EUROPEAN BINDING TARIFF INFORMATION

Report of the second phase of the exercise to monitor the issuing of BTI and the application of the relevant Community legal provisions in the Member States 2009 and 2010
List of contents

List of contents: Page 2
List of Annexes: Page 7
List of Appendices Page 8
Summary Page 9
Part 1: Introduction:
The background to the EBTI-3 monitoring exercise

General introduction: Page 13
Purpose of the monitoring exercise Page 13
A brief explanation of Binding Tariff Information Page 14
What is tariff classification? Page 14
The importance of tariff classification Page 15
Some misconceptions about BTI Page 15
Methodology Page 16
Preparation Page 17
Scope of this report Page 18
Second phase, follow-up and future Page 19
Main differences between the 2007 and 2009 questionnaires Page 19

Part 2 Findings of the Monitoring Teams:

Section 1: General information concerning the national administrations

General information Page 21
Findings during the monitoring visits: Page 21
Status of customs administrations Page 21
Human resources Page 22
Recruitment Page 23
National systems Page 23
BTI and other work related tasks Page 24
Section 2: Treatment, recording and uploading of BTI applications and treatment of samples

2A: Treatment of BTI applications upon receipt in the administration

Designated offices

BTI applications

Greece

Malta

Portugal

Conditions for accepting BTI applications

Treatment of applications hand delivered to customs

Treatment of applications submitted through the post

Treatment of applications submitted electronically

Reception of BTI applications in regional offices

Recording the reception of applications

Publication of applications in the EBTI-3 database

Registration numbering systems

Acknowledging acceptance of BTI applications

2B: Reception and treatment of samples

2C: Submission of supplementary information with the application

Section 3: BTI applications from other Member States and outside the European Union

Applications from outside a Member State

Applications on behalf of a trader established in another Member State

Reasons for requesting BTI from another Member State

Treatment to be accorded applications on behalf of traders established in other Member States
Applications on behalf of traders established outside the EU

Arguments of the Commission against issuing BTI directly to traders established outside the EU

Treatment accorded applications on behalf of traders established outside the EU

Section 4: Processing BTI applications: checks, BTI shopping and the role of laboratories in issuing BTI

Processing a BTI application

Initial checks to be undertaken

BTI shopping

The role of laboratories

Images and BTI applications

Section 5: The DDS and EBTI-3 databases, their maintenance and their role

5A Databases

The DDS database

The EBTI-3 database

Access to EBTI-3 database

Problems encountered by officials with EBTI-3 database

5B The role of the EBTI-3 database in issuing BTI

Prior to issuing a BTI

Checks before issuing BTI

Checks during the validity period of BTI

Checks after BTI ceases to be valid

Section 6 Rejection of BTI application

Reasons for rejecting BTI applications

Insufficient or vague descriptions

Proposal to introduce status codes for applications
Section 7  Drafting and issuing of BTI and accelerated procedures; usage of BTI

Drafting and issuing BTI  Page 59

Reasons for submitting classification problems to the Customs Code Committee  Page 59

Accelerated or "fast track" procedure for issuing BTI  Page 60

Confidentiality  Page 61

Work in progress environment  Page 62

Usage  Page 63

Section 8  Images and keywords

Images  Page 65

The importance of images to BTI  Page 65

Images and BTI applications  Page 66

Keywords and indexing  Page 67

Keywords and their importance to BTI  Page 68

Section 9  Appeals

General background  Page 70

Appeals procedures in the EU  Page 70

National appeals procedures  Page 71

Lithuania  Page 71

Finland  Page 71

Austria  Page 72

Malta  Page 72

Bulgaria  Page 73

Cyprus  Page 73

Luxembourg  Page 74

Latvia  Page 74

Denmark  Page 75

Estonia  Page 76
Section 10  Annulment, invalidation and revocation and period of extended use

General background:  

The difference between annulment and invalidation/revocation  

Annulment and its consequences  

Invalidation and its consequences  

Revocation and its consequences  

Findings during the monitoring visits  

Annulments  

Invalidations  

Revocations  

Period of extended use (period of grace)  

Section 11 Diffusion of information concerning BTI and training  

General background:  

Training  

Diffusion of information on BTI  

Distribution of information within customs administrations  

Diffusion of information to the general public  

The internet and EBTI  

Member States’ administrations’ web sites  

Part 3  Recommendations to the Member States  

Part 4  Recommendations from the Member States to the Commission
## Annexes

<table>
<thead>
<tr>
<th>Annex 1</th>
<th>Statistical information concerning the Member States visited in Phase 2</th>
<th>Page 111</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annex 2</td>
<td>Annual figures for BTI applications received by Member States from 2005 to 2013 (inclusive)</td>
<td>Page 115</td>
</tr>
<tr>
<td>Annex 3</td>
<td>BTI issued annually by Member States during 2005 to 2013 (inclusive)</td>
<td>Page 117</td>
</tr>
<tr>
<td>Annex 4</td>
<td>Correlation tables</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Annex 4 A</strong> - Correlation table between sections in the report and the sections in the questionnaire</td>
<td>Page 119</td>
</tr>
<tr>
<td></td>
<td><strong>Annex 4 B</strong> - Correlation table between sections in the questionnaire and the sections in the report</td>
<td>Page 120</td>
</tr>
<tr>
<td>Annex 5</td>
<td>Acronyms and abbreviations</td>
<td>Page 121</td>
</tr>
</tbody>
</table>
## Appendices

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appendix 1</td>
<td>Questionnaire submitted to administration being visited</td>
<td>123</td>
</tr>
<tr>
<td>Appendix 2</td>
<td>Information paper sent to Member States before the visit</td>
<td>180</td>
</tr>
<tr>
<td>Appendix 3</td>
<td>Relevant articles in Council Regulation (EEC) No. 2913/92</td>
<td>184</td>
</tr>
<tr>
<td>Appendix 4</td>
<td>Relevant articles in Commission Regulation (EEC) no. 2454/93</td>
<td>191</td>
</tr>
<tr>
<td>Appendix 5</td>
<td>General information on completing an application for BTI</td>
<td>198</td>
</tr>
<tr>
<td>Appendix 6</td>
<td>Model of BTI application form</td>
<td>202</td>
</tr>
<tr>
<td>Appendix 7</td>
<td>Model of BTI notification form</td>
<td>204</td>
</tr>
<tr>
<td>Appendix 8</td>
<td>Administrative Guidelines</td>
<td>209</td>
</tr>
<tr>
<td>Appendix 9</td>
<td>Summary of Special Report No. 2/2008 on BTI of the European Court of Auditors and link to the full report.</td>
<td>230</td>
</tr>
</tbody>
</table>
Summary

Introduction

On 19 April 2004 the European Binding Tariff Information (EBTI)-3 system entered into production in the 15 countries that at the time were Member States of the European Union. With the accession of 10 new Member States of 1 May 2004 and a further 2 on 1 January 2007, the use of the system was extended to encompass the 27 Member States at the time of the monitoring. The objective of the EBTI system is to guarantee legal certainty for economic operators with regard to the tariff classification of their goods and consequently of the treatment of those goods by the customs administration of the EU.

Monitoring

Following the introduction of the EBTI-3 system the European Commission decided it should monitor the application of the legislation governing the issuing of BTI. It was decided that all Member States should be visited and that the officials of the Commission should be accompanied by BTI experts from national administrations. Given that 27 Member States would be visited it was decided to split the monitoring exercise into two phases, each extending over a 2 year period. The first phase covered the years 2007 and 2008 during which 14 administrations were visited. The second phase covered the years 2009 and 2010 and the remaining 13 administrations were monitored. This report only covers the second phase. The global report of the first phase was published in 2012 and can be consulted at the following link:


Objectives of the monitoring action

From the outset it was decided that the monitoring should not be carried out as an audit of the administration but rather as a fact finding and exchange mechanism intended to guide and advise administrations where errors or misunderstanding of the legislation came to light. Four principle objectives were identified.

1. Assess how the administrations are implementing the provisions in the legislation.

2. Offer guidance where it was found to be required, for example in cases where the legislation was misunderstood.

3. Make recommendations to the administration where it was felt improvements in procedures could be introduced.

4. Have an exchange of views between the operatives in the Member States and the Commission to learn their respective points of view with regard to the EBTI-3 system and how it is working at their level.

The preparation

Given the magnitude of the monitoring exercise being undertaken, it was necessary to draw up an action plan with a view to establishing a procedure that would be used in all visits. This was important
in order to treat all administrations equally and in order to establish parameters against which all administrations could be assessed.

With this in mind, a questionnaire was established before the first visits in 2007 took place and which contained 114 questions, many with multiple choice answers. That questionnaire was updated and some additional questions were added bringing the total to 118 questions for the second phase. All questions related to some aspect of the internal management of the administrations or to the procedures followed by the administration when processing BTI applications or issuing BTI. On the basis of analysis of the replies to those questions the Commission established those areas where there was potential for weakness or where the answers were not corroborated by the contents of the EBTI-3 database. The administrations were given 2 calendar months to respond to the questionnaire.

Furthermore, prior to commencing each visit, the Commission selected between 15 and 20 random examples of BTI applications and BTI. A list of the examples was prepared and forwarded to the administration, at least 1 week prior to the visit, with the request that the dossiers concerning each example be made available for discussion during the visit.

**The visits**

Each visit took place over a minimum period of 2 days. In the case of the visits to France and Germany, the visits were conducted over a period of 3 days. During each visit, the replies to the questionnaire as well as selected BTI examples were examined and discussed with the administration. The same procedures were followed throughout the monitoring exercise with a view to making assessments on the basis of identical criteria.

**The Global Report**

The global report of the second phase of the monitoring has been prepared by amalgamating the findings from the 13 visits. The report reflects the situation as it was at the time of the visits and only rarely does it refer to subsequent developments. The report has been prepared on the assumption that the average reader will have little or no knowledge either of Binding Tariff Information or of the legislation which provides its legal basis. Consequently, every effort has been made to ensure that the reader understands the different provisions and the requirement they impose for certain procedures. The report has been divided into 4 different parts: a general explanation, findings, recommendations from the Commission to Member States and recommendations from Member States to the Commission.

**Findings**

On the whole it can be said that the administrations are performing their duties and honouring their obligations very well. However, that is not to say that the monitoring teams did not recognise that improvements in procedures could be made. Overall, administrations are working to a very tight schedule and in some cases they are under pressure to fulfil ever growing obligations both to the national administration and to the EU. However, despite those pressures the officials remain dedicated to fulfilling their obligations to both their national administration and to the EU.

The main inconsistencies identified relate to the uploading of applications in the database, the notification of reception of applications and samples and the attachment of images and keywords to BTI when they are being issued. While not impacting in a major way on the actual issuing of BTI, all such divergences in practice increase the risk of issuing divergent BTI and circumvention of customs duties in terms of the usage of BTI decisions by dishonest traders..

In all such cases identified as potentially problematic, the administrations concerned have been recommended to correct, eliminate or improve those aspects of their procedures or performance giving
cause for concern. Given that the monitoring visits were not audits but rather were fact-finding and exchange of information visits, the report does not identify individual Member States where inconsistencies in procedures were discovered, nor does it identify the Member States to which specific recommendations were made. Nothing is to be gained by naming individual administrations, especially as recommendations apply to all Member States.

As the monitoring visits also provided an opportunity to the national BTI teams to express their views, recommendations and proposals from the administrations are also included in the report.

The future

Despite the monitoring exercise having been completed in December 2010, monitoring as such must, and will, continue although not in the same form as previously undertaken. In future it will be more targeted and much will be done through searches in the EBTI-3 database. However, the foundations have been laid by the visits carried out during the 4 years and weaknesses have been identified in a number of administrations. Therefore, where it is felt an administration requires further counselling, the Commission will intervene and where possible assist the administration to rectify the problem. However, the main objective of monitoring remains the uniform application of the legislation which is the legal obligation of every Member State and failure to honour that obligation will be viewed very seriously.
PART 1

Introduction
The background to the EBTI-3 monitoring exercise

**General introduction:** Binding Tariff information has been available in the European Union since the early 1990's and has proved to be popular with traders. The current version, EBTI-3 (European Binding Tariff Information-3) went into production on 19 April 2004 in the then 15 Member States and on 1 May 2004 in the 10 Member States that acceded to the Union on that day. With their accession on 1 January 2007 Bulgaria and Romania also started using EBTI-3. (Croatia became the newest Member State on 1 July 2013).

Given the fact that currently 28 countries are issuing BTI decisions, each decision being binding on all Member States without exception, it is extremely important that decisions are issued and this trade facilitation tool is used in a correct and uniform manner throughout the territory of the Union. With that principle in mind it was decided that the Commission, in association with the administrations of the Member States, should monitor the use of the EBTI-3 system and assess the implementation of the legal provisions regulating the issuing of binding tariff information. Furthermore, the monitoring of EBTI-3 was also recommended by the European Court of Auditors in its Special Report No. 2/20081 on BTI. (See Appendix 9)

After much consideration it was decided that this exercise should be divided into 2 phases. It was agreed that during the first phase 14 Member State would be visited and the remaining 13 Member States would be visited during the second phase. Two years was allocated to each phase, meaning that all 27 Member States administrations would be visited over a 4 year period. The second phase, with which this report is concerned, commenced in May 2009 and ended in December 2010. During that time Lithuania, Finland, Austria, Malta, Bulgaria, Cyprus, Luxembourg, Latvia, Denmark, Estonia, Greece, Portugal and the Czech Republic were visited in that order.

The first visits of the second phase of the monitoring exercise were carried out under the Customs 2007 programme and the remaining visits fell under the Customs 2012 programme.

**Purpose of the monitoring exercise:** The customs union is one of the corner stones of the European Union and the main obligation it imposes is that customs legislation is applied uniformly in all Member States. It must also be remarked that while the legislation governing the Customs Union is the responsibility of the Commission, how that legislation is applied falls within the competence of the Member States. It is therefore the responsibility of the Commission to ensure that the legislation is applied in a correct and uniform manner, thus guaranteeing the equal treatment of all traders, wherever they may be established in the EU. In the context of BTI this concerns the correct and uniform tariff classification of goods.

The main purpose of the monitoring exercise was to ensure that all Member States' administrations are issuing BTI in accordance with the relevant provisions of the Customs Code and its Implementing Provisions. However, the monitoring visits also presented administrations with an opportunity to exchange and share their experiences as well as to express their points of view and expectations with regard to the EBTI-3 system. It also presented the Commission with the opportunity to provide guidance where administrations had doubts or were unsure of best practice.

---

1 Special Report No. 2 concerning Binding Tariff Information (BTI) together with the Commission's replies (OJ C103 of 24 April 2008, page 1). See Appendix 9 for link to the report.
**A brief explanation of Binding Tariff Information:** A Binding Tariff Information decision (BTI decision or a BTI) is simply a written decision issued by the customs administration of a Member State concerning the tariff classification of specific goods and that decision is binding on the customs administrations of all Member States of the EU against the holder of the decision.

Binding Tariff Information is only given for imports from, or exports to, countries outside the European Union. Such decisions are not required for intra-Union trade as the EU forms a single market.

A BTI decision is valid for a period of 6 years and can only be invoked by the person to whom, or entity to which, that decision is addressed (i.e. the holder). A BTI can be used as often as necessary during that 6 year period provided the goods are identical to those described in the decision.

A trader may have as many BTI decisions as he requires provided each one refers to a single type of goods. A trader may request a BTI from the administration of a Member State other than his own under certain conditions. Those conditions are that he must have a representative established in the Member State acting as the applicant or he must intend to import/export goods in that Member State.

The period of validity of BTI may in certain circumstances be reduced. Those circumstances are provided for in the legislation and range from changes arising in the Combined Nomenclature, judgements of the Court of Justice of the European Union or to any other circumstance which results in the decision being no longer in conformance with the law. Furthermore, decisions that have been issued on the basis of misleading or incorrect information that the applicant knew or should have known to be untrue will be annulled and the holder may face penalties, depending on the circumstances.

It must be stressed that traders can import or export goods without possessing a BTI decision. Holders of BTI decisions under the current legislation are not obliged to use them. BTI decisions do not entitle traders to anything other than legal certainty with regard to how their goods will be treated by the customs. That treatment is based on the tariff classification of those goods and that determines what duties, if any, customs charges or other measures they may be subject to.

The responsibility for the accuracy of the content of applications falls on the applicant. The customs administrations have the right to ensure that goods that are declared on the basis of a BTI decision are identical to those described in the decision.

All aspects concerning the issuing and legal effect of BTI decisions are set out in Articles 11 and 12 of Council Regulation (EEC) No. 2913/92 and in Articles 5 to 13 (inclusive) of Commission Regulation (EEC) No. 2454/93. (See Appendix 2)

**What is tariff classification?** The primary reason for requesting a BTI is to identify the tariff code number appropriate to a specific product so that the trader can determine the duties and any other customs charges he would have to pay when importing the product into the EU. Tariff code numbers are contained in Annex 1 to the Combined Nomenclature (CN) and all commodities can be assigned a number, either specific or generic, depending on the characteristics of the goods. The Combined Nomenclature is based on the Harmonized System Commodity Description and Coding System of the World Customs Organisation (generally referred to as the “Harmonized System”). An economic operator can request a BTI either for the CN or TARIC code for the goods he wishes to trade.
The importance of the tariff classification: Once the customs have issued a BTI, the holder of that decision is in a position to assess his costs, any duties and customs charges he may be liable for, and on that basis he can determine his profit margins. Those charges will be the same throughout the EU regardless of where in the EU the goods are declared and cleared through customs. However, as explained in the next section below possession of a BTI does not release traders from any obligations he has towards customs or any other authority in the Member States. The sole promise of a BTI is to give the trader legal certainty concerning the tariff classification for the goods referred to in the decision and on the basis of that he is in a position to make important business decisions.

Some misconceptions about BTI:
In the minds of many traders there are some misconceptions about the power and effect that possessing a BTI has on trade and customs. In this section it is hoped to dispel some of the more extreme fallacies and clarify what a BTI is and what it can be used for.

- “It is obligatory to have a BTI”: This is untrue. A trader has the choice of either obtaining a BTI or of proceeding with his transactions without one. The benefit of having a BTI is that it clarifies from the outset the tariff classification that the customs authorities in all 28 Member States will accept when the goods are declared, wherever the declaration is made in the EU.

  Currently there is no obligation on the holder of a BTI to use it when declaring his goods at the customs. However, if a trader should decide not to use his BTI and declares his goods at another heading, the customs will be legally entitled to take whatever legal steps it considers appropriate to ensure correct classification and that any duties liable are paid.

- “Possessing a BTI grants immunity from customs controls”: There is a commonly held belief that if a trader has a BTI his goods will pass through customs without examination. This is untrue. Possession of a BTI does not mean that the goods it covers will not be subject to inspection or other customs formalities. A BTI only provides certainty with regard to the tariff classification of the goods described therein and all other controls may be carried out by the customs.

- “A BTI can be invoked for transactions that occur before its start date of validity”: Some economic operators have the mistaken opinion that a BTI can be used to reclaim duties or other charges incurred on transactions that have taken place prior to the issue of the BTI decision. In fact the legislation clearly states that BTI shall be binding on the customs only in respect of goods on which customs formalities are completed after the date on which the information was supplied (Article 12 (2) second paragraph, of the Customs Code).

- “I can use someone else’s BTI”: A BTI decision is always addressed to a “holder”, either an individual person or a company. It cannot be used or invoked by anyone other than the holder named in it. Similarly, it cannot be used by subsidiaries of the holder if that holder is a company. However, given that information concerning the goods covered in valid BTI is available to the general public (via the public DDS database), a trader may refer to a BTI issued to another trader in support of the tariff classification he is declaring provided the goods are similar. However, he cannot rely on the legal certainty of that BTI as it has not been issued to him.

- “A BTI can be used for goods similar to the goods described therein”: A BTI refers to specific goods and therefore when it is used in the course of customs clearance the goods being declared must be identical to those described in the BTI. It is consequently very
important to carefully consider the description of the goods when submitting a BTI application, as the customs will base the description in the BTI on that provided in the application. The perfect description allows the customs officer to clearly identify the goods as being identical to those mentioned in the BTI.

- **“A trader can have more than one BTI for identical goods”:** This is untrue. Any trader established in the European Union can request a BTI for goods he intends to import or export. Once the BTI has been issued he can use it in any of the 28 Member States. Therefore he does not require another BTI for the goods covered by a valid BTI he has already received. However a trader may apply for more than one BTI provided that each application refers to different goods.

- **“I need a BTI for trade with another Member State”:** As the EU is a single market Member States cannot, in legal terms, import or export goods between themselves and consequently BTI is not issued for the intra-Union movement of goods. BTI is only issued for the very specific purposes set out in Art. 12(7) of the Customs Code (Council Regulation (EEC) No. 2913/92). Those purposes include import and export transactions, export refunds and import, export and advance certificates which are submitted when formalities are carried out for acceptance of the customs declaration for the goods concerned.

**Methodology:** Given the scope of the monitoring exercise (i.e. uniform application of the legislation by 27 customs administrations) it was agreed from the start that each step of the way had to be carefully planned and controlled in order for the exercise to be effective and efficient. Therefore a number of decisions were made with a view to ensuring the smooth running of the exercise from the start.

- **Time table:** It was felt that to monitor 27 administrations a reasonable time-frame was essential. However, given the number of administrations to be monitored, it was also clear that to effectively do so would take a number of years to complete. Consequently, it was decided to split the monitoring exercise into 2 phases, each phase being conducted over a 2 year period. It was decided that the first phase would cover 14 Member States and the remaining 13 Member States would be visited during the second phase.

