered by the Regulation could be fixed to an object such as a helmet, could be held in the hand, had a recording capacity of a shorter duration, had a better resolution, was able to take better quality photographs and enabled the quality to be checked.

However, the Court noted that the products shared the following characteristics: a micro HDMI port, a mini USB port, a Wifi connection, took photographs and recorded video sequences of more than 30 minutes, designed for use in sporting activities. The products had no zoom, viewfinder or built-in internal memory.

The Court assessed that the features shared by both cameras confirmed they were sufficiently similar and that the cameras subject to the Grofa Judgment could be classified by analogy to the camera covered by Commission Regulation 876/2014.

Krings GmbH (Case C-130/02): The Court considered the classification of two **products for making beverages with a basis of tea**. They each had a percentage composition of sugar and tea extract, which was different to the product covered by Commission Regulation 306/2001 that had a different percentage composition of sugar and tea extract (Paragraph 38).

Anagram International Inc. (Case C-14/05): The Court considered the classification of a **plastic festive balloon**. Bonded plastic formed the external layer of the balloon, which was different to the product covered by Commission Regulation 442/2000 in which bonded plastic formed the internal layer of the balloon. The court ruled that the "Reasons" in the Regulation provides that those products may be printed with different motifs, without influencing the classification as a toy balloon (Paragraphs 33–35).

The CJEU expressed its view in the following cases that **goods may not be considered to be sufficiently similar** to the goods covered by the Regulation, and therefore would not be classified by analogy:

Kamino International Logistics (C-376/07): the Court observed that the **monitors** at issue (Paragraphs 64–66) used LCD technology while the monitor covered by Commission Regulation 754/2004 used plasma technology. The Court also noted that the screen size and resolution of the monitors were also different, and concluded that the goods were not sufficiently similar.

Oliver Medical SIA (C-547/13): the Court considered that the **laser skin treatment devices** at issue were not identical to the goods covered by Commission Regulation 119/2008, as they differ in size and weight, as well as in the technology they use. However, the Court considered that the Regulation may, by analogy, apply to the devices by referring to the 'Reasons' in the third column of the annex, i.e. 'Classification under heading 9018 as a medical instrument or appliance is also excluded as the apparatus does not provide any medical treatment and is not used in professional practice'. Consequently, it is due to the 'Reasons' that the Regulation may apply by analogy and not features such as the size, weight and technology (Paragraphs 54–59). As the product under consideration by the Court was used in professional practice, but also in beauty parlours, the Commission Regulation 119/2008 could not apply by analogy.

Grofa GmbH, GoPro Cooperatief UA (Joined Cases C-435/15 and C-666/15): the Court considered that the **action cameras** at issue were not identical to the "pocket sized video recorders" covered by Commission Regulation 1249/2011, as the action cameras at issue did take still image photographs, did not have a digital zoom, a loudspeaker or a built-in internal memory. However, to determine whether a Regulation can apply by analogy, it is also necessary to take into account of the 'Reasons' given by that Regulation: the product covered by the Regulation was not considered to be sufficiently similar as "the apparatus is only capable of recording video" (Paragraphs 36–42).

It is necessary to assess whether goods are sufficiently similar to the goods covered by a Commission Regulation on a case by case basis. As explained above, the nature of the goods and their characteristics need to be considered. For example, in the Grofa/GoPro CJEU case, the goods at issue were not identical to the goods covered by a Regulation, but were considered to be sufficiently similar. The camera covered by the Regulation had e.g. a recording capacity of a shorter duration, a better resolution, etc. However, the products shared various characteristics e.g. the taking of still image photographs and a video recording capacity of more than 30 minutes. The Court assessed that the shared characteristics confirmed that the goods were sufficiently similar.

However, where appropriate, account must also be taken of the ‘Reasons’ for including/excluding goods in a Regulation, see column (3) ‘Reasons’. If a product covered by a Regulation is excluded from a heading, e.g. as it is not used in professional practice (as referred to in the Oliver Medical case), the goods under consideration by the CJEU could only be considered to be sufficiently similar to the goods covered by the Regulation if they also are not used in professional practice. In such circumstances, the features of the product (dimensions, weight and technology used) are not decisive factors for the classification of a product under that heading.

The assessment will depend on the nature of each individual product.

14. RIGHT TO BE HEARD

The right to be heard applies to situations where customs authorities intend to take a **decision that would adversely affect the person** to whom it is addressed.

In such situations, customs authorities have the obligation to **communicate to the addressee the grounds on which they intend to base their decision**, and he must be given the **opportunity to express his point of view (Article 22(6) UCC)**. **Article 8 DA** provides that the period of time for the applicant to express his point of view shall be **30 days**, effective from the date on which he receives that communication or is deemed to have received it.

It is advisable to request the person concerned (applicant/holder of the decision) to inform the customs authority if he wishes to **waive his right to be heard**. The BTI decision of the person who decides to waive his right to be heard should be revoked as soon as the customs authority is made aware of his decision.

Article 8(2) UCC IA authorises the customs authorities to take the decision when the **person concerned expresses his point of view before the expiry of the 30-day period** unless he simultaneously indicates his intention to further express his point of view within that period.