- **Reference period:** In order to have a valid comparative assessment of the performance of each administration it was decided that as well as using the same questionnaire for the visits of each phase it was also necessary to specify a reference period for each phase. The reference period chosen for the first phase was the 24 months of 2005 and 2006. In the case of the second phase which is covered by this report the reference period was the years 2007 and 2008. The importance of the reference period is that all Member States visited could be assessed on their performance during those 24 months and an overall assessment could be made for that specific time frame. The overall aim was to compare the performance of each administration during the same time frame and using the same parameters as much as possible.

- **The Questionnaire:** In order to have meaningful results it was imperative that all administrations were assessed on the basis of the same criteria. Therefore to understand how each administration applies the legislation and fulfils its obligations to traders, a questionnaire was created. That questionnaire covered all aspects of the BTI issuing process as well as matters such as staffing levels, work tasks, training and diffusion of information concerning BTI. (The questionnaire is reproduced at appendix 1.)

The structure of the questionnaire also determined the structure of the discussions with the administrations as the topic of each section of the questionnaire was examined and discussed
in detail with the officials. However, for the purposes of the global report, the findings of certain sections of the questionnaire have been merged together and this is indicated at the beginning of each section in Part 2 of this report. There are also two correlation tables attached at Annex 4.

It should be noted that there were some differences between the questionnaires established for the two phases of the monitoring exercise. Those differences were based on what was observed during the first phase and resulted in a number of questions being reassigned to other sections within the second phase (2009) version of the questionnaire. The major differences between the two versions of the questionnaire are listed at the end of this Part of the report.

- **Participation of national officials:** To maximise the benefits to be obtained from these visits, it was also decided that for each visit the members of the Commission team should be joined by officials from Member States administrations. A standard professional profile was established for Member States’ participants and it can be found at Appendix 4 to this report. The presence of national officials proved to be beneficial both to the officials themselves but also to the Member State being visited as the participants were in a position to share their experiences and practices with each other. It also stimulated discussion and reassessment of the practices in the participants’ home administrations which in turn led to further improvement in performance.

When the Commission announced its intention of launching the monitoring exercise it also called for expressions of interest from officials in the national administrations to participate in the visits to the administrations that most interested them. Officials who were interested in accompanying the Commission teams made their wishes known and were invited to participate in the visits provided they fulfilled the professional profile. On average three national officials accompanied the Commission team on each visit.

**Preparation:** In order to ensure the success of the exercise, much consideration was given to planning and preparing each visit. The pattern that emerged foresaw a series of two back to back visits, each visit being to a different Member State and with sufficient time in between pairs of visits to allow for adequate preparation for the succeeding pair.

It must be remembered that with the exception of the visit to Luxembourg which took place in isolation, two sets of preparations had to be undertaken in parallel as two Member States were visited in a single week. The preparations involved in each visit took considerable time as each Member State had specific circumstances attached to it so that while the overall preparations remained the same, there were minor variations that had to be dealt with.

A brief survey is set out below of the different standard steps in the preparation of each visit.

- **Confirmation of dates and participants:** Firstly, the Commission contacted the administration to be visited to agree on the dates for the monitoring visit and at the same time forwarding the questionnaire. The administration was requested to complete it and return it to the Commission within 2 months.

- **Recruitment of national participants:** Once the dates of the visits were agreed the national officials who had expressed the wish to accompany the Commission team to the specific Member States were informed so as to confirm their availability.

- **Preparation of documentation:** Given that there were 22 Sections in the questionnaire, and that the answers from each administration would be different, it was important that all information to be gleaned from the replies was presented in a form that was both useful and clear. Two draft documents were prepared: i.e. (1) a synopsis and list of additional questions
and (2) a list examples of applications and BTI for discussion with the administration.

- **Synopsis**: The first task undertaken at the Commission was to analyse the answers from the administrations and on the basis of the replies the Commission prepared a synopsis of those replies, section by section, and that synopsis was incorporated into the draft template report of the visit.

- **Additional questions list**: Based on the replies, a series of questions was established to form the basis for the discussion with the administration. Those questions were also included in the draft template (but later removed when the report was finalised). Those questions were intended to elicit further explanation of procedures or to fill in gaps in the answers to the questionnaire and were tailored to suit the individual Member State’s position as reflected in the responses to the questionnaire. When the draft template document was finalised it was sent to the accompanying participants in the national administrations for their information.

- **Examples of applications and BTI**: In order to verify the answers given in response to the questionnaire concerning the issuing of BTI, a small number of examples (between 15 and 20) was extracted from the database and listed. The examples comprised a number of BTI and their corresponding applications as well as a number of BTI applications that had not resulted in BTI decision being issued. The examples were selected from applications received or BTI issued or revoked during the specified reference period (which in the case of the visits covered by this report was the 24 months of 2007 and 2008). That list was sent to the administration being visited with the request that the dossiers for each application or BTI be available for examination and discussion during the visit. The intention was that by discussing examples of actual BTI applications and BTI issued by the administration shortcomings in the procedures used to process them could be highlighted and solutions for improvements offered.

- **Annotated version of examples list**: An annotated version of the list of examples was also prepared by the Commission. The objective of that list was to act as a reminder of the “problems” identified so as to be able to discuss them with the administration. That list was distributed to the accompanying officials from Member States. This method of procedure did indeed prove very effective in the course of the overall monitoring exercise.

- **Tasks after the visits**: After each monitoring visit, a preliminary report was drawn up and it was made available to all Member States, with the intention that the information obtained during the visits, the advice given and developments undertaken in the Member States being visited could be shared, and consequently lead to further improvements in performance in all Member States. When the individual preliminary reports were completed the Member States concerned were given the opportunity to comment on the findings and recommendations of the monitoring teams. This was done to ensure that all Member States were fairly treated and that their administrative practices with regard to EBTI were correctly reported.

- **Follow-up**: A follow-up letter was sent to each administration approximately 1 year after the preliminary report was made available to the Member State. That letter requested information concerning the implementation of the recommendations of the monitoring teams. Each administration was given a specified time limit to reply to the follow-up letter.

**Scope of this report**: The scope of this global report is limited to the findings of the monitoring teams at the time of the visits to the different administrations. Given that this phase was completed during the 24 month period 2009/2010, the findings reflect the situation existing in the administrations at that time and with very few exceptions the report does not reflect any new developments or
innovations that may have occurred since then. Therefore any statistics quoted reflect the situation were extant at the time the visits were conducted and do not relate to the current circumstances unless otherwise indicated.

**Second phase, follow-up and future:** It is intended that monitoring of EBTI-3 continue at a less intense level than the two phases already carried out. Since the completion of the second phase in December 2010, a number of follow-up visits have been carried out by the Commission. However, it may happen that other activities will be undertaken in the future with a view to improving the performance of administrations but at the time of finalising this report nothing specific has been planned.

**Main differences between the 2007 and 2009 questionnaires:**

<table>
<thead>
<tr>
<th>2007 Version</th>
<th>2009 Version</th>
</tr>
</thead>
<tbody>
<tr>
<td>Questions 18 and 19 in Section 3 transferred to</td>
<td>=&gt; Section 4 which now relates entirely to samples</td>
</tr>
<tr>
<td>Sections 4 and 5 in the 2007 version become</td>
<td>=&gt; Sections 5 and 6 respectively in 2009 version.</td>
</tr>
<tr>
<td>Section 6 split between</td>
<td>=&gt; New Sections 7 and 8</td>
</tr>
<tr>
<td>Question 31 to 36 (inclusive) (ex-Section 6) transferred to create a</td>
<td>=&gt; New Section 7</td>
</tr>
<tr>
<td>Questions 37 to 39 (inclusive) (ex-Section 6) transferred to</td>
<td>=&gt; New expanded Section 8 (BTI-shopping)</td>
</tr>
<tr>
<td>Section 7 (Work in Progress environment) becomes</td>
<td>=&gt; New Section 9</td>
</tr>
<tr>
<td>Sections 8 and 9</td>
<td>=&gt; Become Sections 10 and 11 (respectively)</td>
</tr>
<tr>
<td>Sections 11 and 12</td>
<td>=&gt; Become Sections 12 and 13 (respectively)</td>
</tr>
<tr>
<td>Section 13</td>
<td>=&gt; Becomes Section 14 (with 2 additional questions)</td>
</tr>
<tr>
<td>Sections 14 to 21 (inclusive)</td>
<td>=&gt; Become Sections 15 to 22 (inclusive) (respectively)</td>
</tr>
</tbody>
</table>
PART 2

Findings of the Monitoring Teams
Section 1 General information concerning the national administrations

(Section 1 of the questionnaire)

General information: In all Member States the task of issuing binding tariff information falls to the national customs administrations. In most Member States of the EU the officials dealing with BTI are also charged with other customs related tasks so that they do not exclusively work on BTI. The most obvious of those tasks include the tariff classification of goods, servicing meetings of the Customs Code Committee, Combined Nomenclature Section, and providing information to the administrations’ legal services and national courts tribunals concerning tariff classifications they have given in binding decisions that are appealed. There are other tasks which also fall to the BTI officials but the three mentioned are the most commonly assigned to those officials.

It is a fact that annually the numbers of BTI issued increase and especially with more technological innovation and development, the desire of traders to have legal certainty with regard to such goods is stronger than ever. During the period 2005 to 2010 (inclusive) 9 of the Member States visited during the second phase experienced an increase in the number of BTI they issued, three of them experienced a decline in the numbers while the figures for the remaining one were more or less stable. Given the nature of current trade and trading patterns, commerce has had a profound influence on the pattern established over the past years for the issuing of BTI decisions. It is no accident that the major BTI issuing countries all possess major seaports and historically have been at the forefront of commerce.

Findings during the monitoring visits: Given the wide range of aspects of the administrations covered by this Section the findings are set out below on a topic by topic basis.

Status of customs administrations:

The administrative status of national customs administrations varies from Member State to Member State.

In Finland the Board of Customs is an independent agency subordinated to the Ministry of Finance. In Denmark it is part of the SKAT which itself is part of the Ministry of Taxation. In Latvia the customs is an agency that is a part of the State Revenue Service (which itself is under the supervision of the Ministry of Finance), while in Bulgaria, customs is also an agency but within the Ministry of Finance. In Estonian legislation the Tax and Customs Board is an institution in the Ministry of Finance’s area of government. In Lithuania the customs is neither part of the Ministry of Finance nor an agency but rather has an equivalent status with the Tax Inspectorate.

In the remaining 7 Member States (Austria, Cyprus, Czech Republic, Greece, Luxembourg, Malta and Portugal) the customs is part of the Ministry of Finance (Ministry of Finance, the Economy and Investment in Malta). (This reflects the status of the customs administrations at the time of the visit to the specific Member State and does not take account of any administrative changes that may have taken place since then. (See also Annex 1.))

BTI are issued exclusively by the customs administrations in all 13 Member States visited during this phase of the monitoring exercise.

Human resources:
During the second phase of the monitoring exercise, the Member States visited included, amongst others, those with the smallest populations. None of them have populations above 11 million and consequently their customs administrations are relatively modest in size. This is reflected in the numbers of officials employed by those administrations at the time, ranging from approximately 6,000 in the Czech Republic to 430 in Cyprus.

In all cases it is fair to say that the officials working on BTI tasks felt that they would accomplish their tasks more efficiently if they had one or two additional colleagues to share the burden. In some Member States staffing had reached minimum levels and was earmarked for more cuts, leaving the remaining officials in a difficult situation where they would struggle to maintain a good service to the public and at the same time such cuts would possibly endanger the issuing of BTI by the administrations.

In Finland a system was in place whereby each official had the support of two others that he/she could rely on, if necessary, for example in the case of absences. However, in Malta there were only 2 officials dealing with BTI at the time of the visit although it has to be said that there were not many requests for BTI in Malta. (That situation has dramatically changed in the intervening years with Malta issuing 53 BTI during 2012 and 83 BTI in 2013 and illustrates the point that administrations must always be aware that situations can change unexpectedly and they must have contingency plans to meet the challenges head-on). (See also Section 7 of this report.)

In both phases of the EBTE-3 monitoring staffing levels gave cause for concern as there is a general trend towards reducing staff numbers and the staff in many administrations is stretched to the limit. All of this has a knock-on effect on the quality of the overall service provided and specifically in the case of BTI gives cause for concern about the quality of both the decisions being taken with regard to classification and the quality of the BTI being issued. Furthermore, such pressures on staff will inevitably also lead to delays in issuing decisions, make it harder to recruit staff to the BTI sectors and generally is bad for the overall morale of officials.

In many of the Member States visited the officials dealing with BTI matters have had experience of tariff classification of goods, both general and specific, before they have joined the BTI team. The experience gained has been through working in local customs offices, working in the tariff classification department on general queries and graduating on to classifying specific products or ranges of products. In certain administrations the BTI officials must have a university degree connected to the goods they will classify.

While assessing staff levels one of the main criteria to be considered is the workflow, the numbers of tasks and the kinds of tasks being done. However, in the context of BTI and due to its nature the much of the work involved in issuing BTI decisions is for all intents and purposes invisible. Research work especially consumes much time but can show few physical results. However, given the importance of thorough research work it should not be underestimated nor undervalued when assessing the levels of staff. Furthermore, the complexity of the goods being classified will vary depending on many factors and will influence the output of the BTI sector. The more complex the product more effort and time is required to classify it.

It is a fact that annually the numbers of BTI issued increase and especially with more technological innovation and development, the desire of traders to have legal certainty with regard to such goods is stronger than ever. During the period 2005 to 2010 (inclusive) 9 of the Member States visited during the second phase experienced an increase in the number of BTI they issued, three of them experienced a decline in the numbers while the figures for the remaining one were more or less stable. This was mirrored exactly during the same period in the 14 administrations visited during the first phase.

**Recruitment:**
Another important aspect of human resources policy is recruitment and it can be problematic for some administrations to find personnel with the appropriate level of education and knowledge of customs. Most administrations endeavour to recruit new officials for BTI duties from the national customs administration. The philosophy behind this strategy is that customs officers will at least be familiar with classification, even if not to the desired degree for the specific tasks involved, and that appropriate training can correct any shortcomings in their customs “education”. Persons without experience in the customs field will, by necessity, require a longer training period and will only become fully operational after a longer period.

Lithuania does not have a specific policy with regard to recruitment but rather follows the national legislation on recruitment which means that new staff is recruited by way of public competitions. The Bulgarian administration targets persons with the correct level of professional education, e.g. someone being recruited to work in the mechanical sector would have education in engineering.

In the Czech Republic the administration recruits new staff through open competitions and publicity campaigns about working for customs. This method is preferred because generally customs officials do not have the requisite qualifications to deal with the technical requirements demanded by the Combined Nomenclature.

In Denmark, at the time of the visit staff levels were being reduced to meet a total reduction of 2,000 officials by 2013. At the same time new staff was being employed. Recruitment for the Tariff Classification Centre ideally comes from within the customs administration but in reality new recruits from anywhere within the administration, are welcome given the difficulties in finding new young officials.

In a number of other Member States there is no specific policy aimed at recruiting new officials for the BTI sector from within the customs administration (as is the case in Lithuania) while in others (Austria, Bulgaria, Denmark, Estonia, Finland, Latvia, Malta and Portugal) priority is given to recruiting officials with customs experience. However, the Lithuanian officials in the BTI sector had many years of experience in classification. The Estonian administration seeks new recruits for the BTI/classification sector initially from within the customs but if that fails they will try and recruit from the Customs Academy. Only if those attempts fail will the administration then seek officials from the general public. Only Portugal reported that it had no difficulties in replacing officials with others from the customs administration due to the fact that there is a lot of interest in working in the BTI sector. The remaining administrations try to recruit from the customs administration and in the case of BTI some (e.g. Bulgaria, Cyprus and Greece) require that new recruits to the sector have some professional experience of tariff classification.

A number of Member States place emphasis on the third level educational qualifications of the officials dealing with classification and BTI, requiring that they have specialist qualification for the goods they will deal with. Such is the case in the Czech Republic, where recruitment is conducted through open competitions and publicity campaigns. The administration reckons it takes approximately 2 years before a new recruit will reach the desired level of expertise to be able to work independently. During those two years the recruit will work alongside a specific colleague who acts as a mentor and gives on the job training.

National systems:

All 13 Member States visited during the second phase of the monitoring use EBTI-3 to publish the BTI applications they receive and all BTI they issue. However, that is not to say that they have not developed national systems or databases of their own.

Austria developed its own national database called ETOS (Einreihungs- und TUA-
Organisations System) that permits more than simple storage of information but also allows customs officials to submit requests to the tariff division of the customs or to the laboratory. The Czech Republic has developed an electronic registry called the Tariff Information System (TIS) which registers correspondence and assigns queries according to the workload at the time to a specific office or official.

Bulgaria, on the other hand, already had developed a national BTI system that mirrors the EBTI-3 prior to accession so that upon accession to the EU in 2007 it did not abandon it altogether but has retained it for all the internal procedures and drafting connected to issuing BTI. This has proved to be a satisfactory solution for the Bulgarian administration and as with the 12 other Member States visited, all applications and BTI are published on the EBTI-3 database.

**BTI and other work related tasks:**

The officials working on BTI in all administrations visited have additional tasks to do on top of those attached to issuing BTI.

The additional tasks assigned to officials dealing with BTI relate generally to tariff classification matters. They include, amongst others, answering queries on tariff classification both from traders and from other customs officials, preparing briefing documentation for delegates to Customs Code Committee meetings, individual officials represent their Member State at such meetings for the relevant sector they deal with, in many administrations certain BTI officials also provide training (both BTI specific and more general depending on the audience) to their colleagues, they are often charged with ensuring the customs nomenclature content of the customs websites is kept up to date and dealing with legislative procedures related to the area of tariff classification.

It should be borne in mind that very often general queries regarding non-binding tariff classification information require officials to carry out research which takes up much time and such work, due to its informal nature, does not produce visible results even though it is important to the traders. This is especially true in some Member States where traders do not request BTI in great numbers, despite being encouraged to do so by the administrations.

**Co-operation:**

Another important factor in the successful implementation of the EBTI system is cooperation not only between different Member States but also within national administrations. It is important that officials can communicate and cooperate with their colleagues at home and in other Member States as trade becomes ever more international and boundaries become less important. The approach of the Lithuanian administration serves as an example. The Lithuanian customs administration has developed very close cooperation between the customs directorate and the five regional customs offices and the customs laboratory. A limited number of experts on classification matters, origin and valuation work in each of those offices and they meet every two to three months to discuss problematic cases, appeals and other relevant classification issues.

**Administrative practices:**
During the visits to a number of Member States, the monitoring team found particular administrative practices in place that are aimed at improving efficiency. These innovations shall be mentioned in the specific sections of this report that they refer to.

As previously mentioned constant developments in industry, especially in the electronics and internet technology fields, greatly impacts on staff level and staff performance. It means that the level of research required to determine the tariff classification of new products is intensifying. As all the necessary information to permit classification by an administration is rarely submitted with the application additional information is requested and very often with new technology the matter ends up being discussed in the Customs Code Committee. Such events as described put pressure on the personnel issuing BTI, and can have an negative impact both on the individuals themselves as well as upon their work performance.

Therefore the competent authorities in Member States must reassess staffing levels and/or the duties assigned to those officials issuing BTI at regular intervals rather than waiting until problems have developed in the future. While it is recognised that currently many administrations wrestling with financial constraints such budgetary factors must not be allowed to prevent Member States honouring their obligations nor to compromise the performance and quality of service provided to the public in the field of binding tariff information

**Judgments of national courts and tribunals:**

There were rulings of national tribunals concerning BTI in force in a number of the Member States visited but they had not been referred to the Commission because they upheld the decisions the administrations had taken. However, the customs administrations in the 13 Member States visited said that should there be any such judgments or rulings of national courts or tribunals that went against the decisions they had taken or Union legislation, they would inform the Commission immediately.
Section 2  Treatment, recording and uploading of BTI applications and treatment of samples

(Sections 1, 2, 3, 4, 5 and 8 of the Questionnaire)

References:

Legal provisions: Articles 12 (1) and (7) of Council Regulation (EEC) No. 2913/92
Articles 6 and 8 of Commission Regulation (EEC) No. 2454/93

Guidelines: Section 4

Section 2A  Treatment of BTI applications upon receipt in the administration

**Designated offices**

**General background:** Article 6 (5) of Regulation (EEC) No. 2454/93 requires that the list of customs authorities designated by the Member States must be published in the Official Journal of the EU, "C" series. That information is provided by the national administrations to the Commission and is regularly updated in the Official Journal. (At the time of publication of this report it appears in Official Journal C 176 of 11 June 2014 on pages 6 to 10 (inclusive).)

**Findings during the monitoring visits:** Of the 13 Member States visited, 10 of them had a single designated authority for receiving BTI applications and for issuing BTI, but not necessarily the same authority in every case (i.e. a single authority for receiving applications and another single authority for issuing BTI).

The three exceptions were Finland, Denmark and Portugal. In the case of Finland and Portugal, BTI are issued by a single authority but applications may be sent to any local customs office and from there they will be referred to the main customs office in Helsinki or Lisbon.

In Denmark, for customs purposes, the country is divided into 2 areas: Skat Århus (covering addresses in Nordjylland, Midtjylland and Sydjylland-Fyn) and Skat København for the rest of the country. Applications should be submitted to the appropriate regional office which will issue the resulting BTI.

The Czech administration at the time of the monitoring visit received applications and issued BTI in Prague but since then the BTI section has been relocated to Olomouc.