In cases where the **person concerned does not respond within the 30-day period**, his BTI decision should be revoked.

In cases where the person concerned decides to invoke his right to be heard and his **arguments are found to be unjustified**, the decision which adversely affects the applicant (i.e. the decision to revoke the BTI) shall set out the grounds on which it is based (**Article 22(7) UCC**).

14.1. Cases where the right to be heard applies

1. Customs authority decides not to issue a BTI decision

The right to be heard must be allowed when the customs authority refuses to issue a BTI decision (for example, due to identified BTI shopping). The refusal of customs authorities to issue a BTI decision can be considered as **potentially detrimental to the interests of an economic operator**. Consequently, in that situation the customs authority when notifying the applicant of its impending decision must invite him to express his point of view on the matter.

2. Annulment of a BTI decision

The responsibility for providing customs authorities with all the relevant information concerning goods for which a BTI decision is sought lies fully with the applicant. In accordance with **Article**

34(4) UCC, BTI decisions shall be annulled where they are based on **inaccurate or incomplete information from the applicant**.

The BTI decision holder concerned must be given the right to express his views before the decision to annul his decision is executed.

3. Revocation due to error in the classification, e.g. after an internal review, consultations with other Member States, as a result of the conclusions of the Customs Code Committee, etc.

The Court of Justice of the European Union ruled that *'where, on more detailed examination, it appears to the customs authorities that that interpretation [of the Combined Nomenclature given by customs in a BTI] is wrong, following an error of assessment or evolution in the thinking in relation to tariff classification, they are entitled to consider that one of the conditions laid down for the issue of a BTI is no longer fulfilled and to revoke that BTI with a view to amending the tariff classification of the goods concerned'*¹¹.

In such cases, the **revocation of the BTI** decision could indeed have a **negative effect on the interests of an economic operator**; hence, the holder must be given the right to be heard.

4. Rulings by the Court of Justice of the European Union (CJEU) or Commission implementing regulations concerning classification (classification regulations)

In cases where the CJEU has ruled or a Commission implementing regulation is adopted on classification, such rulings or regulations not only affect the identical goods concerned by them but they may also, by analogy, affect similar goods. In the case of a classification regulation, the regulation may apply by analogy to products considered to be sufficiently similar (See Section 13). Therefore, **BTI decisions for goods that are regarded as similar** have also to be identified by the customs authorities.

As the Member States have been involved in the discussions and voted on the regulation, they have prior knowledge that a measure is being prepared and that it may impact on a certain number of BTI decisions. That gives the customs authorities time to determine those decisions that are affected by the regulation.

The holders of those decisions have to be given the right to be heard as, in fact, there may be distinguishing features or characteristics attached to those products that would exclude them from the coverage of the judgment or regulation.

When a CJEU ruling is published in the Official Journal of the European Union, the holders of the relevant BTI decisions should be notified by the customs authorities of the impending decision to revoke their BTI decision immediately after the publication of the ruling. Holders whose BTI decisions may cease to be valid due to the entry into force of a classification regulation should be informed as well.

In such cases, the **invalidation (classification regulations) or revocation (CJEU ruling) of the BTI** decision could indeed have a **negative effect on the interests of an economic operator**; hence, the holder must be given the right to be heard.

¹¹ Joined cases C-133/02 and C-134/02 Timmermans Transport and Logistics BV:
<http://curia.europa.eu/juris/showPdf.jsf?jsessionid=9ea7d0f130d533c0d1561c5b48d78461e2e91a826954.e34KaxiLc3eQc40LaxqMBN4Oc3mRe0?text=&docid=48861&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=364307>

5. BTI decision which no longer complies with (i) an explanatory note to the Combined Nomenclature or (ii) classification decisions, classification opinions or amendments of the explanatory notes to the HS, adopted by the WCO

Explanatory notes to the Combined Nomenclature are considered to be an important aid for interpreting the scope of the various tariff (sub)headings but do not have legally binding force.

Customs authorities should identify the BTI decisions they have issued that are affected by the new explanatory note. Given that the Member States have been involved in the discussions that have led to the explanatory note and have voted on the actual text of that note, they will have had prior knowledge and time in which to examine those BTI decisions they believe are affected by it. Similarly to the explanatory notes to the Combined Nomenclature, classification decisions, classification opinions or amendments of the explanatory notes to the HS, adopted by the WCO (all listed under points (a)(iii) of Article 34(7) UCC), are considered as guidance documents for interpreting the scope of the various tariff (sub)headings.

Although customs authorities are obliged to revoke a BTI decision according to points (a)(iii) of Article 34(7) UCC, they still have to determine which BTI decisions are affected and shall be revoked, because none of the means identified in points (a)(iii) of Article 34(7) UCC are addressing any particular BTI decision. In this type of situation, the holder of the decision should always be granted the right to be heard as the **revocation of the BTI decision** could indeed have a **negative effect on the interests of an economic operator**.

Customs authorities should notify the holders of the impending decision to revoke the BTI decision immediately after the publication in the Official Journal of the European Union of the (i) explanatory note, (ii) classification decisions, classification opinions or amendments of the explanatory notes to the HS, adopted by the WCO.

6. Period of extended use not granted

Under certain conditions, the holder of a BTI decision that has ceased to be valid or is revoked may avail of a period of extended use. The refusal of customs authority to grant a period of extended use could **adversely affect the interests of an economic operator**. Consequently, before taking the final decision, the customs authority when notifying the holder of its impending decision not to grant a period of extended use must invite him to express his point of view on the matter.

14.2. Cases where the right to be heard does not apply

1. Customs authority classifies the goods in a different commodity code than the one indicated by the applicant in the application form

In cases, where on the basis of the information provided by the applicant in the application form (including the commodity code, if indicated), the customs authority classifies the goods in a different commodity code, the holder of the decision **does not have the right to be heard (point (a) of Article 22(6)UCC)**. However, he has the **right of appeal against it**. These two rights should not be confused: economic operators **should be granted a right of appeal against any decision taken** by the customs authorities, whereas the **right to be heard should be granted before any decision is taken** which adversely affects the economic operator.

As appeals fall under national competence, Member States have their own legislation and provisions governing them. When notifying the BTI decision to the holder, it is recommended to explain the national appeal provisions as well.

2. Revocation due to clerical error/change in the file which is not linked to the classification

In case where, for example, the name and/or address of the holder are incorrect, the holder of a BTI decision does not have the right to be heard as such an error in a BTI decision **does not impact on the essential nature of such a decision**, namely, the tariff classification of the goods and the legal certainty bestowed by the decision. Furthermore, the revocation of such a decision **cannot be detrimental to his interests**, given that in legal terms he may not be entitled to benefit from that decision in its incorrect state. Should the economic operator have binding contracts based on that BTI decision, he is not adversely affected by the reissue of a new decision with all the correct information and the same tariff classification.

In such cases, the customs authorities should **revoke the incorrect decision and issue a new one** as soon as the error has come to light. The holder of the decision should not be required to submit a new application as, in fact, his original application has not been correctly administered and, consequently, he should automatically receive a new corrected decision.

3. Rulings by the Court of Justice of the European Union (CJEU) or Commission implementing regulations concerning classification (classification regulations)

In cases where the CJEU has ruled on a classification, any **BTI decisions for identical goods that have been subject to a court judgment shall be revoked with effect from the date of publication of the operative part of the judgment** in the Official Journal of the European Union¹².

In cases where a Commission implementing regulation has been adopted on a classification, any **BTI decisions for identical goods that have been the subject of a classification regulation shall cease to be valid on the date of entry into force of that regulation** (in principle on the twentieth day following that of its publication in the Official Journal of the European Union).

In both situations, the customs authority is not making a decision but is merely implementing the law or a judicial order. Consequently, the holders of BTI decisions issued for the goods covered by the judgment or regulation do not have the right to be heard.

4. Amendment to the nomenclatures (Harmonized System, Combined Nomenclature, TARIC)

The Harmonized Commodity Description and Coding System and the Combined Nomenclature are continuously evolving and changes are regularly introduced in order to keep pace with technological and industrial developments. As a result, a BTI decision may fall out of step with the HS and/or the CN as a result of the codes in those decisions ceasing to exist. Consequently,

¹²For example, in the Grofa GmbH/GoPro Cooperatief UA case (joined cases C-435/15 and C-666/15), the Court issued a preliminary ruling in respect of three camera models in the GoPro Hero 3 Black Edition range, and the GoPro Hero 3 Silver Edition, GoPro Hero 3 +Silver Edition, GoPro 4 Silver Edition, GoPro Hero 4 Black Edition and GoPro Hero. Only BTI decisions issued for those action cameras specifically subject to a preliminary ruling by the CJEU can be revoked (if applicable) from the date of publication of the operative part of the judgment in the Official Journal of the European Union. BTI decisions for any other Model of action camera and any other camera will be revoked (if applicable) from the date of notification to the holder of the decision.

those **decisions no longer conform to the customs nomenclature being in force** and the holders of such decisions do not have the right to be heard.

5. Customs authority decides not to issue a BTI decision when an applicant does not provide the information requested by the customs authorities

In accordance with **Article 22(2) UCC**, a person who applies for a decision relating to the application of the customs legislation shall supply all the information required by the competent customs authorities in order to enable them to take that decision. Before the application is accepted, the customs authority may request additional information where it establishes that the application does not contain all the information required. Where the **applicant fails to provide the requested information within 30 days**, the application shall not be accepted (**Article 12 UCC IA**). In such cases the applicant does not have the right to be heard.

6. Commission decision requesting Member States to revoke a BTI decision

In cases of Commission Implementing Decisions instructing Member States to revoke certain BTI decisions (Article 34(11) UCC) the right to be heard does not apply. The BTI decisions to be revoked are **covered by the decision**. This means that customs authorities do not retain the discretion to determine whether a BTI decision does or does not fall within the scope of the decision, but they implement the Commission decision.

15. ROLE OF NATIONAL TRIBUNALS

It may happen that national tribunals in Member States do not always hold the same views on classification resulting from consultation between Member States and the Commission, but reach different conclusions.