**BTI Applications**

**General background:** It is true to say that there is no precise method for predicting the growth or decline in the volume of BTI applications submitted to the Member States. It is a fact, however, that year after year Germany receives the most applications and consequently issues the most BTI. This was the case during the first phase of the monitoring exercise and that situation has remained unchanged. Between them, Germany, France, United Kingdom, Netherlands, Poland and Ireland (in that order) receive the most applications and consequently issue the most BTI, amounting to approximately 87% of the total number issued annually). All of the above Member States were visited.
during the first phase of the EBTI monitoring programme. Please see the first global report for more details on procedures in those Member States.

Information on how to complete an application for a BTI is presented on the Commission's website and is reproduced in Appendix 4 to this report. Applicants are advised to read this information before completing an application for a BTI.

Each application whether it is correctly completed or not has some impact on the receiving administration. Every application requires an official response, whether it is to reject it on the grounds of it being incomplete or incorrectly filled in or to officially accept it. In every case an official has to take time to respond to it appropriately. So no matter how one looks at applications, they do have an impact on human and financial resources regardless of their numbers, completeness, etc.

**Findings during the monitoring visits:** A number of the Member States visited said that traders very often consulted the customs with regard to how they should complete BTI applications. In the case of Latvia, officials estimated that 90% of applicants had consulted the State Revenue Service on how to correctly complete an application. In Lithuania, the administration said that applicants usually consult the customs for similar advice. However, in both countries, the content of the applications submitted by traders is not dictated by the administrations. The advice the administrations give merely explains, for example, the level of detail to be provided in the description, or clarifying the differences between the nomenclatures in which the classification can be given. The specific details in the application and the classification nomenclature indicated are always a matter for the trader to decide.

As stated above it is impossible to predict the numbers of applications likely to be submitted annually to specific Member States. However, it is a fact that globally the numbers have continued to rise each year since the entry into production of EBTI-3. For more detailed information concerning the numbers of applications received annually by each Member State until the end of 2013, please see Annex 2.

Of the countries visited in this group, there are mixed indicators when it comes to the numbers of applications received. The most notable and consistent increase is in the numbers received by Greece, rising from 2 applications in 2005 up to 80 in 2013, each year steadily increasing in number. Malta also presents an interesting case as the numbers of applications received have, with the exception of 2011, continued to increase and amount to 87 in 2013. Similarly Bulgaria has witnessed a consistent increase in the numbers of BTI applications submitted to the administration. In the case of the other Member States visited, there are peaks and falls in the annual figures and sometimes quite substantial fluctuations. However, a quick glance at Annex I to this report shows that on the whole, for the period 2005 to 2013 (inclusive) the figures show that despite the numbers peaking in previous years, the general trend indicates a decline in the numbers of applications submitted in 2011 and 2012. Such information is of interest but while the economic crisis might have had an impact, there does not appear to be a simple explanation as to why so many of the Member States in this group are actually receiving fewer applications than before.

**Greece:** The improved situation in Greece can be explained by internal developments in the way the administration deals with BTI applications and the issuing of BTI decisions. At the time of the visit to Greece, the national legislation required that before the customs could issue a BTI decision it required the formal approval of a national BTI committee established in conformity with “Ministerial Decision and Agreement on the definition of competences and procedures of application of EBTI” (Order No. D1595/709). That order placed certain obligations and restrictions on the customs which in many cases delayed the issuing of BTI.

The Committee was composed of 7 members. The chairman was an advisor to the Minister of Finance and the other members were the head of the 17th Tariff division (the customs division dealing with
tariff classification and the issuing of BTI), the head of the tariff division of the General State Laboratory, the head of section A of the 17th Tariff Division, the head of Section B of the Tariff Division of the General State Laboratory and 2 heads of units of customs offices in the vicinity of Athens. A customs officer from Section A of the 17th Tariff Division also acted as secretary to the Committee. The head of the 17th Tariff division and the 2 participants from the customs laboratory had tariff classification experience.

Of the seven members of the Committee, four were officially appointed or designated (“ex-officio”). Should any of those four members be absent or otherwise unavailable a meeting of the Committee could not take place. Furthermore, should any of the “ex-officio” members retire, the Committee could not meet until a replacement member had been appointed, and sometimes that took a long time.

On the other hand, it was not necessary for all of the three remaining members to be available and a meeting could take place if anyone of them was absent and decisions could be formally taken provided there was a qualified majority. Before a meeting of the Committee could take place an agenda had to be prepared and once a decision had been taken it was recorded in the minutes of the meeting, which were then signed by all the participants. Later an order would be drafted with justifying arguments for that decision.

The Committee only decided on the tariff classification of goods for which BTI had been requested and was not concerned with issuing BTI as such although its decisions did have an impact on the content of the BTI decision. The Committee functioned by each case being presented by a committee member designated to do so by the Chairman. That member would also give an opinion on the classification of the goods. After a discussion the Committee would take a decision on the basis of the majority opinion. However, if the Chairman did not agree with that decision he could reject it and the case would have to be discussed again at the next meeting. Possible reasons for rejecting a decision could be that the Chairman felt more information or research was required or he could have had doubts about the tariff classification being proposed.

The negative impact the procedures of the Committee had on the issuing of BTI was that no BTI decision could be issued without a decision on the tariff classification of the goods by the Committee and consequently an application submitted close to the time of a Committee meeting would be treated quicker than one submitted shortly after a meeting. Furthermore, as it was always necessary for the four “ex-officio” members to attend, meetings were held at irregular intervals and the situation could be further aggravated when a new member had to be appointed to replace a retired “ex-officio” member. However, the Greek authorities recognised the negative impact of this Committee procedure and shortly after the monitoring visit, it was abolished and full competence for the issuing of BTI was conferred on Section A of the 17th Tariff Division.

Malta: Due to its geographical situation in the Mediterranean Sea, Malta has always been a centre of trade between Europe, Africa and the Middle East and consequently has a long history of maritime commerce. Since accession to the EU the number of BTI issued by the Maltese administration has always been low, but in the last 2 years there has been a dramatic increase in the number of applications received. During 2012 Malta received 43 applications but that doubled during 2013 when 87 applications were submitted to the administration. However, during the visit in 2009 two factors were highlighted to account for the low numbers of applications received up to that time: the size of the population and tradition.

Malta is the Member State with the smallest population and consequently the number of Maltese importers is very small and so the demand for BTI by those traders is not going to be high. However, traditionally, Maltese importers have a sound knowledge of customs procedures, including tariff classification and generally are familiar with the code numbers applicable to the goods they wish to import. They are also used to consulting the customs when they are unsure of the correct classification and have been doing so for a long time. Unfortunately, they wait until such time as they are declaring the goods to contact the customs about tariff classification so that applying for a BTI at that stage
would not cover the goods being declared. This is a habit the customs administration has long been trying to eliminate but despite all its efforts to promote BTI, it is only partially successful as the numbers of application have varied over the years but show an increase all the same. One of the steps the administration has taken is to publish a specific brochure, aimed at traders, that includes general information on BTI and how to complete an application along with an actual application form. However, at the time of publication it is very difficult to predict whether the number of applications will continue to rise or whether the 2013 number represents a peak.

**Portugal:** The Portuguese administration said that its experience was that traders may submit a large number of applications occasionally, for example when launching a new line of merchandise, and consequently the total numbers of applications could rise one year and fall the next in such circumstances so that the annual number of applications submitted contains a strong element of unpredictability.

---

**Conditions for accepting BTI applications:**

**General background:** While a BTI application may be received in an administration it is not necessarily the case that it will be officially accepted. There is a subtle difference between receiving and accepting a BTI application. Reception simply means that the document has reached the customs but acceptance indicates that it has also complied with the basic conditions that turn it into a formal application rather than a mere document.

The first, and most obvious, condition is that the application is submitted on the correct form. The appropriate form is available online on the DG TAXUD webpage or from the customs authorities of the Member State where it is going to be submitted. The legal basis for the current BTI application form is Article 6 of regulation 2454/93 and Annex 1B to that Regulation. Please also see Appendix 6 to this report.

Next it must be completed in a national language of that Member State. Of the 13 administrations visited, Finland will accept applications in either Finnish or Swedish, the national languages of the country. Malta only issues BTI in English although Maltese is an official working language of the EU, and the BTI application form exists in Maltese. Luxembourg will accept applications in French German and English but the BTI decision will only be issued in French, the official language of the Grand Duchy.

In accordance with the EU legislation, in order to be accepted an application has to be correctly completed and all mandatory information has to be provided on the application form. The mandatory information required from a trader when applying for a BTI is clearly set out in Article 6.3(A) of Regulation (EEC) No. 2454/93 and is indicated on the application form also. If all three of those requirements are met the administration can officially accept the application.

"Acceptance", however, does not necessarily mean that the information is correct or complete; it merely means that the administration acknowledges that it has received a legally recognisable application rather than a mere document. Additional information concerning the goods may be required before the administration can determine the classification and deliver a BTI decision but it can be requested at a later date. Once "accepted", the application must be published without delay on the EBTI-3 database and its receipt acknowledged to the applicant, in accordance with the legislation.

The internal procedures followed by Member States administrations vary in accordance with national administrative law and/or good practice. In certain Member States such rules are laid down in writing whereas in others they have been developed over years and have become a matter of good order.
**Findings during the monitoring visits:** All Member States visited will only accept applications and issue BTI in their national languages. As mentioned in the “general background” above, Finland issues BTI in both its national languages and Malta will only issue them in English although Maltese is an official working language of the EU and the application exists in the Maltese language. With regard to supplementary information administrations recognise that very often such information is only available in more widely spoken languages and therefore many administrations will accept additional information in other languages. However, that does not prejudice the right of an administration to request a translation of such information if it is considered necessary.

**Treatment of applications hand delivered to customs:**

**General background:** Many BTI applications in the 13 Member States are hand delivered to the customs. This is especially true in smaller Member States where the offices designated to receive applications are situated in the capital city. Although that may be the case, it does not mean that the correct procedures for dealing with applications when they arrive can be dispensed with. If anything, the only advantage to be had from hand delivery of an application is that it cuts out the time normally associated with deliveries by other means.

**Findings during the monitoring visits:** In many of the 13 Member States visited most of the BTI applications submitted to the customs are delivered by hand. In Malta, for example, at the time of the monitoring visit, all applications were being hand delivered to the customs. In Latvia the vast majority (approximately 95%) of applications came from applicants established in the region of Riga and consequently the majority of those applications were hand delivered. A similar situation prevails in Bulgaria where the majority of applications are from traders in the region of Sofia and consequently the majority are handed in to the customs. The Portuguese administration estimates that 70% of BTI applications it receives are hand delivered, usually by customs brokers acting on behalf of traders. In larger Member States geographical distances between the sites of designated offices and regional cities and towns generally result in many applications being sent via the postal system. In a number of the Member States BTI applications, regardless of the method of delivery, are treated in a similar manner to any other correspondence sent to the administration, i.e. they go to the registry before being officially accepted (in other words, scrutiny of the application occurs after official registration in the central registry but before they are uploaded in the EBTI-3 database and assigned a number in the system). Once registered in the central registry, the applications will then be forwarded to the designated unit in the administration where the scrutiny of the content of the applications will be carried out and it will either be accepted and published in the database or rejected.

However, a number of administrations take the opportunity to scrutinise hand delivered applications in the presence of the persons delivering them in order to ensure all mandatory fields have been completed. In one of those Member States, the registry will contact the customs officials dealing with the goods if there are doubts about the completeness of the application but that would be a rare occurrence as most traders consult the administration before submitting an application. If any mandatory field has been overlooked the applicant will be given the opportunity to correctly complete the application there and then. However, if all mandatory fields have been completed the application will be officially accepted.

As stated above, in many other administrations hand delivered BTI applications are sent to the central registry and assigned a registration number before being scrutinised to determine whether they can be accepted or not. In at least two Member States, the applicant will be given a copy of his application with a date stamp on it and in one of them only if he requests it. In another administration a stamped copy of the application that has been handed in to customs is given to the applicant and following
Acknowledgment of acceptance of applications is not practiced in a uniform manner among the 13 Member States visited and that aspect of the application of the legislation is discussed further on in this section and in Part 3 of this report concerning Recommendations.

Treatment of applications submitted through the post

General background: Geographically many of the 13 States visited are quite small in size and consequently hand delivery of applications is a relatively simple matter. However, the second most common method of delivery of applications is through the national postal services. In such cases, the applications will arrive with the other mail at a sorting office or a registry, depending on the internal organisation of the administration.

Findings during the monitoring visits: Applications submitted via national postal systems are delivered directly to the central registry of the administration along with all other mail and there they are registered with the rest of the incoming mail. Once registered as incoming mail, they are then referred to the relevant offices dealing with BTI matters, where they are distributed to the officials concerned. Estonia receives almost all its applications in this manner as it has strict security rules concerning entry into the customs buildings. The majority of applications in the Czech Republic are submitted by registered mail.

When the applications are received in the units dealing with BTI, it is at that point that they are assessed to determine their completeness. If deemed to be complete they are registered in the EBTI-3 system and acknowledgments sent to the applicants. However, at least one administration does not systematically acknowledge acceptance of any applications (i.e. not only BTI applications but any applications for any other purpose) but will do so only if the applicant requests it. Another only acknowledges them verbally over the telephone.

However, this is not an accurate interpretation of "acceptance" in the context of BTI as physically receiving what is legally nothing more than a piece of paper at this stage differs considerably from officially acknowledging that a correctly completed application has been received and that the administration recognises it as such.

These various approaches to a rather simple obligation are neither consistent nor compatible with the legislative obligation to notify applicants. The legislation requires that applicants are notified that the administration has received their applications and that either the 3 month period has started or supplementary information is required. There are no exceptions to that rule provided for in the legislation.

Treatment of applications submitted electronically

General background: Currently the legislation requires that all documents concerning the application and issuing of BTI are completed in writing. However, during the first phase, France and the United Kingdom (both visited in 2008) have researched and developed electronic applications with an eye to the future and a paperless environment. A more complete description of the systems they developed can be found in the global report of the first phase of the monitoring exercise.
Findings during the monitoring visits: None of the Member States concerned by this report have developed or use a system that permits the electronic submission of BTI applications.

Reception of BTI applications in regional offices

General background: As stated earlier, in three of the administrations visited applications can be received in regional customs offices. In both Finland and Portugal there is a single designated office in the capital for issuing BTI but applications can be sent to any regional customs office. The Danish administration is organised in a unique way in that there are 2 centres for receiving applications and issuing BTI, one in Arhus and the other in Copenhagen.

Findings during the monitoring visits: Applications that have been submitted to the regional offices in Finland or Portugal are sent to the designated office in the capital through the internal post or via the national postal system. Officials working in the regional offices do not have any training in how to check applications to verify if they have been correctly completed. Such checks are carried out by their colleagues dealing with BTI. In Denmark there is one classification centre but it operates from 2 locations (each location covers a specific area of the country). Both offices deal with all products. However, the procedures in Denmark more or less follow those in force in the other 10 Member States that have single designated reception offices. Checks are carried out in both regional offices to ensure applications are correct and then they are registered.

Recording the reception of BTI applications

General background: BTI applications are generally treated in a similar manner to any other incoming correspondence received in an administration, i.e. it is sent to the registry to be registered as incoming mail. In some Member States the customs has its own registry but in others there is a single registry that registers all incoming mail. Furthermore, a distinction has to be drawn between registration in the administration’s registry and registration in the EBTI-3 database. Whereas the former is governed by the administrative rules in place at national level, registration in the EBTI-3 database is governed by EU legislation.

Findings during the monitoring visits: Once an application has been registered in the general or departmental registry (depending on the national administrations’ structure) it is sent from the registry to the relevant section dealing with BTI where it may be assigned to an individual official or to the unit as a whole. That aspect of the administration depends very much on how it is organised at national level. In nine of the Member States (Bulgaria, Cyprus, Denmark, Estonia, Greece, Latvia, Lithuania, Luxembourg and Malta) the officials working in the BTI sector will deal with all aspects of the application’s passage through the system as well as drafting and issuing the BTI. In the other four Member States the duties and responsibilities of the BTI officials are clearly delineated so that in those administrations certain officials only register and publish BTI while their colleagues draft them and classify the goods described therein. In Austria Bulgaria, Finland and Lithuania the officials classifying the goods specialise in a limited range of goods or tariff chapters (e.g. electronic good, textiles, etc.) and will only deal with applications for those goods.

Regardless of the structure of the national administration all applications, once registered by the registry, will pass on to the sector dealing with BTI where all subsequent actions and procedures will take place.
### Publication of applications in the EBTI-3 database

**General background:** The legislation requires that BTI applications are uploaded in the EBTI-3 database without delay. The obvious reason for this stipulation is to ensure that Member States administrations avoid issuing divergent BTI decisions and furthermore, avoid issuing a BTI decision to a holder who already has one for identical goods. All delays in publishing applications in the EBTI-3 database must be avoided. (This topic is discussed in greater detail in Section 5 which deals with the EBTI-3 database.)

**Findings during the monitoring visits:** It was found that the requirement to publish applications in the database "without delay" was fulfilled in Member States with varying degrees of diligence.

The time frame from registration to publication ranged from 24 hours or less with “a worst case scenario” of a month although the administration that referred to the 1 month said that the usual time it took for an application to be uploaded in the database is a week. Therefore, depending on how long it takes for an application to be registered, delays in registration have a knock-on effect in that they also lead to delays in uploading the application in the EBTI-3 database. However, unlike the situation uncovered during the first phase of monitoring, all the Member States concerned by this report upload applications in the EBTI-3 database as soon as they possibly can.

One Member State did say that it might take up to 2 weeks on rare occasions for an application to be uploaded but that would be due to the workload of the officials being exceptionally high at the time and the fact that the BTI team is extremely small. However, in general, the time frames revealed during the visits were satisfactory, and a number of administrations were constantly endeavouring to improve on them. In one administration the time lapse between registration and uploading in the database was 2 days maximum.

Another Member State said it usually waits for three or four days from the time of receipt before uploading applications in the database with the clear intention of giving the trader time to reflect on his application and change or enhance any details he feels should be amended.

Overall, however, it was found that in almost all cases in the 13 Member States applications are uploaded within a few days of them being registered and it would be a rare occurrence if it takes longer than a week. All the administrations concerned recognise the importance and value of uploading applications in the database with the minimum delay.

### Registration numbering systems:

**General background:** While there is no specific reference in the legislation to registration of BTI applications, or indeed of BTI, it is clear from the official form for both applications and BTI that some form of registration identification is required. Consequently this is an aspect of the procedure that falls entirely within the competence of the national administrations.

**Findings during the monitoring visits:** The monitoring teams found that there is no single method employed by the administrations in the Member States for numbering BTI applications and the resulting BTI. In a number of cases, the central registration number also becomes the BTI registration number. One administration said that the registration numbers assigned to BTI applications are generated by the registry system and it results in different numbers being assigned to BTI when issued.
One unique problem arises due to the use of different alphabets which share what appear to be similar letters and numbers. This becomes apparent when searching for Greek language applications or BTI if such searches are conducted in languages using the Latin alphabet. Certain letters in both alphabets appear to be the same but in fact are different and consequently result in a “no record found” message. In such instances it is necessary to make the search using the Greek alphabet language version of the database and the BTI can then be extracted.

Acknowledging acceptance of BTI applications:

General background: One of the obligations imposed by the legislation is the acknowledgement of acceptance of a BTI application and that obligation applies without exception to all correctly completed applications. The law requires the administration to inform the applicant that his application has been accepted and to inform him from which date the 3 month period starts running. The significance of the 3 months is that the administration is obliged to write to the applicant if it cannot issue the BTI decision within that timeframe. The three months starts running from the time the customs has at its disposal all information it requires in order to be able to come to a decision. If, after the start of the three months has been notified to the applicant it becomes apparent that additional information is necessary, the three months is suspended. Once the additional information has been provided the three months starts again as at that time the customs will be in possession of all the necessary information, in line with the legislation (Articles 6.4 and 7.1(a) of Regulation 2454/93 refer.)

Findings during the monitoring visits: The fulfilment of the obligation to acknowledge in writing the acceptance of applications was not consistent in the 13 Member States at the time of the monitoring visits. Certain Member States simply did not acknowledge the receipt and acceptance of BTI applications, especially applications hand delivered to the designated office, regardless of the legislation. In most cases the reasoning is that as the application has been handed in to the administration it is not necessary to acknowledge its receipt. While it is true that in those cases the receipt of the application is beyond doubt, the acceptance (i.e. acknowledgement that the application has been correctly completed and is legally accepted by the administration) of the application must be acknowledged to the applicant. The notification of acknowledgement can also be used to request additional information (if the required information is apparent at the time) or to notify the start of the three month period referred to in Article. 7.1(a).

However, not all administrations subscribe to the opinion that acknowledgement is unnecessary. There are those that acknowledge all applications as required, and at least one gives a stamped copy of the application to the person delivering the application and subsequently acknowledges in writing its acceptance once it has been registered in the central registry. Another administration acknowledges applications after they have been uploaded in the EBTI-3 database and gives the applicant the registration number for future reference in any correspondence. Another Member State acknowledges applications submitted via the national postal system and takes the opportunity to also request any additional information it has identified as required in order to be able to classify the goods.

If at the time of acknowledgment it is not apparent that additional information is required, a request for the supplementary details to be submitted can be sent later, once they have been identified. Such a request will also mean that the three month period is suspended until the necessary information is received after which it will start running.

In all, but two, Member States applications received through the post are acknowledged. In one of those two Member States the administration is of the opinion that the registration of all incoming mail, including BTI applications, is in itself sufficient acknowledgement.
The second Member State concerned does not systematically acknowledge receipt or acceptance of any applications. If an application is delivered via registered mail its delivery is acknowledged by the postal authorities and if hand delivered the applicant can receive a copy of the application with a date stamp on it, but only if it is requested. In all other cases the applicant can telephone that administration for a verbal confirmation that his application has been received.

Another variation on this is practiced by another administration that does not acknowledge receipt of hand delivered applications but informs the applicant verbally when the three month period has started running. The administration considers that date to start running from the time the completed application is handed in, provided all mandatory fields have been completed. A third variation practiced in another Member State is to acknowledge all applications over the telephone and notification of the start of the three months starts from the date the application is lodged in the central registry.

Section 2B The reception and treatment of samples

**General background:** Given the variety of products being manufactured and traded, samples play a key role in the understanding of goods, their composition and characteristics. In many cases it is necessary for the customs to request samples for examination either in laboratories or by the officials dealing with tariff classification. Therefore the treatment accorded samples when submitted is very important. All efforts must be made to ensure that the condition or state of the samples is in no way altered as any such changes could compromise any analyses or tests carried out on them later.

Bearing that fact in mind, it is important that once under the control of the customs, samples are retained in secure and, when necessary, refrigerated conditions.

**Findings during the monitoring visits:** There are a variety of different approaches to the question of how samples are treated in the 13 Member States visited. In general, the receipt of samples is not acknowledged by the majority of the administrations. One administration said it will acknowledge receipt of samples, but only if the sender requests them to do so.

In another Member State an acknowledgement of acceptance will be sent to the applicant if the applicant specifically requests that the laboratory carry out an analysis of a sample he has submitted. It is not considered necessary to acknowledge receipt of samples that are handed in personally to the customs. In all other cases the receipt of samples is acknowledged to the applicants by telephone.

In almost all the administrations visited, properly secured premises are available for the safe storage of samples. In one administration access to its offices is strictly limited so that only authorised persons can enter the floor and within that area a secure locked cabinet is used to safeguard valuable or what can be termed “attractive” samples until they are either returned to the owner or destroyed. In many Member States, samples can only be sent directly to the customs administration but in some cases, samples can be sent directly to the laboratory, and in certain cases only with prior agreement.

Another administration does not have specifically secured facilities available for the retention of samples and this is due to the fact that that administration receives very few samples. Generally samples are retained by administrations until such time as an appeal is no longer possible and the applicant may have the sample returned if he so wishes or it may be destroyed.
Section 2C Submission of supplementary information with the application

**General background:** It is specified in the legislation that all information necessary to assist the customs in taking a decision should be attached to the application. However, given the highly technical nature of many products it is not reasonable to expect every trader to know all of the specifications and details that customs require to classify his goods. However, when submitting his application there is a field (field 10) on the application form that allows him to indicate any additional information he has submitted. Such information can, according to the legislation, include brochures, photographs, samples and "other" (e.g. results of privately commissioned analyses).

**Findings during the monitoring visits:** As required by the legislation (Arts.6.3.(A)(d) and (e) of Reg. 2454/93) applicants should provide all available information concerning the goods for which the BTI is being requested. However, it is not always possible for an applicant to know the precise information that may be the deciding factor in determining the classification of the goods and consequently the administration will be obliged to request the missing information.

In all 13 Member States visited, the procedure for obtaining such additional information follows the same pattern. As already mentioned earlier, in a number of the administrations the majority of applications are personally delivered to the customs and officials take that opportunity to quickly assess whether or not the application has been completed correctly. That involves ensuring all mandatory fields have been filled in and it is sometimes evident that additional information or even samples may be required. Therefore in those situations the applicant will be told what extra information he should provide.

The general pattern of procedure is that the administrations assess the goods description and the information provided and then they determine whether some additional specific details or, as already stated, a sample is required before a final decision can be reached. In all Member States the applicant is contacted and requested to provide the missing details and he is given a deadline within which to do so. Given that the additional information may have to be requested by the trader from the manufacturer who will be established outside the EU, it may not be possible to meet the deadline. However, such deadlines are rarely rigid and they can be extended upon reasoned request by the applicant. Failure, in the long run, to provide the information to the administration will lead to the application being rejected on the grounds of insufficient available information. *(For the role of laboratories, please see Section 4 of this report.)*
Section 3  BTI applications from other Member States and outside the European Union

(Section 7 of the Questionnaire)

References:

Legal provisions:  Articles 12 (1) and (7) of Council Regulation (EEC) No. 2913/92
Articles 6 and 8 of Commission Regulation (EEC) No. 2454/93

Guidelines:  Section 4

Applications from outside a Member State

General background:  The matter of how to deal with applications for BTI received from or on behalf of traders established outside the territory of the Member State gives rise to differing practices in the administrations.

Applications submitted on behalf of traders established outside the territory of the issuing Member State fall into two distinct categories. Either they are for traders established in another Member State or for traders who are not established in the EU at all.

In the first case, Art.6.1 of Reg. 2454/93 (the Implementing Provisions) confirms the legal status of applications being made in another Member State on condition that the BTI is going to be used in that Member State or the applicant is established in that Member State.

In the second case, the legislation is less precise with regard to applications on behalf of traders established outside the EU and it is those applications that give rise to certain divergences in the interpretation of the legislation by the Member States.

Given that there is no direct mention of whether or not a trader established outside the EU is entitled to obtain a binding tariff information decision it is the opinion of the Commission that the other obligations on the holder of a BTI imply that such applications should be rejected. The Commission intends to clarify this situation when drafting the Commission acts for the entry into force of the Union Customs Code, where it will be stated clearly that applicants must be established in the customs territory of the EU.

Findings during the monitoring visits:  The first general observation is that there were very few applications submitted to the administrations visited that originated outside those Member States covered by this report. Of the 13 administrations visited, 3 had never received applications from or on behalf of applicants established outside the Member State up to the time of the monitoring visits. However, most of the others had received applications both from/or on behalf of traders established in other Member States and/or non-EU countries.

In the case of non-EU countries, applications frequently come from neighbouring states. The third countries most concerned were cited as Norway, Switzerland, and Liechtenstein. However, applications from Canada, Australia, Taiwan and the US were also mentioned. Surprisingly, given the length of the border between the EU and Russia, there were no records of any applications originating from Russia or on behalf of Russian traders although the Finnish administration issues BTI for goods exported from the EU to Russia.
Applications on behalf of a trader established in another Member State

**General background:** Art. 11 of the Customs Code states that any person may request information from the customs with regard to the application of customs legislation. It also states that such a request may be refused if it does not relate to an import/export operation actually envisaged.

Given that the EU is a customs union it follows that the customs legislation, including the Combined Nomenclature, is applied in a uniform manner throughout the territory of the EU. Therefore, a trader in one Member State must be accorded the same treatment in all other Member States. That being the case, the tariff classification of a specific product in one Member State should be the same in all the Member States.

A further extension of this right is that every trader has the right to request information from whichever Member State he wishes in the sure knowledge that he will be treated in exactly the same manner as traders who are established in that Member State.

**Reasons for requesting BTI from another Member State:** As a valid BTI can be used in any Member State it may seem strange at first glance that a trader in one Member State should request a BTI from the customs of another Member State. However, there are logical reasons for doing so.

The primary reason for requesting a BTI in another Member State is language. While there is no possibility that a valid BTI would be rejected on language grounds, it would be unrealistic to expect that customs officers at points of import/export would have sufficient knowledge of all 22 official languages (there were 22 official languages at the time of the monitoring visits) in which BTI are issued to enable them to read and understand all BTI. (Although Irish and Maltese are official working languages of the EU, BTI are not issued in those languages as both Ireland and Malta issued them in English instead.) Therefore, in many cases, traders opt to apply for the BTI in the Member State where it will be used given that if the BTI is in a language other than the national language of the importing Member State the trader may be requested to provide customs with a certified translation which in turn could give rise to delays and extra expense.

Another obvious reason is that should there be any doubts concerning the goods being imported it is logically less problematic for customs officials to deal with their own administration in their own language. As the issuing administration will have at its disposal all the information concerning the goods mentioned in the BTI such cases can be resolved quickly and with minimum delay. If the BTI was issued in another Member State the customs officials would have to contact their own administration which in turn would have to contact the issuing administration.

**Treatment to be accorded applications on behalf of traders established in other Member States:** The treatment accorded to BTI applications from other Member States requires that certain precautions are adopted to ensure the integrity of the BTI system and to avoid giving any opportunity to dishonest traders to exploit the system.

In cases of doubt with regard to the intentions of the applicant the Members States concerned (i.e. the Member State that has received the application and the Member State where the holder is established) will enter into direct consultations. In many instances those contacts will be conducted either electronically in an informal exchange between colleagues. However, in some cases it may be necessary to adopt a more formal method and send a letter. The less formal consultations generally take less time.
**Findings during the monitoring visits:** As stated earlier, 3 out of the 13 administrations had not received an application on behalf of traders established outside their national territories. Of the remaining 10 Member States, only one had not received any applications on behalf of traders established in other Member States but had received one submitted by a national on behalf of a trader established in the US. Of the remaining 9 administrations, eight systematically consult with the administration in the trader’s home Member State. In many of those Member States those consultations take place in English with satisfactory results.

The one administration that does not systematically consult their counterparts in other Member States is of the opinion that to do so is time consuming. However, it does consult the EBTI-3 database to determine whether the trader has already received a BTI. Only if that search indicates the existence of a BTI will the administration consult with the other Member State. If, on the other hand, no trace of a BTI is found in the database, the administration proceeds to processing the application and drafting the decision and just before issuing it the database will be consulted again to determine whether a BTI has been issued to the trader in the meantime.

The monitoring team pointed out to that administration that in fact the most efficient method is to check the database immediately the application is accepted and consult with the administration of the other concerned Member State. By waiting until just before issuing the BTI, it could happen that a BTI has been issued to the trader by another Member State since the time of the initial search in the database, and consequently much time, effort and resources would have been wasted. It is far better and more efficient to consult with the trader’s home administration at the start of the process and thus avoid wasting time researching, drafting and preparing a BTI decision that may not be issued in the end.

A number of administrations informed the monitoring teams that in fact applications they had received from applicants established in other Member States had turned out to be attempts at BTI shopping and in all cases the applicants did not receive a BTI. Other administrations said that they were aware of BTI that had been issued to their nationals by administrations in other Member States but that they had never been contacted to discuss the eligibility and motives for those applications.

**Applications on behalf of traders established outside the EU**

**General background:** The primary objective of BTI is to give EU traders legal certainty with regard to the tariff classification of their goods and to ensure equal treatment when importing them into or exporting them from any Member State of the EU. BTI are not valid outside the territory of the EU and they are not binding on the customs authorities of countries that are not members of the EU. However, it is true, that having a BTI issued by an EU customs administration can bolster a trader's arguments for a specific classification when dealing with some non-EU customs administrations.

The primary condition attached to issuing a BTI is that an import or export transaction is envisaged and the applicant must confirm whether or not that is the case at the time of completing the application. Given that condition it is for all intents and purposes impossible to comply with it when established outside the EU. A trader established in Asia, for example, cannot physically fulfil the obligations attached to importing/exporting goods into/from the EU, i.e. completing customs formalities such as presenting the BTI to the customs when declaring the goods. However, the possibility exists for non-EU traders to benefit from BTI under certain conditions.

**Arguments of Commission against issuing BTI directly to traders established outside the EU:** As stated above, traders who are established outside the EU may feel that they could benefit from having a BTI for goods they intend to export to the EU. There are obvious reasons
for this, such as being aware of the tariff classification and its attendant implications: i.e. tariffs, other possible customs charges, other measures that apply to the goods, being able to calculate for the EU buyer how much he will have to pay in customs duties etc. which in turn may persuade him to place orders. It is clear that having such information available makes good business sense but it is also a fact that BTI are only issued if an actual transaction is envisaged. Consequently the Commission is of the view that BTI should not be issued directly to non-EU traders, but rather to an appointed representative who shall act on the trader's behalf.

Art.5 of the Customs Code sets out the right of any person to ".......appoint a representative in his dealings with the customs authorities to perform the acts and formalities laid down by customs rules". When making the application for the BTI the trader can appoint such a representative to carry out his obligatory functions with customs. Art.5.2 further specifies that such representation can either be direct or indirect and allows the customs authorities to restrict such representation to customs agents carrying on their business in the territory of the Member State.

It is also a condition that BTI can only be invoked by the holder of the information only in respect of the tariff classification of specific goods when they are being imported into/exported from the EU. If a holder is established outside the territory of the Community it is not possible for him to invoke a BTI, given that it is binding on the customs as against the holder, unless he has appointed a representative who will act on his behalf. However, it must be clearly indicated from the very start (i.e. when completing the application) that a representative has been appointed by the holder.

Based on the statutory conditions attached to BTI it is the view of the Commission that it is implicit in the legislation that holders of BTI can only be established in one of the Member States of the European Union unless they appoint a representative who is established in the EU, otherwise the BTI cannot be used.

**Treatment accorded applications on behalf of traders established outside the EU**

**Findings during the monitoring visits:** The findings during this phase of the EBTI-3 monitoring very much reflect the findings of the earlier phase. There is no consistent approach adopted by Member States with regard to the matter of issuing BTI to traders established outside the EU.

A number of Member States said that although they had never faced the situation of an application submitted from a non-EU country they would not issue a BTI in those circumstances. At least seven of the thirteen administrations would not issue a BTI to a trader established outside the EU if that trader did not have a representative established somewhere in the EU. An eighth administration said it is reluctant to issue BTI in such circumstances and would only do so if the trader insisted as the legislation is weak on this point. Another would not even accept such an application if the trader does not have an established representative. The national legislation in another Member State requires that any economic operator established in a third country wishing to do business is required to appoint a representative established in the Member State, not only for customs purposes but also for VAT purposes. On the other hand, two of the thirteen Member States are of the opinion that there is no legal barrier to issuing BTI to traders established outside the EU.

From these findings it is clear that traders established outside the EU will receive BTI from a number of Member States but only on condition that those traders have appointed representatives established in the Member State to represent them in their dealings with the customs. In one case a Member State refused to issue a BTI to an applicant established in Asia precisely because he did not have a representative in the Member State working on his behalf.
Even though there is no outright proscription in EU legislation against issuing binding decisions to traders established outside the EU, those traders who apply can obtain BTI provided they conform to certain requirements, the most obvious being to have a representative established either in the Member State where the application has been submitted or where the decision is going to be used. In addition to that requirement, a number of administrations said that they would be extra vigilant when dealing with such applications and that they would look at a number of other criteria such as whether the trader is an exporter to the EU and the sensitivity of the goods for which the decision is requested.
Section 4 Processing BTI applications: checks, BTI shopping and
the role of laboratories in issuing BTI

(Sections 4, 7 and 8 of the Questionnaire)

References:

Legal provisions: Art. 6 of Reg. 2913/92
Guidelines: Sections 4, 5 and 7.2

Processing a BTI application

General background: Once a BTI application has been received and accepted by the administration, it should be uploaded in the EBTI-3 database immediately. (Please also see Sections 2 and 5 of this report). It must be stressed that official acceptance of an application does not mean that the administration has at its disposal all the information required to enable it to determine the tariff classification of the goods. Neither does it mean that the holder is entitled to receive a BTI. It means that the accepting administration will consider the application in the context of the legislation and decide whether or not a BTI can be issued.

The matter of the time constraints for issuing BTI needs to be explained at this point as it may appear to be contradictory when the different articles in the legislation are read. The first thing to note is that there is no strict time frame imposed by the legislation for issuing a BTI. The legislation demands that the BTI is notified to the applicant as soon as possible (Art. 7 of Reg. 2454/93 (Implementing Provisions)). However the provisions of the Customs Code (Reg. 2913/92) dealing with decisions relating to the application of customs rules in general also have to be applied to BTI. Art. 6.2 of Reg. 2913/92 provides that a decision shall be made within a period laid down in accordance with the existing provisions, starting on the date on which the request is received by the customs. In the case of BTI that period is 3 months and is provided for in Art. 7.1(a).

If after 3 months it has not been possible to issue a decision, the applicant should be notified with an explanation for the delay and given an indication of when he might expect to receive the BTI (Art. 6.2 of Reg. 2913/92). However, the 3 months period only starts running from the time the customs administration has at its disposal all the necessary information to enable it to determine the classification of the goods (Art. 6.4 of Reg. 2454/93).

Once uploaded in the database the task of processing the information in the application begins but before the actual drafting of a decision commences the customs administration undertakes various controls and checks relating to the status of the holder and the composition, characteristics, etc. of the goods.

Findings during the monitoring visits: As indicated in Section 2A, the time frame for uploading BTI applications in the EBTI-3 database following registration in the national registries of the 13 Member States ranges from anywhere between 24 hours to 1 month. The majority of the administrations however, manage to upload the applications within days of them being registered. Delays in uploading applications should be avoided at all cost as they create a potential situation in which BTI shopping can thrive.

The first actions to be taken following uploading in the database is a series of checks to ascertain the
entitlement of the applicant to a BTI decision. As already explained, a trader may have as many BTI decisions as he requires provided each one is for a specific type of goods. Therefore the first check is to search for other applications, both for the same goods and for the same holder. If he has introduced any other applications for identical goods in other Member States, the Member States concerned should get in contact with each other to decide which of them shall issue the decision.

The majority of the Member States visited said that regardless of where the applicant is established, the EBTI-3 database is always consulted. When looking for indications of BTI shopping different criteria are used than would be the case if checking that a national trader has not obtained a BTI or holds a BTI for identical goods. (*See the sub-section below concerning BTI-Shopping*)

One Member State admitted that the administration does not systematically consult the database at the start of the processing of the application. The reason given for this is that it is time consuming and besides, the database will be consulted just before the BTI is issued to ensure there is no other BTI for the same goods held by the same holder.

The monitoring team vehemently disagreed with that policy and pointed out that the method of proceeding described in fact encourages time wasting. If such checks are carried out at the start of the processing of an application much effort and time can be saved as the efforts involved in unnecessary processing and all it entails could be diverted to processing applications that have been correctly and honestly submitted. By waiting until the BTI is about to be issued there is a risk that time and valuable resources will have been wasted researching, and perhaps analysing, goods and then drafting a BTI just to find that another Member State has been doing the same things and has issued one. More seriously, the potential for two Member States to issue a BTI to the same holder for identical goods but under divergent tariff classifications is magnified.

This analysis was confirmed by the Member State when it admitted it had issued a BTI to a trader established in another EU State, when in fact his home administration had refused him a BTI because the goods were being discussed at the Customs Code Committee. The BTI was issued because the administration believed the goods were sufficiently similar to goods classified by the European Court of Justice. The monitoring team were of the opinion that this situation would not have occurred if a consultation had been carried out in the database.

**Initial checks to be undertaken:**

**General background:** Initially the first step in issuing a BTI is to confirm that the holder is legally entitled to be issued with a decision. Secondly, the administration has to determine if it has in its possession all the information required to allow the tariff classification of the goods to be determined.

There are a number of reasons why a designated holder may not be entitled to a BTI. If the holder referred to in the application already possesses a valid BTI for identical goods he is not entitled to another one and if he has submitted more than one application for identical goods he will not be entitled to receive a BTI for all applications. He is legally entitled to receive one BTI only for one type of goods and any other application(s) for identical goods will be rejected. Such checks can be carried out in the database and the search results will only be as good as the information already uploaded. Hence the requirement to upload all valid applications as soon as possible.

With regard to the information provided in the application and supplementary information attached to it, the official dealing with the case must examine the information available to see if it is sufficient to enable the tariff classification to be determined. (*Please also see Section 2 C dealing with the provision of supplementary information.*)
If the description of the goods is sufficient and/or a sample has been provided, the business of determining the tariff classification can proceed. Depending on the type of goods and the characteristics that have to be identified, it may be necessary to refer the matter to the laboratory working for the administration. *(Please also see sub-section below on the role of laboratories).*

This is especially true in the case of complex goods, such as electronics, foodstuffs, chemical products, etc., where very specific detailed information may well be the determining factor in the classification of the goods. Consequently, administrations very often have to request supplementary information from traders.

**Findings during the monitoring visits:** As already mentioned, there are a number of different aspects of the legislation that have to be confirmed before a BTI can be issued. Most important of those is the matter of eligibility, i.e. is the applicant entitled under the law to receive a BTI. As explained above, if a trader already possesses a valid BTI, he is not entitled to another for the same goods so long as the original is valid. However, if he is dissatisfied with the tariff classification he may be tempted to seek another BTI from another Member State in the hope that he will be given a more favourable classification.

---

**BTI shopping**

**General background:** BTI shopping is the term used to describe the practice of one trader trying to obtain more than one BTI for the same goods. A trader can have as many BTI as he requires on condition that each one refers to different goods. However, a very small minority will shop around Member States in the belief that they will receive a more favourable classification in some Member States than in others.

When requesting a BTI the applicant is also required to state whether or not he has submitted other applications or received BTI for identical or similar goods, and to state whether or not he is aware of BTI issued to other holders for identical or similar goods. If he already possesses a valid BTI for identical goods the Member State where he has applied will instruct him to use his existing BTI and will inform him that it will not be issuing one on the basis of his application.

It should be noted that although an applicant will know whether or not he has applied for more than one BTI or has received a BTI for identical goods (field 11 of BTI application form), he is asked only to declare if he is aware of other BTI for identical goods (Field 12 of the application form). If it should prove to be the case that there are other BTI for identical goods it cannot be automatically taken for granted that the applicant is deliberately misleading the administration.

If he has submitted more than one application for identical goods, the Member States to which he has applied will contact each other and between them decide which one will issue the BTI. Once that has been decided each of the Member States concerned will inform the applicant if it will or will not be issuing a BTI in response to his application.

However, regardless of the fact of whether the application is or is not rejected, it must be uploaded in the EBTI-3 database in order that other Member States can see it, should the designated holder try to obtain a BTI for identical goods elsewhere in the EU.