When issuing rulings, national tribunals apply EU legislation on tariff classification. In matters relating to the interpretation of EU law, Article 267 of the Treaty on the Functioning of the EU lays down that national courts or tribunals may refer conflicting matters to the Court of Justice of the EU.

Where Member States' customs authorities **consider that a ruling issued by a national tribunal is in conflict with EU law**, they should, if possible, appeal the decision and request that a preliminary reference is made to the Court of Justice of the European Union. Member States should notify the Commission of national court judgments that go against established classification practice or create divergence. For this, 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. In any event, Member States should not issue BTI decisions 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.

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

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

16. CHECKLIST

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

1. Check application to ensure all mandatory boxes have been filled
2. Upload application on EBTI-3 database, preferably with an image attached
3. Consult EBTI-3 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, ensure that the Member State concerned transmits any information necessary for processing of the application
6. If additional information or sample required, request it from applicant
7. Once all necessary information received, notify applicant that the 120-day issuing period has commenced
8. Consult EBTI-3 database to check if holder has other BTI decisions for identical goods and to avoid issuing divergent BTI decisions
9. Consult all relevant classification information (e.g. classification regulations, judgments, etc.) including minutes of the Customs Code Committee
10. If potential divergence discovered, contact other Member State(s)
11. If bi/multilateral contacts fail, submit substantiated submission to the Commission
12. If in doubt about an existing BTI classification, contact the other Member State
13. Structure the description of goods
14. Structure the justification as advised in this document
15. Use at least 5 keywords from the Thesaurus per BTI decision in compliance with the structure of the description
16. Add images to the BTI decision paying attention to confidentiality
17. Notify applicant when decision issued

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 and customs representatives, if appointed, must 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, or
 - where they intend to use the decision.
- Customs authorities must publish the application within 7 days of receiving it.
- The customs authority has a maximum of 30 days from the date of reception of the application to notify the applicant of its formal acceptance.
- 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.

2. Issuing phase

- BTI decisions are not issued for HS codes.
- The customs authority must issue the BTI decision within 120 days of formally accepting the application.
- The applicant must be informed when the 120 days start 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-day period is suspended for the length of time it takes the applicant to furnish the additional information and will resume upon its receipt.
- Customs authorities are obliged to make searches in the EBTI-3 database and to record the results of those searches.
- If the customs authority 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.
- The applicant does not have the right to be heard before the BTI decision is taken.
- 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.

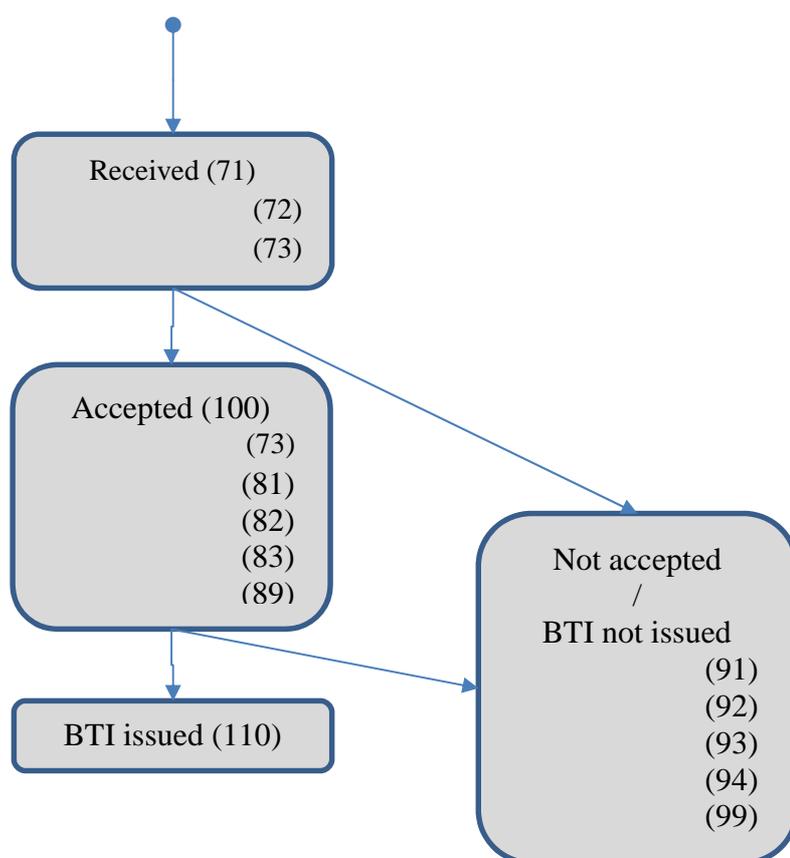
3. When BTI decisions are annulled

- There is a single condition for annulling a BTI decision – it 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 customs authority that issued his EORI number shall also handle any request for a period of extended use.