**Findings during the monitoring visits:** During the visits it came to light that there had been an attempt by a trader established in a Member State that had been visited during the first phase to obtain BTI from a number of administrations visited during the second phase. However, the
Member States concerned carried out the consultations in the database as recommended in the Guidelines and uncovered this attempt at BTI shopping.

Another administration had a similar experience outside the reference period (but a short time before the visit of the monitoring team) with a trader established in another Member State who applied to a number of administrations for a BTI.

Another one of the administrations visited had also uncovered a similar scheme by a different trader established in another Member State who used various names but always the same business address when he failed to obtain a BTI from his home customs administration.

When searching in the database for proof of BTI shopping, a number of Member States explained the criteria they use to determine whether or not the trader has indulged in this practice. Amongst the search criteria most commonly used are: the name of the holder, the commercial denomination, description of the goods, the tariff classification being proposed as well as the tariff classification that the administration considers to be correct, the customs I.D. of the trader, the sensitivity of the goods and the existing duty rate attached to the goods (an element identified in one Member State as an important incentive to indulge in BTI shopping in the hope of having a classification attracting a lower duty rate).

One Member State also takes account of whether the goods in the application are also under discussion in the Customs Code Committee and also whether the classification of the goods requires an expensive or elaborate analysis or interpretation of the Explanatory Notes.

As referred to above in the sub-section “Processing a BTI application” one Member State does not systematically consult the database to check for BTI shopping. However, when searching for evidence of BTI-shopping the same administration subscribed to the criteria listed in the preceding paragraph.

The role of laboratories

General background: As already explained above, very often it may be necessary for the customs to request samples of goods with a view to having them analysed. All administrations visited have laboratory facilities at their disposal. In some Member States the laboratory belongs to the customs administration but in others it is used at national level by all the different ministries and agencies. However, in Denmark, the laboratory is a private one but working under contract with the administration.

Generally the chemists dealing with customs matters are very familiar with the Combined Nomenclature and consequently they know what criteria to use in order to determine whether or not a product falls under a specific heading. While such expertise is desirable it still remains the responsibility of the customs administration to decide on the tariff classification.

Findings during the monitoring visits: The first observation is that with the exception of Luxembourg, all the other Member States visited during this phase of the monitoring exercise have a state or customs laboratory at their disposal, either one working exclusively for customs or one that works for the finance ministry or the government ministries in general. Luxembourg has limited laboratory facilities so that a limited range of tests or analyses can be carried out locally. However, for those tests and analyses unavailable in Luxembourg, the state has an agreement with the Belgian customs administration that such tests or analyses can be referred to the Belgian customs laboratory in Leuven. There is a specific national budget in place to pay for this arrangement and there are specific procedures to be followed if that budget is to be used.
Although Malta has its own national laboratory, it also has an agreement with the Italian customs administration to refer any samples requiring analysis that cannot be carried out in Malta to the Italian customs laboratory in Catania, Sicily. In such circumstances, samples are transferred to Catania by the fast ferry operating between both islands.

In Denmark, where there are two centres for receiving applications and issuing BTI, samples are sent from the centre in Aarhus and transferred once a week to the laboratory which is sited on the outskirts of Copenhagen. The transfer is carried out by the agricultural refunds team because they have the facilities to transport frozen samples. The laboratory is a private one that has a contract with the administration to perform any necessary tests or analyses. While the chemists may offer suggestions concerning the classification of goods, the final decision will always rest with the administration.

Two administrations share office accommodation with the customs laboratory, a fact that makes consultation with the chemists relatively easy as it is possible to have face-to-face contact with them.

In the remaining Member States the laboratory is situated in a different building, but always within reasonable distance from the customs and always within the same city.

On occasions when the state laboratory has been unable to perform analyses in accordance with very specific methods, the Cypriot administration has used the facilities of an external accredited laboratory in Cyprus.

In Lithuania samples are requested according to the nature of the goods. If it is felt by the customs that an analysis is required the onus falls on the applicant to deliver a sample to the customs laboratory. All analyses carried out by the customs laboratory are charged to the applicant and the laboratory has a price list for the main types of analyses.

With regard to the role that the laboratories play in the classification of goods, the chemists generally recommend specific classifications to the customs but the customs officials issuing BTI have the final say in the resulting classification in the decision. However, in the cases of chemical products, one administration said it accepts the opinion of the laboratory but in all other instances it makes the final decision on the tariff classification.

Another aspect of the work of laboratories is the cost. The legislation authorises administrations to pass on to the applicant any charges incurred by the state due to analyses or tests. In a number of the Member States visited, those charges are systematically charged to the applicant. One Member State said it tries to avoid requesting analyses from the state laboratory as the administration bears the cost. The applicant will be requested to provide an analysis which can either be done in a private laboratory or in the customs laboratory. If it is carried out in the customs laboratory the applicant will be asked to pay for it. A price list is publicly available and it has ministerial approval. The same administration also notifies holders that although they have an approved analysis it does not exclude the administration from occasionally sampling the goods during declaration for further spot check analysis.

In Malta the applicant will be charged for any analysis that reveals that the information provided by him is different from that in the laboratory’s results. Otherwise there will be no charge for the laboratory’s services. A number of Member States charge traders for analyses or tests carried out in the customs or state laboratories and price lists are publicly available in those countries. Consequently, traders are allowed in those circumstances to submit privately commissioned analyses from accredited laboratories but that does not mean those private analyses will not be scrutinised. As many of the officials working on BTI are holders of university degrees on the products they work with, they are sufficiently qualified to recognise dubious results and send them to the laboratory for an opinion from the chemists. Therefore, it is not in the interests of traders to influence the results of external analyses they commission as the results will be scrutinised by the customs officials drafting BTI.
Images and BTI applications

See Section 8
Section 5 The DDS and EBTI-3 databases, their maintenance and their role

(Sections 7, 8, 11, 18 and 19 of the Questionnaire)

References:

Legal provisions: Article 6.3 (A)(k) of Commission Regulation 2454/93
Guidelines: Sections 4, 5 and 7.3.3,

5A Databases

General background: When signing and dating an application for a BTI and in addition to accepting responsibility for the accuracy and completeness of the information contained in the application, the applicant is also consenting to that application and all additional information connected with it and the resulting BTI being stored on a database of the European Commission. That condition is set out in the "important note" displayed on the application form. It also indicates that any information that the applicant does not identify as being confidential shall also be made public.

Certain information on the application forms is indicated as being confidential and that information will not be made public. Applicants can also list specific information they consider to be confidential by indicating it in field 9 of the application form (Commercial denomination and additional information). Please also see Appendix 4: "General Information" where detailed information on the status of fields in the application form is explained.

Bearing in mind confidentiality requirements and personal data legislation in force in the EU, the Commission has developed 2 databases. The DDS (Data Dissemination System) database, in which all confidential and personal data elements are hidden, is open to public consultations. The EBTI-3 database is only available to the administrations in the Member States that issue BTI and at Commission level to a limited number of designated officials in certain Directorates General.

While the European Commission maintains the two databases, it is the responsibility of the Member States to ensure that they accurately and promptly upload data in EBTI-3. Any delays in doing so can have serious repercussions for Member States individually and the European Union as a whole. Furthermore, any evidence of unnecessary delays in maintaining information concerning BTI up to date in the EBTI-3 database that results in a loss of EU traditional own resources could result in recovery action being taken by the Commission and eventually have financial consequences for the negligent Member State concerned. Therefore the key events in a BTI decision's life must always be uploaded in the database as soon as possible to avoid any problems later on.

Findings during the monitoring visits: Similar to the finding of the monitoring teams during the first phase, the overall performance of the databases was judged by the administrations to be good but the main criticism remained the slowness of the system while making searches in it.

Other observations revealed by administrations would appear to indicate that the system is slowest in the afternoon. One Member State did admit that it believed the problem arose from their internet connection as the officials had remarked on an improvement shortly before the visit.

While all administrations that had encountered problems or difficulties said they had reported them to
their national helpdesks, many of those national helpdesks had not had any direct contact with the EBTI-3 helpdesk. However, there was general satisfaction with the level of resolution of such problems as reported to national helpdesks.

The monitoring team expressed concern in one Member State about the entry of dates in the database. Examples of incorrect dates relating to the reception on applications and conflicts between the issuing date and the start date of validity were discussed. The Member State was reminded that the dates shown in the database are important, especially the start date of validity and the date of issue. The date of issue can be the same or earlier than the start date of validity but the BTI cannot be valid before it is issued. However, this instance was an exception as the problem was not encountered in any of the 12 other Member States.

**The DDS database**

**General background:** The public database entered into operation on 1 July 2003 and provides the researcher with a limited selection of data elements extracted from BTI that have been issued. Only valid BTI are retained in the public database and once they become invalid, for whatever reason, they are removed from the public domain. The information shown in the public database includes the BTI decision reference number and issuing Member State, the start and end dates of validity, the description of the goods and any images attached to the BTI (provided such images are not confidential), the date of issue, the justification for the classification and keywords. All those elements can be used as search criteria when consulting the database. That data can assist traders in determining the tariff classification of their own goods, but the decisions cannot be invoked by anyone other than the person to whom they are addressed.

Details concerning the applicant, holder, and confidential elements connected to the goods are not displayed. Applicants have the opportunity to indicate any commercial elements they wish to have treated as confidential by the customs administration. However, sometimes applicants do not make such a request, whether by design or omission. In such a situation it is recommended in the Administrative Guidelines that any identifying markings, logos etc. should be hidden and if that is not possible the images and information can be made confidential. Similarly, any other information that could lead to the brand identification of the goods should be concealed (e.g. packaging/bottles, etc. or illustrations or slogans that are well known to be associated with a specific brand).

**Findings during the monitoring visits:** As mentioned already, the DDS database only stores non-confidential information and only valid BTI are shown. All BTI that cease to be valid, for whatever reason, no longer appear in the DDS database from the end date of their validity.

Most of the Member States visited have given access to the DDS to all officials working at points of import and export. If additional information is required it may be requested from headquarters. Some administration have given a limited number of officials in regional offices or at points of import/export access to EBTI-3 but that is not an approach generally followed by the Member States.

**The EBTI-3 database**

**General background:** The EBTI-3 database differs from the DDS version in that it contains all BTI applications, all BTI since they were first issued (both valid and invalid) as well as all the elements not available in the DDS database. The importance of the role of the EBTI-3 database in the issuing and control of BTI cannot be over emphasised.
There have been 2 earlier versions of the database but the current EBTI-3 came into operation on 19 April 2004 and since that date all applications have been stored on it. Besides the actual elements available from the applications and BTI, additional information of an administrative nature is also available thus making it possible to follow the whole life cycle of any application and BTI. For example, it is possible to learn when an application was actually uploaded in the database or the date when a BTI has ceased to be valid for whatever reason and if terminated due to a specific reason, that reason is also indicated. All the elements available in the EBTI-3 database can be used by the administrations to reduce the possibilities for errors and any breach of the conditions for issuing a BTI. Those elements however are not of specific interest to the general public and would not in any way add to their understanding of the essential element of a BTI, namely the tariff classification applicable to specific goods and the reasons for it.

**Findings during the monitoring visits:** During the visits the monitoring teams, bearing in mind the importance of the EBTI-3 database and its function in the issuing of BTI, reminded the administrations of the importance of promptly introducing applications, accurate information and BTI as soon as they are issued into the database. Delays in introducing vital information could have negative consequences for all administrations. The monitoring teams also emphasised the necessity for carrying out targeted searches in the EBTI-3 database with a view to minimising as much as possible the chances of issuing divergent decisions and eliminating BTI shopping.

---

**Access to EBTI-3 database**

**General background:** All officials in the Member States who process applications and issue BTI have access, either direct or indirect, to the EBTI-3 database and all have received training, either from the Commission or in their national administration, in how to use it. In some Member States a limited number of officials at points of import/export also have access to it (consultation rights) but the general trend in most Member States is to limit access to those officials who really need it for their everyday work. Generally those officials are drafting and issuing BTI. In most Member States customs officers at points of import/export do not have any direct access to EBTI-3 but can consult the DDS. The main reason for being so reluctant to broaden access in Member States appears to be the question of security and confidentiality. However, the Netherlands (visited during the first phase) is a clear exception to that policy where the administration granted over 400 customs officials access to the EBTI-3 database.

In cases where a customs officer has any doubts about the validity of a BTI when a trader is declaring his goods, a quick search in the DDS will confirm whether or not the BTI is still valid. However, if more information, particularly of a confidential nature (e.g. the name of the holder) is required, the officer has two options open to him: either he asks the colleague(s) with access to EBTI-3 (if there are any) to provide him with the details he requires or he must contact the central office where the BTI are issued. In either case he has the opportunity to quickly confirm the validity of any BTI presented to him.

In addition, a select number of officials in certain directorates general of the Commission have access to EBTI-3 on the grounds that it is beneficial, and in certain cases essential, for efficiently carrying out their duties. The directorates-general concerned are either customs or trade oriented (e.g. DGs TAXUD, TRADE and AGRI) or are involved in risk analysis and financial control (DG BUDG and OLAF). Commission officials only have consultation rights to the system.

**Findings during the monitoring visits:** As explained already the EBTI-3 database contains all BTI that have been issued, including those that are no longer valid, as well as all applications. The customs administration in all Member States, and in particular the officials drafting and issuing BTI,
have access to the EBTI-3 database and depending on the tasks of the individual officials they have different rights within the system.

Designated persons may have either consultation rights (allowing them to only conduct searches in the database) or production rights to allow the creation, and issuing of new BTI. However, the officials drafting and issuing BTI must at least have production rights allowing them to carry out all tasks necessary in the production and issuing of BTI decisions. In most cases they will have both. As an example, at the time of the visit, Finland had given access to the EBTI-3 database to approximately 100 officials, access being granted on the basis of the work-needs of the officials concerned.

The national administrations are free to decide who should have access to the EBTI-3 database with no limits being placed by the Commission on the numbers of officials granted access.

**Problems encountered by officials with EBTI-3 database:** Given the importance of the EBTI-3 database to the good functioning of the system for issuing binding decisions, it is of the utmost importance that any problems encountered should be reported immediately to the helpdesk. If problems are left unattended to they will only increase the probability of errors occurring.

**Findings during the monitoring visits:** Overall, no major problems had been experienced by the national administration at the time of the visits and in fact 5 administrations stated they had not experienced any difficulties at all. The most common observation was that accessing the EBTI-3 database was often a very slow process. That was reported by five administrations but it was noted by some that the speed issues had improved by the time of the visits. Two administrations noted that the access speed was slowest in the afternoon. Comments were also made by a number of administrations on the contents of the Thesaurus and the fact that some terms were incorrect in specific languages.

The monitoring teams emphasised the necessity of contacting the central helpdesk if the national helpdesks cannot resolve problems with the system. Similarly in instances of incorrect terms in the Thesaurus, administrations should contact the Commission indicating the erroneous term and giving the correct one, after which it shall be corrected.

5B The role of the EBTI-3 database in issuing BTI

**Prior to issuing a BTI**

**General background:** While the public database is important, especially for traders seeking information on the possible classification of their goods or when seeking a BTI, the data displayed in the EBTI-3 database can determine whether a BTI is issued or not. Given the additional confidential data stored in the EBTI-3 database, e.g. the name and address of the holder, commercial information, etc. the customs administrations have important additional information at their disposal that can be crucial to deciding whether or not to issue BTI. For example, should it happen that a search in the database reveals that a trader already has a valid BTI for specific goods, any additional BTI applications he would submit for identical goods, anywhere in the EU, would be rejected and he would be told to use his existing BTI.

Once it is confirmed that a BTI application, as submitted, is acceptable (i.e. all mandatory fields have been completed) that application is uploaded in the EBTI-3 database (applications are not uploaded in the public DDS database). At this point in processing the application the data available in EBTI-3 becomes crucial, not only with regard to whether a BTI will be issued but also with regard to the
classification of the goods. While responsibility for the content of the application rests with the applicant, the responsibility for the content of the database rests with the Member States, as it is vital that all information uploaded is accurate and published with minimum delay. Any failure to promptly upload data or any mistakes in that data can have consequences for the correct functioning of the BTI system as such, but could also lead to the non-uniform application of the legislation.

The importance of making the details of applications available to administrations in other Member States must not be minimised. From the information provided it is possible to verify if the applicant is legally entitled to be issued with a BTI; that he has not applied for a BTI in another Member State, and whether other Member States have received applications for similar or identical goods and if so, whether BTI has been issued and under what tariff classification. It is at this point that divergent opinions on the tariff classification can emerge.

It is also possible to identify those applications that have never resulted in a BTI. It is important that every application's life-cycle is clearly mapped in the database and to facilitate understanding of each application’s history the Member States have the possibility of inserting additional information in a specific "for official use" field provided for that purpose on the application. That information may include the reasons for delays in issuing BTI, or the reasons for not issuing BTI at all. Unfortunately some administrations do not avail of this facility but others very punctiliously provide such information in that field.

The "official use" field affords administrations some protection against accusations of negligence or failure to honour their obligations by not issuing a BTI. This was also one of the negative points raised by the Court of Auditors of the EU in their special report No. 2/2008, as it appeared that some Member States had many unfulfilled applications and no explanation for why this was so.

**Findings during the monitoring visits:** As explained earlier, it is vitally important that correct and comprehensive searches are made in the EBTI-3 database before a BTI decision is issued to the holder. During the visits to the 13 Member States, the monitoring teams discussed the search methods used in the various administrations with officials.

Of the thirteen administrations visited, nine ranked the tariff classification of the goods as their no. 1 search criterion. Of the other four, three ranked the holder’s name as their top search criterion and one used the applicant’s name. Other criteria (e.g. keywords, images, start and end dates of validity, etc.) are also used with different rankings in the various Member States. These findings closely mirror the findings of the monitoring teams during the first phase of the monitoring exercise. Of the fourteen administrations visited during that phase, nine Member States also used the tariff classification as their no.1 search criterion.

**Checks before issuing BTI**

**General background:** There are a number of checks that should be carried out on applications and existing BTI before a new BTI is drafted. The objective of such checks is to ensure correct entitlement to a BTI and avoid BTI shopping but also to ensure uniform classification of goods.

The applicant indicates who the holder of the future BTI shall be. However, administrations are required to check that the future holder does not already have a BTI for identical goods and that he has not submitted other applications for identical goods in other Member States. This is in fact the practice known as "BTI shopping" (Please see explanation in Section 4)

The administration is legally obliged not to issue a divergent binding tariff information decision and the primary way to avoid doing so is to consult the database to determine whether identical goods or
goods with very similar characteristics have been classified by other Member States. If a decision exists for identical or similar goods, other administrations are forbidden to issue a BTI decision that is in conflict with the existing one.

That does not mean that the classification in the BTI cannot be contested. In cases where a Member State either finds divergent BTI or does not agree with the classification in a BTI, the administrations of the Member States concerned consult each other in an attempt to resolve the problem. If such consultations fail then the problem is submitted to the Commission for discussion at the Customs Code Committee, BTI section.

**Checks during the validity period of BTI**

**General background:** During its life time a BTI may be used as often as the trader needs it. There is no limit to the number of times it may be used when declaring goods on two simple conditions: i.e. the goods described in the BTI are identical to the goods being declared to customs and it is being used by the holder. Customs officers who have doubts about the validity of the BTI or the goods described therein may require a search to be made in the database.

As explained above, such searches may be conducted in situ if the official or one of his colleagues has access to EBTI-3. Otherwise contact must be made with the issuing authority in the importing Member State and searches can be made there and the results given to the customs official at the point of entry.

A third reason for searching through the valid BTI is related to the obligation on Member States customs administrations to apply customs legislation in a uniform manner. Therefore, when an administration is requested to issue a BTI it is a fundamental obligation, both generally in terms of the customs union and specifically with regard to the legislation governing binding decisions, that no divergence should occur in the treatment accorded to specific goods in the different Member States. The most efficient way of ensuring such uniformity is by systematically consulting the database.

**Checks after BTI decisions cease to be valid.**

**General background:** The idea of searching for BTI that are no longer valid may not seem to be very productive or even relevant to issuing new binding decisions but in fact the past can very much influence the future when issuing BTI. Even after a BTI has expired, either naturally after 6 years or due to specific circumstances it can have an impact on the issuing of new binding decisions.

For example in some cases when a BTI has expired after 6 years the trader will request a new one and in such cases, provided there has been no change in the composition, nature or character of the goods, the tariff classification should generally remain the same. Therefore despite being no longer valid, it would have a bearing on the new BTI.

Another example is when a BTI for specific goods has expired or been revoked and an application for identical goods is received on behalf of a different trader. The classification in the expired BTI and the justifications for it could influence the resulting new BTI decision.

As all BTI include the justification for the classification set out therein, such information can be of assistance to administrations that are researching where a specific product is to be classified. In such cases, images of the goods concerned can be a compelling factor when deciding on the classification.

**Findings during the monitoring visits:** During the visits, the monitoring teams were told by a number of administrations that although they systematically conduct searches in the database they only look at the BTI issued by certain Member States, rather than looking for any BTI, regardless of
nationality, that have specific criteria. This method is very much influenced by linguistic knowledge and frequently an administration will only search for BTI issued in its own national language and in English, French and/or German also. As has been mentioned one Member State admits that it does not systematically search in the database and one of the main excuses put forward is a lack of linguistic knowledge by officials.

Making a search in the database exclusively on the basis of one or two languages is not an advisable way of proceeding. Furthermore, a vast knowledge of languages is not necessary especially given the fact that BTI are indexed using keywords, and there is a built-in Thesaurus in EBTI-3. (See Section 8: Images and keywords)
Section 6  Rejection of BTI applications

(Sec 6 of the Questionnaire)

References:

Legal provisions: Art. 11 (1) of Regulation 2913/92
Guidelines: Section 4

Reasons for rejecting BTI applications

General background: This topic has been briefly touched upon in Section 4 dealing with the processing of BTI applications

The legal basis for rejecting BTI applications is set out in the Customs Code. The most obvious reasons for rejecting an application before it is registered are that the incorrect form has been used or it is not in the official language of the member State. However, it is also possible that it may be incomplete (i.e. some mandatory fields on the application have not been completed). The mandatory information that must be submitted in a BTI application is set out in the legislation (Arts. 6.3 (A) (a) to (k) inclusive of Reg.2454/93) and by not providing all of it the applicant has not made a valid application and consequently the request will not be uploaded in the EBTI-3 database.

All other reasons for rejecting a correctly completed BTI application concern post registration circumstances, meaning that the application has been formally received and accepted but the quality of the information provided or the veracity of that information was found to be wanting after it has been uploaded in the database. Examples of such reasons include a lack of entitlement to a BTI, lack of information, failure to provide requested information or simply the application is not connected with an envisaged import/export transaction. However, regardless of the reasons for rejecting a BTI application, the applicant must be informed in writing and he must also be told of his right to appeal such a decision (Art.6.3 of Reg.2913/92).

With regard to applications that are not connected with envisaged import/export transactions, the legislation is clear on the purposes for which BTI is issued. Article 12.7 of the Customs Code Regulation (Reg. No. 2913/92) states that such information is issued solely for the purposes of determining import/export duties, calculating export refunds and for using import or export or advance-fixing certificates, etc. However, there have been instances where traders have sought BTI for tax purposes, especially for determining the rate of VAT attached to specific goods. Such purposes are not foreseen by the legislation and Member States administrations will not issue binding decisions for such purposes.

Findings during the monitoring visits: As pointed out in the first global report on the EBTI monitoring, the number of BTI applications that are rejected annually is miniscule when compared to the number of decisions issued. That situation became even more obvious during the second phase as many of the administration visited are small and have fewer applications than those visited during 2007-2008. In fact during this phase 3 Member States, Malta, Luxembourg and Estonia reported that they had not rejected any applications during the reference period (the years 2007 and 2008), although Estonia had cause to reject a number of applications after the reference period. Maltese officials said they had no reason to reject BTI applications in view of the fact that they ensure all applications are correctly completed when handed in to the administration.

The main reasons given for rejecting a BTI application before acceptance are that mandatory fields
have not been completed or the application is not linked to an import/export transaction envisaged. Following acceptance by the administrations the main reason for rejecting an application is failure on the part of the applicant to provide additional information requested by the customs. Both those requirements are statutory and consequently failure to comply with them gives the administration no choice but to reject the application as a vital element to understanding the product is missing.

Two Member States specifically do not make a decision to reject applications but fully place the onus on the shoulders of the applicant. One of the two informs the applicant that if the required information is not furnished it will be taken that the applicant is withdrawing his application, while the other informs the applicant that without the requested information the administration cannot proceed to issue a BTI. In both Member States the applicants are given deadlines which may be extended if necessary. If the information or sample is not forthcoming it is assumed that the application is being withdrawn and furthermore, by making that decision, the applicant has ruled out any possibility of appealing against the non-issuing of the BTI. A third Member State takes a similar stand on the non-submission of requested information, the only difference being that the administration makes the decision once a reminder is ignored by the applicant. In such cases applicants are informed in writing by the administration that they will have to submit new applications if they decide later that they do, in fact, want BTI for the goods.

The second most frequent reason for not issuing a BTI after the application has been accepted is that the applicant has informed the customs administration that he is withdrawing his application. As explained in the preceding paragraph, some administrations inform applicants that if they fail to provide requested additional information the administration will understand it to mean that the applicant is withdrawing his application. However, other traders may formally withdraw their applications for business reasons, e.g. they no longer intend to import the product. Whatever the reason, the monitoring teams advised administrations that in such cases the applicant should be asked to confirm his wish to withdraw his application in writing if he has not done so already.

One Member State admitted that it would reject an application from an individual who was not intending to trade the goods being imported, or when a “one-off” transaction is intended. It also admitted to occasionally suggesting to traders that they seek BTI from another Member State. The monitoring team informed that administration that there is no legal basis to support either of those reasons as the Customs Code clearly states that any person has the right to request information concerning the application of customs legislation provided he/she conforms to the requirements laid down in the said legislation.

Another administration said that it would refuse an application if the goods for which it was being applied for were under discussion at the Customs Code Committee but the monitoring team pointed out that in fact there is no legal basis for rejecting an application on those grounds. The application in such a case should be accepted if it is correctly completed, uploaded in the database and the applicant notified that it has been accepted but that the goods are currently under discussion and a BTI decision will be issued as soon as the Committee has taken a decision.

There was also one instance reported by a Member State of a trader presenting a BTI in a VAT case. Following a post-clearance control a claim for VAT was made against the importer who subsequently presented a BTI that had been issued in another Member State and which classified the goods at a more favourable tariff heading. However, the BTI was not accepted as it had actually been issued to another holder and consequently the trader was not entitled to use it.

### Insufficient or vague descriptions.

**General background:** Another reason for rejecting an application is that the description of the goods provided by the applicant is too vague or the application is for more than one type of goods.
Descriptions such as “furniture”, “biscuits”, “see catalogue”, etc. are not satisfactory. Article 6.3 (A) (d) of Reg. 2454/93 clearly states that the application shall include “a detailed description of the goods permitting their identification and the determination of their classification...” In the past many administrations tried to interpret such descriptions, especially when the application was accompanied by a catalogue.

Another variation on this method is to submit an application for more than one type of goods. This is also contrary to the legislation. Article 6.2 of Reg. 2454/93 states the BTI “shall only refer to one type of goods.” The Court of Justice of the EU in its judgement in C-199/09 states that a BTI application “......may relate to different goods provided these all belong to one and the same type of goods. Only goods which have similar characteristics and whose distinguishing features are completely irrelevant for the purposes of their tariff classification may be regarded as belonging to one type of goods for the purposes of that provision.”

However, by providing such vague descriptions the applicant is not fulfilling his obligations nor is he taking responsibility for his actions and such an attitude is unacceptable. Furthermore the trader attempts to shift the responsibility on to the shoulders of the officials who are not legally authorised to decide on which goods a trader would like to have a BTI for. Therefore, the Commission advises Member States that such descriptions are grounds for rejecting an application. In such instances the view of the Commission is that the administration should contact the applicant, refer him to the legislative requirements and give him the opportunity to enter a correct request. If he fails to do so he will not receive a BTI.

However, if, despite the bad description, all mandatory fields have been completed, the application should be uploaded in the EBTI-3 database.

**Findings during the monitoring visits:** When this matter was raised by the monitoring teams with the Member States many of them had not encountered the problem. However, those that had been confronted with unsatisfactory descriptions have not accepted them and have requested the applicants to provide detailed descriptions of the goods for which they are requesting BTI.

---

**Proposal to introduce status codes for applications**

**General background:** At the time of the monitoring, a proposal, initially tabled by Poland, to introduce status codes for BTI applications had already been under consideration in the Customs Code Committee. The idea behind this proposal is to introduce numerical codes, each with a specific meaning, so that track can be kept of the major events in the life of a BTI application as it makes its journey through the administrative processes before the resulting BTI is issued.

Currently only a few Member States systematically use the “For official use” box at the bottom of the application form to indicate actions they take (e.g. submitting samples to the laboratory or requesting additional information) during the processing and drafting of the BTI. Consequently when delays occur in the issuing of the BTI decision, there is no “public” record of why it has occurred. The administration will have records of what happened, but other administrations and the Commission will have no idea of the reasons why there was a delay.

An example of a Member State that systematically uses the official use box is the Czech Republic. The Czech officials record all actions in the official use box, including the dates when the specified actions take place and the dates when the information or correspondence is received from the applicant. They record all correspondence with the applicant (both outgoing and incoming letters), the reception of samples, the dispatch of samples to the laboratory and the return of the laboratory’s analysis. However, as there is no coding system in existence at present, it is necessary to translate any
observations in the official use box if they are to be understood by non-Czech speakers. The aim of the proposal is to introduce a series of numerical codes, each representing a specific action, and consequently intelligible to all administration without translation being necessary.

**Findings during the monitoring visits:** The monitoring teams took the opportunity of the visits to the administrations to ask officials who are directly dealing with applications and issuing BTI about their views on this proposal. Overall, there is support for the introduction of status codes for applications. The benefit for all is that such information as is necessary to understanding the passage of the application through the issuing process is available to all and without any translations, the codes will clearly indicate what has happened and when the actions were taken.

While it may appear unnecessary to have a complete picture of what has occurred to an application, it serves a number of purposes to record what actions the administration has taken. Firstly, if an applicant submits an application in a Member State other than his own, the receiving administration can at a glance confirm whether he has ever submitted a similar application and whether a BTI was issued on the basis of that application, or whether the application was rejected and the reasons for its rejection. That ties in with efforts to reduce BTI shopping and the misuse of BTI.

Secondly if it should happen that the administration finds itself being accused of not acting promptly it can prove what it has done and when it did it. Furthermore, such information facilitates transparency which will become more relevant to applicants in the future with the introduction of electronic applications and BTI.

With the exception of one Member State there is strong support for this initiative from the remaining 12 administrations visited. The reason the dissenting Member State does not support such status codes is that it feels that it would be too time consuming to insert the codes in a time of staff shortages.
Section 7 Drafting and issuing BTI and accelerated procedures; usage of BTI.

(Sections 9, 10, 11 and 15 of the Questionnaire)

References:

Legal provisions: Art. 7 of Regulation 2454/93
Guidelines: Section 7

Drafting and Issuing BTI

General background: The reason for the existence of binding tariff information and the benefits it can bestow on the holders have been sufficiently explained already and therefore there is no reason to further elaborate on that aspect of the BTI.

However, the actual issuing of such binding decisions and the methods used to do so merit some explanation. Therefore, this Section of the report will concentrate on the actual drafting and issuing of such decisions and their subsequent usage.

As explained in Section 4 there is no specific time frame in which to issue a BTI but there are a number of other legal considerations that have to be taken into account. The primary obligation is that unnecessary delays are avoided and where they are unavoidable, the applicant must be informed of the reasons and given an indication of when he may expect to receive his BTI decision.

There are a number of reasons why a delay should occur in the issuing of a decision. An obvious example is when the goods are under discussion in the Customs Code Committee and a decision on their classification is pending. In such cases the Member States are obliged not to issue any decisions that pre-empt a decision of the Committee or that diverge from existing BTI decisions until the Committee has delivered its decision and unfortunately it sometimes takes longer than three months for the classification matter to be resolved.

Reasons for submitting classification problems to the Customs Code Committee: It has to be pointed out that not all problems concerning BTI that are brought before the Customs Code Committee revolve around divergent BTI. New products in particular present specials problems. Given the constant developments in the electronic and IT sectors the customs administrations are very often presented with products that have more than one function and a number of characteristics that can influence the classification. In addition a Member State in the course of researching products before issuing a BTI may come across an existing decision which it believes is incorrect. A divergence has not occurred in that situation but if the two administrations cannot resolve the matter, it also has to be discussed at the Committee. However, regardless of the reasons, such cases impact considerably on the issuing of BTI, as either the administration does not know where the goods fall in the tariff or there is a disagreement between Member States concerning the classification already given in an existing BTI.

Findings during the monitoring visits: As was revealed during the first phase of the monitoring exercise, no Member State can ever issue all BTI within the 3 month time frame referred to in the legislation. There are various reasons for such delays, including discussions at the Customs
Code Committee, or delays in laboratory analyses. Such delays can occur unexpectedly and are beyond the control of the administration. While every effort is made in the Customs Code Committee to resolve divergent opinions concerning the classification of goods, it may take far longer for the committee to have all the elements it considers necessary to assist it in making a decision. As already explained such discussions very often revolve around new products on the market that often happen to also be high value products (electronic and informatics products in particular).

With regard to the actual drafting of the BTI decisions, there are different approaches adopted by the Member States. At the time of the visits none of the administrations were using a checklist to assist them drafting the product descriptions.

One administration however performs quality control through the use of a specific form that contains all the available information on the goods being classified. Although not a formal checklist, it functions very much in a fashion similar to a traditional checklist. The information it contains includes a record of discussions with the laboratory, a record of other relevant BTI found in the database, any documentation lending support for the classification in the BTI, etc. BTI drafted in that administration are also discussed with the head of the Nomenclature Sector before being issued. A number of other administrations also conduct similar discussions in order to ensure that the description of the goods is such as to enable identification of the goods.

However, Cyprus has adopted an administrative policy whereby the case handler prepares a full report on the passage of the application through the administration and the drafting of the BTI prior to the BTI decision being issued. The monitoring team commends this policy as it acts both as a form of quality control but also as a kind of checklist. Most Member States explained that goods descriptions in BTI are formulated by combining the description in the application, the terminology in the Combined Nomenclature and if necessary, alluding to any other elements that would help identify the goods. No one element would provide a viable description on its own so consequently descriptions are a combination of all three elements. The experience of the case handlers also plays a part in goods descriptions as many of those officials are experts on the goods they classify.

Another point of note when drafting the description of the goods in a BTI is the quality of the description provided by the applicant. During both phases of the monitoring exercise, a number of administrations visited had said they had received applications accompanied by a catalogue with a description “see catalogue”. One administration said it would only accept such applications if the catalogue in question referred to a specific product but even then it would request confirmation from the applicant.

**Accelerated or "fast-track" procedure for issuing BTI**

**General background:** It is a fact that, generally, the goods for which BTI decisions are requested are usually goods that are not easily identifiable in the Combined Nomenclature and could be justifiably classified in more than one heading. However, traders require legal certainty with regard to how customs will treat those goods and consequently they apply for BTI. Determining the tariff classification of such goods requires that the goods are thoroughly examined and researched, a process that inevitably takes time and which consequently means that the trader must wait some time for the decision to be issued.

While delays in issuing BTI can be frustrating for applicants it is inevitable that occasionally delays will occur for whatever reason. However, the experience of the one Member State that tried to facilitate urgent cases by introducing an “accelerated procedure” highlights the difficulties such a system gives rise to.
The United Kingdom introduced an accelerated procedure to speed up issuing BTI on payment of a fee. The fee was paid, not for issuing the BTI but for the application being given priority over other applications that were older and already in the pipeline. The trader was promised that his application would get priority treatment before other, older, applications and he would have his BTI within 3 days. In return for receiving such priority treatment the trader paid a specific fee on the condition that it would be returned to him if for any reason the administration failed to issue the BTI within the specified time. However, despite failing to issue the BTI within 3 days and having to return the fee, the application still received priority treatment over the older applications. As the procedure failed to realise its full potential, the applications still benefited from a fast-track passage through the system and many of the fees paid had to be returned, the United Kingdom decided to abandon the scheme.

No other Member State has instituted such a procedure. However, the Netherlands, at the time it was visited, provided an occasional service at no extra charge to the trader, whereby priority will be given to applications for certain types of goods (e.g. fashion goods). This is very rarely availed of by traders. At the time of the visit, it was estimated by the customs to amount to less than 1% of applications received per annum. Furthermore, the applications concerned are treated in the same way as any other application for BTI.

**Findings during the monitoring visits:** None of the Member States visited during the second phase of the monitoring exercise has introduced a “fast-track” procedure.

---

**Confidentiality**

**General background:** When completing a BTI application form, it is indicated to the applicant that two data elements are confidential, i.e. the name of the holder and the commercial denomination of the goods. However, the applicant is asked to specify which elements connected to the goods that he would also like treated as confidential. Unfortunately some applicants overlook this and very often they include what can be considered as confidential information in the field “description of the goods” which is not a confidential field. In cases where a sample is submitted or when the product has a specific manufacturer’s trade name, trademark or catalogue number or would be recognisable to the public without additional description, the Commission has always recommended that such data be treated as confidential, even should the applicant not request it to be treated so. The confidentiality rules extend also to images made and attached by the administration. In all cases where an image is made every effort to blank out commercially identifiable marks or characteristics should be made if the image is intended for the public domain. If it is not possible to successfully hide such identification marks, names, etc., the image should be attached to the BTI in the area reserved for confidential information. Section 7.3.3 of the Administrative Guidelines covers the matter of confidentiality in more detail. (Please see Appendix 8 to this Report.)

**Findings during the monitoring visits:** The monitoring teams found that there are two different approaches to confidentiality being taken by Member States. On the one hand a number of administrations will take the initiative and treat all commercial information or images that could identify specific goods as confidential, regardless of what the applicant has requested while others only treat as confidential those elements identified by the applicant as being of such nature. A number of Member States had had the experience of receiving applications on which the applicant had declared that everything in the application was confidential or declaring that generic names for goods (e.g. “furniture”, “ceramic tiles”, etc.) are confidential. Neither situations are acceptable but the administrations have developed ways to avoid problems. The solution to these problems is to issue BTI with very brief generic descriptions of the goods in the field “description of the goods” on the BTI form.
Work in Progress Environment

**General background:** Having completed all the checks necessary to ensure the bona fides of the application, the administration can then turn its attention to the drafting and issuing of the BTI.

In the EBTI-3 system, a specific work in progress environment has been developed wherein the officials dealing with a specific case can prepare the draft of the final BTI in preparation for issue. This environment allows the drafting to be carried out in a piecemeal manner, rather than obliging officials to complete a draft in one go. This has a number of advantages for officials as the system allows them to introduce the standard data (holder's name, address, information on the application, issuing customs authority, etc.) from the application directly into the draft BTI without having to retype it. The drafting of the goods description, the tariff classification and the justification for it have to be drafted on a case by case basis and can only be commenced once all the relevant information is available, including the results of any laboratory analysis. So while awaiting those results, the draft BTI with the standard information can be stored in the work in progress environment.

The description of the goods in every case has to be individually drafted and must be sufficiently clear to enable the customs officials to identify the goods being covered by the BTI. The quality of the description is very important and it is necessary to strike a balance between being too detailed and not being detailed enough. Whereas the information concerning the holder, his address, relevant dates are given facts, the description of the goods is very much the creation of the author drafting the BTI. Therefore it can take some time before a satisfactory description has been drafted.

Each official has his/her own work in progress environment within the EBTI-3 system. Only the individuals who have the correct username and login can access it and this invariably means that should an official fall ill or be unexpectedly absent his/her colleagues cannot automatically access the drafts in that environment. However, all Member States have in place contingency plans whereby in such situations the contents of an absent official's work environment can be accessed if necessary by a supervisor or a select few colleagues and its contents reassigned to others. However, this is only done if the official is absent for a prolonged period.

(Germany, the United Kingdom and Poland, having their own national systems working in parallel with EBTI-3, do not use the work in progress environment in EBTI-3 but deal with drafting in accordance with national practices in their national systems. All three administrations were visited during the first phase of the monitoring exercise.)

Some administrations prefer to draft the description of the goods outside of the work in progress environment and when it is completed they copy and paste it into the work in progress environment. The length of time that drafts remain in the work in progress environment varies according to the method used to draft descriptions. In some Member States all drafting is done in that environment and consequently the drafts remain there for a longer time than they otherwise would if drafted outside of the BTI system.

**Findings during the monitoring visits:** There are a number of different aspects associated with the work in progress environment which were addressed during the monitoring visits. The most important of those is how unforeseen prolonged absences are managed in the context of work in progress. Given that an official can fall ill or for some other reason cannot be present at work, his/her personal “work in progress environment” will not be available to colleagues to finalise, or at least progress his/her files. In such circumstances the administrations have contingency plans in place so that partially drafted BTI do not get stuck in the administrative system.

The general solution to this problem is that the head of the Unit or Division with responsibility for the BTI team re-assigns the contents of the absent official’s “work in progress environment” to another
official in the BTI team after a reasonable time. In some Member States there is a set time-frame for reassigning the contents of an absent official’s “work in progress environment”. In one administration it will occur if the absence is longer than 1 week while in some others it will happen after 2 to 3 weeks. However in the majority of administrations visited the decision is taken on a case by case basis.

In all 13 Member States provisions are made for annual holidays. In some Member States the holidays are staggered, i.e. no more than one or two officials are absent at the same time. Furthermore, in some administrations it is obligatory for each official to ensure that no pending BTI in the “work in progress environment” will exceed the 3 month period during his/her absence on holiday. Given the small numbers of officials working on BTI in each Member State it is quite difficult to ensure continuity but regardless of what method is in place, all the administrations have systems to ensure continuity and that unnecessary delays due to holidays or prolonged periods of absence are avoided.

The administrative organisation in Finland is structured in such a way that each BTI official has two official replacement colleagues who can stand in if the BTI official should become unavailable. However, this is an exception as most administrations do not have the numbers of personnel to make such arrangements.

Various factors come into play when calculating the timeframe an individual BTI would remain in the “work in progress environment”. The smaller Member States estimated the average time would be 1 to 2 weeks but given that they do not issue large numbers of BTI it is not surprising that more time can be devoted to individual decisions without putting undue strain on the other tasks of the administrations. The larger administrations gave a wider range of estimates, from 3 weeks up to 4 months.

Usage

General information: Currently there is no legal obligation on a trader to use a BTI he has received. Consequently Member States do not compile statistics on the numbers of times BTI are presented by traders when declaring goods to customs.