ANNEX 2 LIFECYCLE OF AN APPLICATION



Status code	Explanation of the code
71	The application for the BTI decision has been received and transmitted to the Commission.
72	Samples or other supplementary information concerning the product have been requested – Application acceptance phase.
73	The Member State where the applicant is established is being consulted.
81	Samples or other supplementary information concerning the product have been requested – BTI issuing phase.
82	The issue of a BTI decision is delayed, pending the outcome of discussions at the Customs Code Committee.
83	(An)other Member State(s) is/are being consulted in case of possible divergence.
89	The issue of a BTI decision is delayed for reasons other than those listed under status codes 81 and 82. These reasons may be further specified in the application field 'Remark'.
91	The BTI decision is not issued because another application for identical goods has been submitted to the customs authorities on behalf of the same applicant.
92	The BTI decision is not issued because the applicant who is requesting the BTI decision already has a BTI decision for identical goods.
93	The BTI decision is not issued because the applicant has withdrawn the application.
94	The BTI decision is not issued due to the failure of the applicant to provide samples or supplementary information under the agreed conditions when requested to do so.
99	The BTI decision is not issued for reasons other than those listed under status codes 91–94. These reasons may be further specified in the application field 'Remark'.
100	The application has been formally accepted and the 120-day issuing period is running.
110	The BTI decision has been issued.

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 (**Article 21(1) IA**).

Application acceptance phase

Within maximum 30 days of receipt:

- Request for additional information where necessary (e.g. laboratory reports) (**Article 22(2) UCC** and **Article 12(2) IA**).
- Notification of acceptance of the application to the applicant (**Article 22(2) UCC**).

Absence of a request for additional information or of a notification within 30 days means that the application is deemed to be accepted. (**Article 12(3) IA**)

BTI issuing phase (Article 22(3) UCC)

Within maximum 120 days from the date of acceptance (+ extension, where applicable):

When the applicant is established in another Member State:

- Automatic 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. (**Article 16(1) IA**)

When consultation between Member States is necessary:

- Any consultation between Member States should take place within the time-limit set for the issuing phase (**Articles 16(1) IA** and point (b) of **Article 23(1)**).

When additional information is required (30-day extension):

- 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. (**Article 13(1) DA**)

If the trader fails to provide the requested information within 30 days, the customs authority will notify the trader of its refusal to issue a BTI decision.

When the customs authorities are unable to comply with the time-limit for taking a decision (for reasons other than a laboratory analysis) (30-day extension):

- That further period shall not exceed 30 days (**subparagraph 2 of Article 22(3) UCC**).

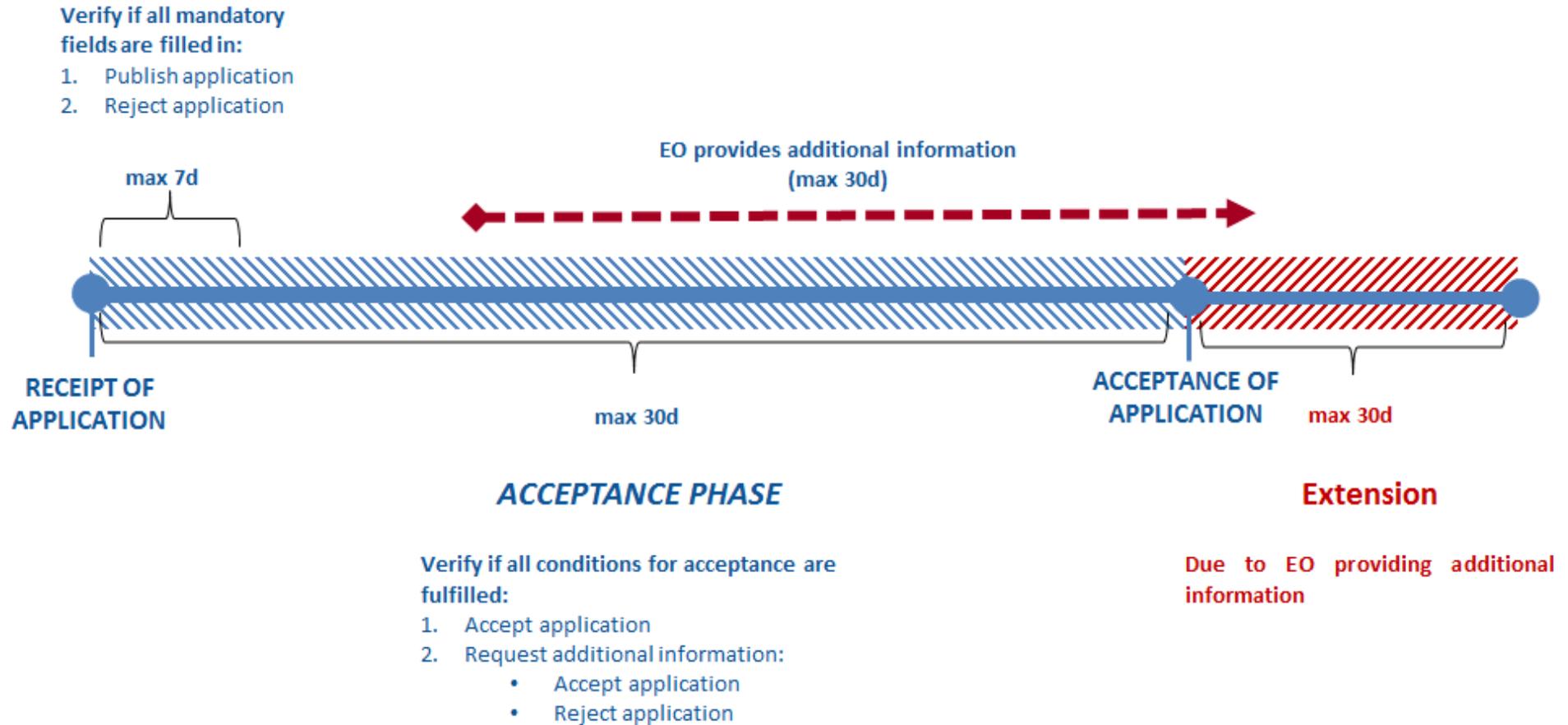
When it is not possible to complete a laboratory analysis considered necessary by the customs authority (30+ day extension):