Findings during the monitoring visits: Given that there is no obligation in EU legislation either to use a BTI once it is issued or to keep records of its usage, it is hardly surprising that the monitoring teams found little information on this aspect of BTI. However, Bulgarian national legislation requires that BTI are declared and a copy is attached to the SAD when declaring the goods to the customs. Despite the legal requirement to attach a copy of the BTI to the SAD, there is no legal obligation on the customs to keep statistics on the usage of BTI. That being the case, the Bulgarian administration concluded at the time of the visit that approximately less that 1% of transactions are accompanied by a BTI, but given that the number of BTI issued during the reference period by Bulgaria was very small it is not surprising that the reported usage was so low.

The Austrian administration also records BTI usage when it is indicated in Box 44 of the SAD. Given that as already stated there is no legal obligation to use a BTI, the statistics gained from these records cannot be relied upon to give an accurate picture of BTI usage in Austria. However, from the records that had been assembled at the time of the visit, it appeared that less than 1% of transactions were covered by a BTI.

In view of how few BTI are declared to customs on the SAD, many administrations confirmed that officials at import/export points will ask a certain number of declarants whether their goods are covered by a BTI decision. However, it could not be explained what would prompt individual officers to ask the declarants about BTI although one administration did say that in many cases the instinct of
the official would play a major role in determining whether or not to ask about BTI.

A number of administrations work closely with their risk analysis colleagues. One Member State said that customs clearance controls are carried out on the basis of risk management. A colour coding system is used to assess the risk, red (for high) means the consignment will be thoroughly examined, yellow (medium/low risk) means the documentation accompanying the consignments will be examined and green (for no risk) means the goods will pass through customs unhindered.

A number of Member States advise BTI holders in the notification letter accompanying the decision that they should indicate that they have BTI in Box 44 of the SAD. However, as this is not a legal requirement in any Member State other than Bulgaria, it is difficult to control it.
Section 8  Images and Keywords

(Sections 12 and 13 of the Questionnaire)

References:

Legal provisions:  No specific provisions
Guidelines:  Sections 7.3.4 and 7.3.5

Images

General background:  As BTI are issued in all Member States and at the time of the monitoring visits in any one of 22 official languages (BTI are not issued in Irish or Maltese) it is important that all decisions are clearly understood throughout the territory of the EU especially given that such decisions are legally binding on the customs administrations.

With this in mind the issuing authorities are encouraged to attach images to both the applications and the BTI decisions.  In the case of applications, such images can be useful in determining if the trader is indulging in the practice known as "BTI shopping" (See Section 4 of this report) and while not a frequent practice it does happen that a trader will submit more than one application in more than one Member State for the same goods.  As the vast majority of Member States will only accept applications in the official language of the state, it is not always easy or straightforward to identify such attempts by merely reading the descriptions in applications or BTI from other Member States. Therefore, with a view to assisting customs officials throughout the EU to identify goods and to combat attempts at BTI shopping it is recommended that images be attached to both applications and BTI.  Images attached to applications can be automatically attached also to BTI by the system and if the drafting official believes additional images are required, they too can be introduced, but always bearing in mind the requirement to respect confidentiality.

The importance of images to BTI

General background:  The rate of attaching images varies between the different Member States.  The nature of the goods, their characteristics and features will determine whether it is possible to create a viable and useful image that clearly illustrates the goods and makes recognition easy. Garments, machinery, components for machinery, and goods with clear physical characteristics are ideal subjects for images.  Up to the time of the visit, one Member State never attached images to applications and rarely to BTI but it had decided in future to attach images where possible both to applications and decisions.

On the other hand liquids, powders or products with no definite shape present difficulties when taking photographs.  However, such difficulties can sometimes be overcome with useful images of, for example, labels, instructions for usage, containers, retail presentation, etc.; all elements that could assist a customs official in identifying the goods.

As already stated, images can be public or confidential, and that status will depend on the goods and any marks, characteristics or other information that could breach commercial secrecy or confidentiality.  Therefore, it may not always be possible to attach an image to a BTI that can be put in the public domain via the DDS database.  However, images can be made confidential in the EBTI-3
system and will only be visible to the customs administration in the Member States and the administrations are recommended to attach images if at all possible and to use discretion regarding their status.

Findings during the monitoring visits: All administrations visited had at least 1 digital camera at their disposal for making images to be attached to BTI but Denmark, due to the fact that there are two centres for issuing BTI, has 2 digital cameras. In most administrations there is no specific training offered on the use of the camera but in Finland training courses were organised by the administration when digital cameras were first introduced. Additional training has been given since then in cooperation with an external company.

In the majority of the Member States, images are made by the case handler. In one administration the images are made by two officials whose function is to register and introduce applications into the system and to photograph samples, etc. In another Member State, the decision to attach an image lies with the case handler, but the head of the sector can also decide if additional images are necessary.

The same rules concerning confidentiality in the context of the description of goods also apply to images. In a number of Member States the confidential aspects attached to images were overlooked and some images in the DDS database have been attached in the public field rather than in the confidential field of the BTI form. In such instances the monitoring teams drew attention to this and reminded the administrations concerned of their obligations to respect confidentiality.

The criteria employed by case handlers to measure the usefulness of attaching an image include whether or not an image will assist the customs officials in identifying the goods, whether or not the goods are, or are likely to be, problematic (e.g. could they become the subject of an appeal) or would an image provide additional useful information concerning the goods?

The Latvian administration in certain situations will attach two images of the same product to a BTI decision, one image for the public domain and the other will be inserted in the confidential field of the BTI. The “public” version will conceal all the elements that could lead to the commercial identification of the product (e.g. trade name, logo, etc.) while the second version of the image, with no elements concealed, will be made confidential and will only be available to customs administrations. The monitoring team commended the Latvian administration for endeavouring to make available as much information as possible within the rules.

A number of administrations admit that any initial searches they carry out in the EBTI-3 database are based on images attached to BTI. Consequently, the importance of attaching clear images both to applications and BTI cannot be over-emphasised. That being the case, the rate of attaching images is also very varied, with some administrations attaching images to both applications and BTI at a high rate, while others only attach them to BTI and some do so at a very low rate.

When asked to rate the criteria they use for searching in the database, the administrations rank images highly amongst the other possible search criteria so it is somewhat surprising to note that the percentage of applications and BTI to which images are attached varies greatly, from Member State to Member State.

Images and BTI applications

General background: As already stated, BTI are issued by and are legally binding on all Member States. However, as has already been discussed in previous sections of this report, applications may not always result in BTI for a number of reasons. On the other hand, once a correctly completed application has been submitted it is uploaded in the EBTI-3 database and from
then on is available to BTI officials in all Member States.

As a measure to combat BTI shopping and also provide clarity, the Commission is of the view that attaching images to applications is an effective way of making BTI shopping more difficult to perpetrate and at the same time helping customs officials to avoid issuing conflicting BTI decisions.

It is also a recognised fact that certain products and goods are not easy to describe in words but with the addition of one or more photographs it could greatly assist customs to recognise the goods described in applications.

**Findings during the monitoring visits:** At the time of the visits a number of administrations were attaching images to applications and at least one was using the application as a template for the BTI and thus did not need to re-upload the image as it is automatically attached to the BTI when issued. In another Member State the same image on occasions was used for more than one BTI. The monitoring team advised against this practice as it could cause problems if, for example, there are slight differences between the product description and the goods shown in the image. The overall view of the administrations is that attaching images should only be done if those images give the viewer a better understanding of the goods.

At least one administration, while attaching images to applications, had failed to attach the same images to the BTI decisions and consequently the decisions did not have any images attached to them at all. Other administrations had attached images that revealed elements that identify the exact goods for which some BTI decisions have been issued but did not make those images confidential. Another variation encountered was images attached to applications being substituted with different images when the BTI was issued. In those cases the monitoring teams advised the administrations on the way those problems should be solved and reiterated the obligation to respect confidentiality.

**Keywords and indexing**

**General background:** As already explained, BTI decisions are issued in the official languages of the Member States, with two exceptions. At the time of the monitoring exercise 23 languages were designated as official working languages for EU official purposes, but for the purposes of issuing BTI, Irish and Maltese are not used but BTI exist in all of the other 21 languages.

Bearing in mind that all BTI are legally binding on all Member States, it is of great importance that customs officials throughout the EU should have ready access to the contents of those decisions in their daily work, especially customs officers working at points of import/export. With this aim in mind, a translation tool was created in the form of a Thesaurus which at the time of the monitoring contained over 10,300 terms, all available in 22 of the 23 official working languages (Irish is the exception. Although Maltese is not used to issue BTI it is possible to search for keywords in the Maltese language).

When issuing a BTI, the administration has the opportunity to index the decision using terms in the Thesaurus. The Commission encourages the Member States to endeavour to insert at least 3 but ideally 5 relevant keywords in each BTI. Besides the official Thesaurus keywords, officials can also add non-Thesaurus keywords. However, while such unofficial keywords may help with searches conducted by officials familiar with the language of the BTI, they are of no benefit to officials who do not know that language as unofficial keywords are not translated in the system. The system also automatically distinguishes between Thesaurus keywords which are displayed in bold capital letters and non-Thesaurus keywords derived from other sources which appear in italic letters.
Findings during the monitoring visits: At the time of the monitoring the Thesaurus had not been updated in a long time and consequently many new products had come on the market and appropriate keywords had not been added to the Thesaurus. Many of the administrations drew attention to this, especially in the field of electronics and internet technology products.

One administration said that as well as a lack of new keywords to cover new products, some of the existing keywords they felt were obsolete. The lack of appropriate keywords was cited by a number of administrations as the main reason that they did not attach many keywords from the Thesaurus. Many administrations said they aim to insert at least 5 Thesaurus keywords but it is very often not possible to find keywords appropriate to the goods in the BTI.

One Member State said it did not systematically consult the Thesaurus when indexing as it was difficult to find keywords relevant to the goods described in the BTI. Instead officials resorted to the DDS database and used keywords that appear in valid BTI. However, if there was no success from that source, appropriate keywords would be searched for during consultations on the internet. Furthermore it did not index all BTI it issued on the grounds that it was not worth the while to index BTI that are to be used for export purposes.

Keywords and their importance to BTI

General background: Indexing BTI is an important task as the variety of languages in which BTI are issued makes it impossible for any customs official to understand all binding decisions. In a certain number of Member States there is more than one official language so BTI will be issued in one of those languages. However, in the case of the 13 Member States visited during the second phase of the monitoring exercise, only Finland and Malta have more than one official language. In Finland Swedish and Finnish are the official languages and BTI are issued in both while in Malta BTI are only issued in English although indexed in Maltese.

The basic promise of BTI is that a trader is guaranteed legal certainty with regard to how the goods described in the BTI are to be treated by the EU wide customs administrations. While neither images nor keywords are statutorily obligatory, they are useful means put at the disposal of customs officials with a view to assisting them in their daily work. When presented with a BTI in a language with which a customs official is unfamiliar, that official needs to be able to access the content of the description quickly. Therefore, good indexing using carefully selected keywords can be very helpful in such situations.

Of course the perfect package is a combination of an image and some well-chosen keywords and they can improve search results and help officials narrow down the number of results that would have to be examined.

In the context of indexing, in a number of administrations there is an internal rule that requires a minimum number of Thesaurus keywords to be attached to a BTI when it is issued. In other administrations it is less strict and the number of official keywords will vary according to the knowledge and familiarity of the officials with the EBTI Thesaurus; the more familiar - the greater the number of keywords.

Findings during the monitoring visits: The length of time taken by the different administrations to index a BTI varied from a minimum of 10 minutes reported by three administrations to a maximum of 1 hour reported by one Member State. However the vast majority of administrations estimated it took officials between 15 and 45 minutes to index a BTI. Some Member States reported that they always consult the EBTI-3 Thesaurus and only in cases where no appropriate
keyword can be found would they resort to other sources, usually the Combined Nomenclature and the
description provided by the applicant.

A number of administrations only use Thesaurus keywords and as a result sometimes they cannot
reach the goal of using 5 keywords. In those cases, although the number of keywords will be less
than 5, they can however be translated using the Thesaurus and can give some indication of the goods
in the BTI decision. If only using non-Thesaurus keywords, indexing is in vain as there will not be
universal translation available using the thesaurus and consequently knowledge of the language would
be required if they are to be understood.

One problem that the Commission raised with administrations is that of keywords that differ slightly
from Thesaurus keywords, e.g. Thesaurus keyword “tables”, keyword used by Member State “table”.
In this example, “table” will not be translated as it does not exist in the Thesaurus. This situation
arises from not consistently browsing the Thesaurus in the EBTI-3 database. A number of the
administrations confirmed that they do not always browse the Thesaurus because they claim it is
difficult to find relevant keywords, yet a quick search of BTI reveals many instances where a keyword
in the decision is in the singular, and the same keyword exists in the Thesaurus but in plural form.
Therefore, the monitoring teams advised administrations that they should consistently browse the
Thesaurus when indexing BTI and thus avoid unnecessary use of non-Thesaurus keywords.
Section 9  Appeals  

(Section 14 of the Questionnaire)

References:

Guidelines:  No specific reference

General background:  The EU customs legislation simply requires that the right to appeal against a decision is available in all Member States. The conditions and steps to be taken in the appeals systems are, however, a matter for each Member State. The important element is that such appeals are independent, i.e. that they are examined and decided upon by persons or bodies independent of the persons or specific bodies that have taken the original decisions. Therefore, for example, an appeal may be heard within a customs administration provided that the persons hearing it are not the same persons who have taken the original decision and are not part of the specific team to which those persons belonged. Each Member State has its own legal rules and requirements concerning appeals and those factors are set out in the national legislation.

Unlike the other sections of this report and to enable better understanding of how appeals against BTI decisions are dealt with in the EU it is perhaps better that the appeals system of each Member State is outlined briefly in this section.

Appeals procedures in the EU:

General background:  The right to appeal any decision of the customs administrations of the EU is enshrined in the Customs Code, Articles 243 to 246 (inclusive). As explained above, how appeals are regulated and the procedures to be applied fall within the competence of the Member States. While certain aspects such as time limits, etc., vary in the different Member States the existence and independence of the appeals system is, without exception, guaranteed in the national legislation of each Member State.

In the context of BTI, the right to appeal the decision in any BTI is mentioned on the BTI form itself, but in the vast majority of cases the national administrations also attach an explanatory letter to the BTI when it is notified to the applicant.

Overall, considering the number of BTI issued in the EU during the reference period, the number of appeals against the decisions in BTI is very small, and few such appeals are successful.

Findings during the monitoring visits:  In all of the 13 Member States visited, there is a specific period after the issuing of the BTI during which an appeal must be launched or the intention to appeal notified to the administration, depending on the national law.

In all 13 Member States, the issuing authority has a role to play in the conduct of appeals. That role is to provide the arbiters with all the information the customs had at their disposal that has led them to classify the goods at the heading in the BTI. Generally this input concerns the facts of the case as presented to the customs but in some Member States a reasoned justification may also be requested.
In some Member States the first instance appeal must be addressed to the customs administration, and in a number of countries it is handled by the officials who have classified and issued the BTI. For obvious reasons, a decision following an administrative review carried out by the administration cannot be appealed by the customs but of course can be appealed by the holder of the decision.

In other Member States it is possible for the holder to go directly to the judicial review, and in some countries it is possible to lodge appeals with the administration and the court at the same time and both proceedings will be dealt with in parallel. Once appeals have entered the national courts system the customs administration can appeal against any decision that it judges to be contrary to EU legislation, although it sometimes will rest with the legal service of the administration to make the decision whether to appeal or not. Once an appeal has reached the level of the highest national court, that court is obliged to refer the case to the Court of Justice of the European Union if it concerns a matter of interpretation of EU legislation. For more specific details concerning the appeals systems in the 13 Member States visited, please see the next sub-section (“National appeals procedures”).

National appeals procedures

Findings during the monitoring visits: Set out below is a simplified explanation of how appeals are treated in each of the Member States visited during the second phase of the monitoring. This is included here to give the reader an idea of the variety of procedures enshrined in the national legislations of the EU. However, it is important to realise that regardless of how the appeals systems are conducted at the national level, holders always have the right to appeal decisions of the customs in the EU. These explanations are set out in the order in which the monitoring visits took place.

Lithuania: When a BTI is issued by the Lithuanian customs, additional information concerning the right of the holder to appeal the decision is given. When notified using the postal service an accompanying letter is attached to the BTI, but if the decision is collected personally by applicant he is given the same information orally. The period for launching an appeal against any administrative decision in Lithuania is 1 month. Appeals can be filed by the holder of the decision or by his lawyer.

There are three different judicial bodies treating appeals against decisions taken by the administration. The appeal of first instance must be made to the Supreme Commission of Administrative Disputes and a decision must be taken within two weeks of the appeal being heard. The decision of the Supreme Commission may be appealed to the Vilnius District Administrative Court within 20 days of the decision. It is also possible for the appellant to appeal directly to the Vilnius District Administrative Court without going to the Supreme Commission. There is no statutory deadline for hearing an appeal before Vilnius District Administrative Court and it could take as long as a year for it to be heard. The highest level of appeal is before the Supreme Administrative Court of Lithuania, but no new evidence can be introduced and the decision of that court is final and cannot be appealed. During the reference period there were no appeals against BTI decisions issued by Lithuania although there had been one during 2005 but the decision of the administration was upheld by the Supreme Administrative Court.

The customs administration is represented by the Legal Division of the Customs Department in all appeals cases. Furthermore, the administration can appeal decisions taken at any stage of the appeals procedure.

Finland: A document setting out the details of the appeals procedure in Finland is always attached to the BTI decision when it is notified to the applicant.

The holder of a BTI has 30 days in which to launch an appeal. The appellant must lodge the appeal, which is addressed to the Helsinki Administrative Court, with the Board of Customs. The official who
issued the BTI must provide a statement and that statement is approved and signed by the Head of the Nomenclature Group and the Head of the Nomenclature, Origin and Reliefs Unit, following which it is sent to the Court accompanied by all relevant documentation. The Board of Customs has 1 month to respond to the notification of appeal. All appeals are dealt with in writing and should the Court require additional information it too will be requested in writing. A judgement of the Helsinki Administrative Court can be appealed to the Supreme Administrative Court.

During the reference period there were three to four appeals each year and all but one of them were rejected by the Court.

**Austria:** When the Austrian customs notify a BTI decision a document is appended to the decision informing the holder of his right to appeal the decision in writing. He has 1 month from the date of issue of the decision to notify the ZvZ (Zentralstelle für Verbindliche Zolltarifauskünfte) of his intention to lodge an appeal and he can submit the specific additional information required to support his appeal. The first appeal must be heard by the ZvZ and the procedure cannot by law exceed 6 months. However, by means of an “internal rule” and as a matter of good practice it usually takes no longer than 100 days.

The first appeal is always heard by the BTI Unit and the decision will be taken whether to uphold the appeal and revoke the decision and issue a new one or to reject the appeal. BTI decisions and the results of first instance appeals are signed by the same official.

If the appellant is not satisfied with the decision by the BTI Unit he can appeal to an independent administrative court within the Ministry of Finance but the customs administration cannot appeal a decision by that body. It can, however, appeal, against decisions of the administrative courts or it can ask the Customs Code Committee to adopt a regulation in order to overrule the court.

Holders of BTI decisions can appeal against the annulment or revocation due to an administrative review of their BTI decisions but they cannot appeal if their applications are rejected in cases where they failed to respond to a request or other correspondence from the administration as all such communications clearly state that failure to react to them will result in rejection of the applications.

During the reference period there were 38 appeals none of which were upheld at first instance. Six of those decisions were further appealed to the court and at the time of the monitoring visit the judgments were pending

**Malta:** At the time of the monitoring visit, the Maltese appeal procedures were undergoing a review triggered by problems arising from an informal opinion on the tariff classification of plastic shopping bags which attracted a national eco-tax.

No additional information concerning the appeals procedure was attached to applications as the administration felt the information on the BTI form was adequate. No specific time limit existed for launching an appeal. At the time of the visit no appeals had ever been launched concerning BTI decisions but the administration said that if a trader was unhappy about a decision he would write to the DG of Customs asking for a review.

When the Maltese customs are uncertain about a classification at the time of importation, the goods will be released on payment of a deposit calculated on the highest possible duty rate applicable to the goods. When the classification is eventually confirmed any excess duty paid will be refunded to the trader. If he queries the classification and amount retained by the customs the implication is that he is seeking a review.

Such reviews are conducted by the BTI officials but the final decision always lies with the Director General who may decide to refund the excess duties to the trader. If the request is refused the amount
of the deposit is regarded as a fine for the incorrect classification of the goods. If the trader is still
dissatisfied he may appeal to the national court, and subsequently to the court of appeal. The legal
affairs unit of the customs is only involved if a case is brought before the court.

**Bulgaria:** The issuing of BTI in Bulgaria is governed by the Administrative Procedural Code and
not the national criminal code. There are two paths open to holders who wish to appeal decisions,
either they can go to a higher administrative authority, which is not obligatory or they can go directly
to the Supreme Administrative Court. Generally the second option is preferred as most decisions of
the higher administrative authority will eventually be appealed in the Supreme Administrative Court,
and by going directly along that route it saves time and the decision will be more stable. However, the
decision of the higher administrative authority is final if it is not appealed.

An appeal against a BTI must be deposited within 14 days of the reception of the notification of the
decision. The reception date is determined by the date of the signature of the applicant on the return
receipt. However, new evidence can be presented up until the time the judicial hearing in the court
begins. The holder is also informed of his right to appeal the decision and given the necessary
information in a specific notice which has been agreed with the legal service of the customs

At the time of the visit there had been one appeal to the higher administrative authority which had
been rejected, but the appellant did not appeal further to the Supreme Administrative Court. There had
also been 3 appeals directly to the Supreme Administrative Court of which 2 were upheld on the
grounds of incorrect tariff classification. In the first case the administration brought the matter before
the Customs Code Committee which agreed with the customs original classification and issued a
classification regulation. The second judgement had only been handed down the week before the
monitoring visit but the Bulgarian administration said that given the fact that the goods concerned
were similar to those in the other instance, they would follow the same course as before although it
was recognised that it would create much work for the Customs Code Committee.