- The time-limit for taking a decision may exceed 30 days (**Article 20(2) DA**).

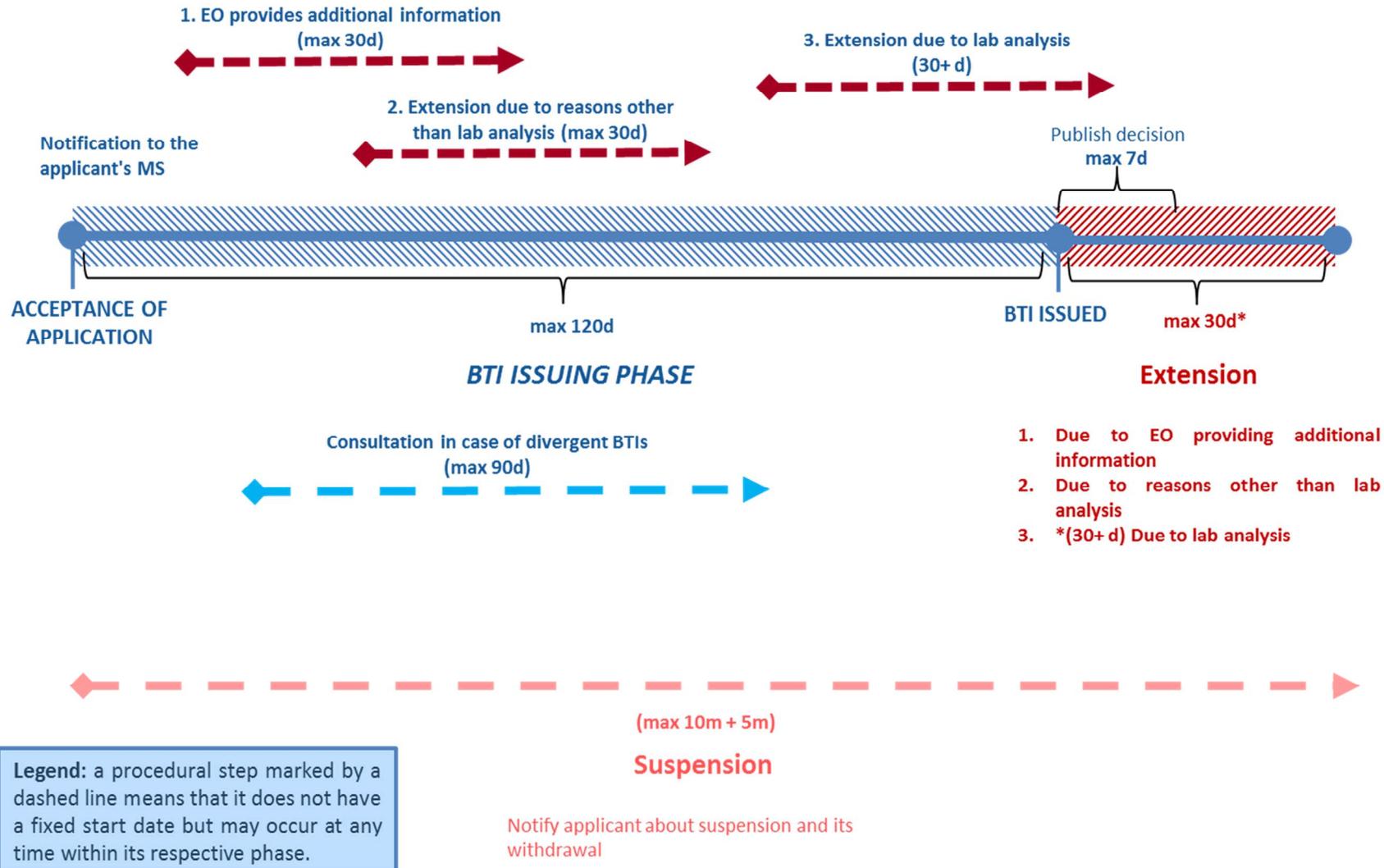
When the Commission suspends the issuing of BTI decisions (10 + 5-month extension):

- Commission notifies Member States of the suspension (**point (a) of Article 34(10) UCC and Article 20(1) DA**). Without delay Member States notify the concerned applicant(s) of the suspension of the issuing process.
↓
- The extended period shall not exceed 10 months.
↓
- In exceptional circumstances an additional extension not exceeding 5 months may be applied
↓
- Commission notifies Member States of the withdrawal of the suspension (**point (b) of Article 34(10) UCC and Article 23(3) IA**). Without delay Member States resume issuing process

BTI Application Acceptance Phase



BTI Decision Issuing Phase



ANNEX 4 CASES WHERE THE RIGHT TO BE HEARD DOES AND DOES NOT APPLY IN RELATION TO BINDING TARIFF INFORMATION¹³

Item	Scenario	Right to be heard Y/N?	Specific legislative reference
1.	If customs decide not to issue a BTI decision	Y	Article 22(6) UCC – first subparagraph
2.	If customs decide to annul a BTI decision	Y	Article 22(6) UCC – first subparagraph
3.	If customs revoke a BTI decision because of an error in the classification	Y	Article 22(6) UCC – first subparagraph
4.	If customs revoke a BTI decision by applying a CJEU ruling or if a BTI decision ceases to be valid due to a Commission implementing regulation by analogy to similar goods	Y	Article 22(6) UCC – first subparagraph
5.	If customs revoke a BTI decision which (i) no longer complies with an explanatory note to the CN or (ii) following classification decisions, classification opinions or amendments of the explanatory notes to the HS, adopted by the WCO	Y	Article 22(6) UCC – first subparagraph
6.	If customs do not grant a period of extended use where a BTI decision has been revoked	Y	Article 22(6) UCC – first subparagraph
1.	If customs classifies the goods in a commodity code different to the one envisaged by the applicant	N	Article 22(6)(a) UCC
2.	If customs revoke a BTI decision because of a clerical error (e.g. error in address input, wrong image used, product misidentified) and the classification in the BTI decision is itself correct	N	
3.	If customs revoke a BTI decision for a product which is subject to a CJEU ruling or if a BTI decision ceases to be valid due to a Commission implementing regulation	N	Article 34(1)(b) UCC
4.	If a BTI decision no longer complies with the HS/CN/TARIC and ceases to be valid	N	Article 34(1)(a) UCC
5.	If customs decide not to issue a BTI decision when an applicant does not provide the information requested by the customs authorities	N	Article 22(1) UCC
6.	If customs revoke a BTI following the Commission decision (requesting Member States to revoke a BTI decision to ensure a correct and uniform tariff classification)	N	Article 34(11) UCC

¹³ Although granting the right to be heard is not a legal obligation in all cases, this does not mean that the customs authority cannot grant it.

INVALIDATION CODE	MEANING OF THE CODE	EXPLANATION OF THE CODE
55	Annulled	This code is to be used in case a BTI decision has been annulled (on the basis of Article 34(4) UCC).
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-3 system checks all active BTI decisions to verify if on a particular day the nomenclature code of a BTI decision 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(s) 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 decision has become invalid due to a change in the validity of an additional code.</p>
62	Invalidated due to: <ul style="list-style-type: none"> • CJEU rulings • measures • guidance 	This code is to be used if a BTI decision has to be invalidated following: <ul style="list-style-type: none"> • rulings by the Court of Justice of the EU • EU measures: <ul style="list-style-type: none"> ○ classification regulations ○ Commission decisions ○ additional notes to the Combined Nomenclature • guidance: <ul style="list-style-type: none"> ○ EU-level: amendments of the explanatory notes to the CN, Customs Code Committee decisions and conclusions and adopted classification guidance ○ WCO-level: amendments of the explanatory notes to the HS, HS classification opinions and HSC classification decisions
63	Invalidated due to national legal measures	This code is to be used if a BTI decision 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 or wrong attached image).
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 decision is issued.
67	Invalidated due a TARIC error	This code is used when, for example, a BTI decision was issued under a TARIC code which no longer existed but was not yet invalidated after its end date (under development)

▼ C1

ANNEX 4

EUROPEAN UNION		APPLICATION FOR BINDING TARIFF INFORMATION (BTI) DECISION	
<p>1. Applicant (mandatory)</p> <p>Name: (confidential)</p> <p>Street and number:</p> <p>Country: <input type="text"/></p> <p>Postcode: <input type="text"/></p> <p>City:</p> <p>Applicant identification:</p> <p>EORI No: <input type="text"/></p>	<p>For official use</p> <p>Registration Number: <input type="text"/></p> <p>National reference number (if any):</p> <p>Place of receipt:</p> <p>Date of receipt:</p> <p>Year <input type="text"/> Month <input type="text"/> Day <input type="text"/></p> <p>Status of the application: <input type="text"/></p>	<p>2. Place where main accounts for customs purposes are held or accessible</p> <p>▶²¹ (if different from the country above) (confidential) ◀</p> <p>Street and number:</p> <p>Country: <input type="text"/></p> <p>Postcode: <input type="text"/></p> <p>City:</p>	<p>6. Type of transaction (mandatory)</p> <p>Please indicate whether you intend to use the BTI decision resulting from this application for one of the following customs procedures:</p> <p>Release for free circulation Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Special procedures Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>(Specify)</p> <p>Export Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p>3. Customs representative (if any)</p> <p>Name:</p> <p>Street and number:</p> <p>Country: <input type="text"/></p> <p>Postcode: <input type="text"/></p> <p>City:</p> <p>Representative identification:</p> <p>EORI No: <input type="text"/></p>	<p>7. Customs Nomenclature (mandatory)</p> <p>Please indicate in which nomenclature the goods are to be classified:</p> <p><input type="checkbox"/> Combined Nomenclature (CN)</p> <p><input type="checkbox"/> TARIC</p> <p><input type="checkbox"/> Refund nomenclature</p> <p><input type="checkbox"/> Other (Specify):</p>	<p>4. Contact person responsible for the application</p> <p>▶²¹ (mandatory) (confidential) ◀</p> <p>Name:</p> <p>Telephone Number:</p> <p>Fax Number:</p> <p>E-mail address:</p>	<p>8. Commodity code</p> <p>Indicate the customs nomenclature code under which the applicant expects the goods to be classified.</p> <p><input type="text"/></p>
<p>5. Reissue of a BTI decision (mandatory)</p> <p>Indicate whether the application concerns the reissue of a BTI decision.</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If yes, provide the relevant details.</p> <p>BTI Decision Reference number:</p> <p>Valid from:</p> <p>Year <input type="text"/> Month <input type="text"/> Day <input type="text"/></p> <p>Commodity Code:</p>	<p>9. Description of goods (mandatory)</p> <p>▶²¹ Detailed description of the goods permitting their identification and the determination of their classification in the customs nomenclature. This should also include details of the composition of the goods and any methods of examination used for its determination where the classification depends on it. Any details which the applicant considers to be confidential should be entered in 10. Commercial denomination and additional information. ◀</p>		

▶ (1) (2) (3) C2

▼ **C1**

10. Commercial denomination and additional information (*) (confidential) Indicate any particulars which the applicant wishes to be treated as confidential, including the trademark and model number of the goods.			
11. Samples etc. Indicate whether any samples, photographs, brochures or other documents available which may assist the customs authorities in determining the correct classification of the customs nomenclature, are attached as annexes. Samples <input type="checkbox"/> Photographs <input type="checkbox"/> Brochures <input type="checkbox"/> Other <input type="checkbox"/> Do you wish your samples to be returned? Yes <input type="checkbox"/> No <input type="checkbox"/> Special costs incurred by the Customs authorities as a result of analysis, expert reports or the return of samples, may be charged to the applicant.			
12. Other BTI Applications and other BTI held (mandatory) ◀ Please indicate if you have applied for, or been issued with, BTIs for identical or similar goods at other Customs offices or in other Member States. Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please give details: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;"> Country of Application: <input type="text"/> Place of Application: Date of Application: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> BTI Decision Reference number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code: </td> <td style="width: 50%; padding: 2px;"> Country of Application: <input type="text"/> Place of Application: Date of Application: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> BTI Decision Reference Number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code: </td> </tr> </table>		Country of Application: <input type="text"/> Place of Application: Date of Application: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> BTI Decision Reference number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code:	Country of Application: <input type="text"/> Place of Application: Date of Application: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> BTI Decision Reference Number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code:
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13. BTI decisions issued to other Holders (mandatory) Please indicate if you are aware of BTIs for identical or similar goods already issued to other holders. ◀ Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please give details: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;"> BTI Decision Reference number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code: </td> <td style="width: 50%; padding: 2px;"> BTI Decision Reference number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code: </td> </tr> </table>		BTI Decision Reference number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code:	BTI Decision Reference number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code:
BTI Decision Reference number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code:	BTI Decision Reference number: Start date of the decision: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Commodity Code:		
14. Are you aware of any legal or administrative proceedings concerning tariff classification pending within the EU, or a court ruling on tariff classification already handed down within the EU, relating to the goods described in boxes 9 and 10? (mandatory) Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please give details: Country: <input type="text"/> Name of the court: Address of the court: Reference number of the case:			
15. Date and Authentication (mandatory) Date: Year <input type="text"/> <input type="text"/> <input type="text"/> Month <input type="text"/> <input type="text"/> Day <input type="text"/> <input type="text"/> Signature: <div style="text-align: right; margin-top: 10px;"> Important note <small>▶⁴⁸ By authenticating this application, the applicant accepts responsibility for the accuracy and completeness of the data contained in it, as well as for any additional information provided with it. The applicant accepts that these data and any photograph(s), image(s), brochure(s), etc. can be stored on a database of the European Commission and that the data, including any photograph(s), image(s), brochure(s), etc., submitted with this application or obtained (or obtainable) by the administration, and which have not been marked under data elements No 1, 2, 4 and 10 of this application as being confidential, shall be disclosed to the public via the internet. ◀</small> </div>			
16. Additional information			

▶⁴⁸ (*) Please, use a separate sheet of paper if more space is required. ◀

▶ (1) (2) (3) (4) **C2**

ANNEX 8 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 st 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 nd 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 st subparagraph and 1 st 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 st subparagraph	Article 34 (5), 1 st sentence		
	Article 20 (6), 2 nd 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		