Once an appeal is launched the legal service of the customs takes charge of the case file and prepares
the file for court. However, the tariff classification unit always prepares a detailed explanation of its
position for the legal service. The court may also call on external expert advice during the appeal and
it is at this point that the input of the classification unit becomes vital.

**Cyprus:** Holders of BTI issued by Cyprus have two options when appealing against the decision.
They can either ask for an administrative review before the Customs Authorities within the time limit
of 60 days from the receipt of the decision or appeal to the Court within 75 days from the receipt of
the decision. They are allowed to proceed simultaneously with the two options provided.

Normally the request for an administrative review concerning a department’s decision is examined
within one month from its submission. However if the review procedure takes more time and the BTI
holder waits for the review decision and does not appeal to the Court within the time limit of 75 days,
he will lose his right to appeal to the Court as the time limit for launching a judicial appeal will have expired.

Should the BTI holder launch both appeals in parallel, Cyprus customs informs the General Attorney’s
Office, that an administrative review is under process. The General Attorney’s Office represents the
department before the court and is informed as soon as a final decision is reached.

In any case the procedure for reaching a decision following an administrative review is faster than the
procedure before the court.

For cases brought before the Court, the appellant has 42 days to launch an appeal before the court of
2nd instance after the delivery of the judgement by the court of 1st instance.
Prior to the visit there had been 4 cases brought before the review panel and none of them had been upheld and none of the 4 was appealed in court either. Furthermore there have been no instances where the Courts have delivered a decision that was not in line with EU law or the approach of other Member States. Therefore there has been no reason for addressing an issue to the Customs Code Committee for examination.

Traders have the right to be heard before an unfavourable decision is taken but that does not extend to BTI. The Cypriot administration is of the opinion that a trader requests a BTI because he is uncertain of the classification and consequently a decision is neutral until such time as the applicant is notified of the BTI. The Commission clarified this point by saying that the right to be heard would only apply when a BTI is revoked following a change in the initial circumstances, in accordance with the case law established by the “Timmermans” case. (Judgment of the Court of 22 January 2004 in joined cases C-133/02 and C-134/02)

**Luxembourg:** When a BTI is issued by Luxembourg, the letter accompanying the BTI informs the holder of his right to appeal the decision and the competent body to which an appeal should be addressed. An appeal must be lodged within 3 months of the decision. In Luxembourg there are two options available to an appellant, he can launch an administrative appeal followed by a judicial appeal or he can simply go directly to the court.

The administrative appeal in Luxembourg has two levels. The first level requires the official who has drafted the decision to re-examine his work and it is he who will decide whether or not an appeal is upheld or rejected at that level. If the appeal is rejected at the first level, the appellant may appeal to the second level which in such a case goes to the Director-general of Luxembourg Customs. However as stated above, an administrative appeal is not obligatory and, if he so decides, the holder may appeal directly to the court. An administrative appeal must be answered within 6 months.

When an appeal is made to the court, the administration drafts a background document for their legal advisers in which it draws attention to any arguments the appellant might raise and to possible loopholes in such arguments. Up to the time of the visit, BTI appeals had never gone as far as the Supreme Court.

**Latvia:** All decisions taken by the State Revenue Service can be appealed within 30 days of their receipt. As BTI decisions are notified by registered post, the date of receipt is calculated as being 7 days from the date of posting. The BTI is accompanied by a letter which explains the conditions attached to lodging an appeal. The first review is carried out at the level of the Director-General and is carried out within 30 days but, if necessary, may be extended to 60 days. The Legal Service of the State Revenue Service will request the BTI Unit to draft an explanation of why the decision in the BTI was taken and on the basis of that explanation the legal Service will advise the Director-General on how to proceed. The final decision will be drafted by the BTI case-handler who is dealing with the file. It is obligatory for the first appeal to be submitted to the State Revenue Service. Appellants cannot go directly to the Court.

If the Director-General rejects an appeal, the trader can lodge an appeal with the Administrative Local Court within 30 days. Appeals at the level of the Administrative Local Court can take between 1 and 2 years to be heard. The participation of the Classification Unit is automatic at all levels of the appeals process but it is formally invited by the legal Service which always represents the State Revenue Service in judicial proceedings.

If the Administrative Local Court rejects the appeal, the trader has 20 days in which he can lodge an appeal with the court of second instance, the Regional Administrative Court, and that can take up to a year to be heard. The court of third instance is the Supreme Court and an appeal at that level must be lodged within 30 days. If the Supreme Court refers a question to the Court of Justice of the European Union, it can suspend the proceedings pending a judgment of the European Court.
The administration has the right to appeal against decisions of any of the three courts but for obvious reasons it cannot appeal against a decision of the Director-General. It is the Legal Service that will make the decision as to whether or not an appeal should be lodged by the State Revenue Service against a decision of any of the courts. However, the State Revenue Service will always appeal against a decision if it is believed to be contrary to EU legislation. Furthermore, judges while they are expert in certain specific matters rely on the advice they are given with regard to administrative technicalities.

**Denmark:** In Denmark, a trader has 3 months in which to lodge an appeal with the “Landsskatteretten” (Danish National Tax Tribunal - referred to as the Tax Tribunal). The Tax Tribunal is established like a court with a chairman and board of members. A minimum of three but maximum of four members must be present when it sits. It is part of the Ministry of Taxation but is not connected to SKAT. The chairman is usually a High Court judge and the members are usually members of the Danish Parliament or are appointed by the trade unions. The chairmen of the tribunal have gained knowledge of customs nomenclature over time so they are not unfamiliar with classification.

When an appeal is lodged with the Tax Tribunal, a copy of the appeal is also sent to the customs classification unit of SKAT. The customs is requested to hand over all papers connected with the case and to provide an explanation for the decision within 14 days. The Tax Tribunal carries out a detailed examination of the case and usually 9 to 12 months later it will hold a meeting to discuss the appeal. There is no statutory deadline in which it must give a decision. However, while it is examining the case the appellant has the right to request a meeting with the case handler and if there is no decision within 6 months of the appeal being lodged he also has the right to go to the court.

The appellant will be asked when he can participate in a meeting with the Tax Tribunal and the customs will be invited to attend the meeting also. The appellant is asked to set forth his arguments as to why the BTI decision should be overturned. The customs is then given an opportunity to counter his arguments. This stage of the appeal usually takes approximately 30 minutes.

If the Appeal is upheld the customs must prepare arguments and give reasons if it wishes to appeal the decision of the Tax Tribunal. Those arguments are forwarded to the state solicitor along with the arguments of the national appeals board and it then falls to the state solicitor to decide whether to proceed with the appeal. If both the customs and national appeals board positions agree the state solicitor will recommend to the Director-General that the appeal should go ahead. However, the final decision will rest entirely with the Director-General and appeals against Tax Tribunal decisions must be lodged within 3 months from the date it is handed down.

The state solicitor is a private lawyer contracted to look after state cases in the national courts and if his/her interpretation of the law differs from that of the customs there is the possibility that he/she may not consent to launching an appeal. There must be a good chance of winning the appeal for approval to be given.

There are 2 levels of judicial process in Danish legislation; the first level is the civil court and the second is the High Court. Cases in the High Court are usually dealt with by written procedure. If there is a point of law that must be submitted to the Court of Justice of the EU, the matter will sent by the High Court. Both parties usually will agree to it being sent to the Court in Luxembourg and they may suggest questions to be put before that court.

Denmark also has a system whereby applicants have the right to be heard before the BTI is issued. If the customs agrees with the envisaged classification indicated by the applicant there is no reason to invite the applicant to express his opinion. However, if the customs has a different opinion from the
applicants or the classification it proposes is based on information the applicant does not have (e.g. the results of customs laboratory analysis or technical information from internet sources, etc.) the customs will inform the applicant of their intended classification and offer him the opportunity to express his opinion. Traders widely avail of that opportunity and more often than not will express their opinions. This method of procedure reduces the likelihood of BTI decisions being appealed as the applicant and customs have been in contact and the applicant has had the opportunity to convince the customs of his views prior to the decision being issued.

Estonia: When a BTI is notified to the applicant in Estonia, no additional information concerning the appeals procedure is attached to the decision. However, the holder has the option either of filing an action under the provisions of the Code of Administrative Court procedures or filing a challenge under the provisions of the Taxation Act in the Tax and Customs Board. Any appeal must be launched within 30 days of the issue of the BTI decision.

Challenges launched in the Tax and Customs Board are lodged at the regional Tax and Customs Centre office which for BTI is in Tallinn. The case handler who drafted the BTI, with the assistance of the legal department would examine the appeal. The next step is the preparation of a document called “decision on a challenge to the customs act” which is itself an act and has to be ready within 30 days (but in certain circumstances that deadline can be extended).

The case handler may also sign the decision on the challenge. In the past decisions on challenges were signed by the Director–General. Such decisions are generally prepared by the BTI section and it is then examined by the legal department. It has happened in the past in other areas of customs that the legal department have asked the classification team to revoke a decision. The head of the customs department can sign decisions that do not incur proprietary consequences.

It is also easier to challenge a decision in the Tax and Customs Board and besides, launching proceedings in the Administrative Court is very expensive. In actions before the administrative court, the customs authority will be represented by a legal expert, briefed by the classification team. Classification experts may also be called before the court to provide expert testimony.

There are two further judicial levels in Estonia, the District Court and the High Court. The administration said that most classification cases go further to the administrative court. However, the Tax and Customs Board can appeal against a judgment of the Court.

Greece: If the classification in a decision issued by the Greek customs authority differs from that envisaged by the applicant he is informed that he has the right to appeal against it. Any such appeal must be lodged with the judicial administrative court within 60 days of receipt of the notification of the decision. The proof of receipt is either the signed registered post receipt or if collected personally a copy of the BTI signed and acknowledging receipt. The appellant is obliged to engage a lawyer and to pay a charge for lodging the appeal.

Under Greek law there is no statutory time limit in which an appeal must be answered. The time it takes to reach a decision will depend very much on the volume of work before the court at the time of the appeal. Traders must lodge appeals with their local courts. At the time of the visit, there were 52 prefectures in Greece and an even greater number of local courts. However, in Athens and Piraeus there are specific courts for treating appeals.

Greek law requires that a trader inform the customs that he is appealing the classification when declaring his goods. In the context of appeals against the tariff classification of goods (but not BTI appeals) each of the 10 customs districts in Greece has a committee to deal with such matters. The members of those committees include chemists, representatives from industry and trade organisations. Decisions of that committee can be appealed to a second level committee. The members of that committee are 2 chemists, representatives of chambers of commerce and the head of the tariff
classification unit. The chairman is the legal advisor of the State Legal Council. However, neither committee rules on BTI appeals. In the event of a dispute between customs officials concerning tariff classification the dispute must be sent directly to the second level committee.

In the event of a BTI appeal, the Tariff Classification Unit will be asked for its input. In the past it has happened that the head of the unit has been requested to provide the court with explanations over the telephone but there is also the possibility of being requested to appear in person before the court. Appeals in court may take a few years before the judgment and very often the customs is not informed of the result. Consequently the administration was not in a position to give an indication of the success rate of the customs in such cases.

If the court of first instance rejects an appeal, the trader has the right to appeal to the second level and if he so wishes up to the high court. The customs has the right to appeal any unfavourable decisions of the court or judgments that go against Community practice.

**Portugal:** Under the Portuguese legal system an appellant has the right to choose where he wishes to lodge his appeal. Generally however, the first appeal will be lodged with the hierarchical court with the possibility of later going to the Administrative Court. However, if he chooses to bypass the hierarchical court, he cannot appeal to it at a later date. The time frames for launching an appeal in either court are different. An appeal must be lodged with the hierarchical court within 30 days and with the Administrative Court within 90 days, with both time limits starting on the same day.

An appeal to the hierarchical court must be addressed to the Secretary of State, who then refers it to the Director-General and down the hierarchical chain until it reaches the BTI division. The BTI team will then examine the appeal and discuss it. The legal department is not involved in this type of appeal.

In the case of an appeal to the Administrative Court, the BTI team will prepare the reasoning for the classification. The customs administration in such appeals before the court is represented by the legal department but there is always the possibility that officials from the BTI unit are requested to appear before the court as specialists. If the appeal is upheld, the customs administration has the right to appeal against the judgment but the legal department will decide whether or not such an appeal should be lodged. At the time of the visit there had been no appeals against BTI decisions.

**Czech Republic:** The timeframe for lodging an appeal in the Czech Republic is 90 days unless a specific notice is issued stating something different. At the time of the visit a new administrative regulation introducing new procedures was being discussed and amongst the changes it proposed was the reduction of the 90 days to 15 days and it would identify the addresses to which appeals should be sent.

In the case of BTI, the holder can appeal to the BTI department which can either uphold the appeal and subsequently revoke the BTI or it can reject the appeal and forward the matter to the Directorate of Customs. In the BTI department the case handler will deal with the appeal and has 30 days to make a decision. When it is referred to the Directorate of Customs the Director General has another 30 days in which to make a final decision. Up to the time of the visit there had never been an instance when the Director-General disagreed with the decision of the BTI department.

All appeals must go through the administrative appeals procedure before lodging a judicial appeal. Appellants have two months following the administrative decision to appeal to the court under the terms of Administrative Court Procedure 150/2002. There is no statutory time limit with in which the court must give a ruling. The only stipulation is that it does so as soon as possible. The decision of the court of first instance can be appealed to a higher court and the decision of each higher judicial level can be appealed up to the level of the Constitutional Court of the Czech Republic with the result that it
could take up to 5 years before the matter is resolved and all avenues of appeal exhausted.

In the Czech legal system there are 4 levels of court: the municipal regional court, the Supreme Administrative Court, the Court of Cassation and the Constitutional Court of the Czech Republic. When a case is brought before the court the BTI department is not consulted as the case will be handled by the legal service of the Directorate-General. However, the opinion of the legal service will be based on the information provided by the BTI department. Officials from the department will not be called to give evidence as all proceedings before the court will be dealt with by the legal service.

Appeals to the Court of Cassation must be lodged within 14 days and when they concern BTI the Director-General makes the decision whether the appeal should be lodged. The administration cannot appeal against a judgment of the Court of Cassation or the Constitutional Court. With regard to judgments that have an impact on Community legislation, it is the court that will decide whether the matter should be submitted to the Court of Justice of the EU, but the customs administration will endeavour to convince the court that its views on the impact of the judgment are correct.
Section 10 Annulment, invalidation and revocation and period of extended use

(Sections 16 and 17 of the Questionnaire)

**References:**

**Legal Provisions:** Articles 8, 9, 10, 12.4, 12.5(a) and 12.6 of Council Reg. 2913/92 and Article 12(2) (a) of Commission Reg. 2454/93

**Guidelines:** Sections 10, 11 and 12

**General background:** When a BTI is issued it is also assigned a period of validity. Art.12.4 of Reg.2913/92 stipulates that BTI shall be valid for a period of 6 years but the legislation also provides for the shortening of that validity period in specific circumstances. As the information in a BTI is binding on the customs administrations of the EU, those administrations cannot be bound to accepting (1) tariff classifications that are no longer in conformity with the law or (2) decisions that have been taken on the basis of false or deliberately misleading information from the applicant. Those circumstances if not addressed would seriously undermine the value and credibility of the BTI system.

Consequently, certain articles in the legislation are concerned with annulment (Art. 8 of Reg. 2913/92), invalidation (Art. 9 of Reg. 2913/92), and the circumstances that give rise to invalidation (Art.12.5 (a) of Reg.2913/92.) Art.12.2 (a) of Reg2454/93 sets out when invalidations in the different circumstances enter into force.

It is very important that any changes in the validity of BTI decisions are recorded in the EBTI-3 database with minimum delay. Failure to do so could cause a Member State to accept a BTI that should have been invalidated by the administration that issued it. When BTI are invalidated, revoked or annulled in the EBTI-3 database, the date on which it ceases to be valid is indicated as well as the reasons for the invalidation.

The specific reasons set out in the legislation have each been assigned a numerical code and that code is inserted in the database. All officials in administrations who have access to the EBTI-3 database can, therefore, clearly see at a glance the validity status of a BTI and why a particular BTI is no longer valid and the date from which it ceased to be valid.

The difference between annulment and invalidation/revocation.

**General background:** It is perhaps worth clarifying the difference in legal terms between an annulment and an invalidation/revocation of a BTI decision. To the man in the street the difference may not be obvious but in reality, depending on the reasons for terminating the validity of a BTI decision, the consequences for the holder and the administration can vary greatly.

Firstly, the difference in legal terms between an annulment and an invalidation/revocation is that insofar as an annulment is concerned, the decision has never existed in law with the consequence that the holder of the decision never had at any time the legal security bestowed by a BTI. On the other
hand, a BTI that has been invalidated or revoked was valid for a certain time and the holder could rely on it for that period. Invalidation or revocation takes effect from the date of its notification to the holder whereas a BTI that is annulled has no validity period assigned to it in the database (the start and end dates of validity shown are the same).

Therefore, it is important that the correct reason for curtailing a BTI decision's statutory life span is determined and correctly indicated in the database.

**Annulment and its consequences**

**General background:** A BTI decision can only be annulled if (1) the information provided by the applicant was incomplete, incorrect or misleading and that (2) reasonably he should have known it to be the case and consequently (3) the decision would not have been taken if the complete and correct information had been provided to the administration. Given the fact that in many cases an importer will depend on the manufacturer or supplier of the goods to provide him with the information, there is always the possibility that incorrect information has been provided to the importer and he in turn has submitted it to the customs in good faith. Therefore, it is important that all three of the conditions listed above are met.

Once those facts have been determined by the customs administration, the BTI will be annulled and the holder will be informed of that decision. Annulment means that the holder cannot, and never could, rely on the tariff classification in the BTI as legally it is considered as never having existed.

If the holder has used the BTI he is liable for any customs duties or charges he has evaded as a consequence of that usage. Therefore, it is vitally important that the EBTI-3 database is updated as soon as the decision to annul a BTI has been taken. Any delays could provide a dishonest trader with the opportunity to use the BTI in another Member State and so long as it appears valid in the database the importing state is obliged to accept it. Financial liability for any loss of EU traditional own resources however, would not fall on the importing Member State in those circumstances but, based on the evidence in the EBTI-3 database of unnecessary delays in maintaining the correct validity status of the BTI up to date, the Commission may take action against the negligent Member State and that could have financial consequences for it.

**Invalidation and its consequences**

**General background:** The most significant difference between an annulled BTI and one that has been invalidated or revoked is that the latter has had legal status for a certain period of time and the holder could rely on it during that time. Whereas BTI are annulled due to the actions of the applicant, when they are invalidated or revoked it is due to reasons beyond the control of the holder, i.e. the law has changed and the goods are no longer classified at the heading expressed in the BTI or an error has been made by the administration when the BTI was issued.

Art.12.5 (a) of the Customs Code (Council Reg. 2913/92) sets out the circumstances under which a BTI becomes invalid. In general terms invalidation results from changes in the legal status of the BTI decision; either the tariff code has ceased to exist, there has been a judgement of the Court of Justice of the EU, or it is no longer compatible with the interpretation of the nomenclature of the Harmonized System Commodity Code or the Combined Nomenclature.
Invalidation can have a negative impact on the interests of the holder and therefore in certain circumstances he is offered the chance to continue to benefit from the BTI for an extended period not exceeding 6 months provided he fulfils certain conditions. This period of extended use, also known as a "period of grace" is described in more detail further on in this section.

Revocation and its consequences

General background: Even though it may at first glance seem that invalidation is the same as revocation in the context of BTI there is in fact a subtle difference between the two actions and their causes. In the case of invalidation, the BTI ceases to be valid due to changes in the law which renders the decision in conflict with the legislation or the interpretation of the HS or CN. In the case of a revocation, the decision is recalled due to an error which either can result in the wrong classification being given or details unconnected to the tariff classification being incorrect. Regardless of the reasons, the applicant and holder cannot be held responsible for errors made by the administration.

An error in classification arises when following an internal review of a classification it is decided that the tariff classification in a BTI is incorrect. It can also arise following consultations with other Member States when the issuing administration agrees with the arguments of another administration. It can also occur when a typographical error is made in the tariff classification indicated in the BTI.

In the case of an error in the tariff classification the trader has had legal certainty up until the time he has been notified that the BTI is revoked and he cannot be held liable for any duties or customs charges that would have been due if the correct classification had been given in the decision. Similarly when an error not connected to classification occurs it is not the fault of the holder but it is expected that he should check the information in the BTI and bring such errors to the attention of the issuing authority.

Findings during the monitoring visits:

Annulments (invalidation code 55): Of the 13 administrations visited only 8 annulled decisions during the reference period (2007/2008). The remaining 5 Member States did not annul any BTI decisions during that period. The annual totals of annulments in the 8 Member States were 13 during 2007 and 11 during 2008 giving a total for the reference period of 24 annulments. The total number of BTI annulled in the EU during the same 24 month reference period was 462.

A total of 438 annulments were carried out during the same reference period by the 14 Member States visited during the first phase. The ratio of annulments to BTI issued in the 8 Member States covered by this report is 1 annulment for every 205 BTI issued. The ratio for the remaining 14 Member States is almost identical at 1 annulment for every 206 BTI issued (calculation done on the figures for the same reference period).

If nothing else, the above figures illustrate that the ratio of annulments to BTI issued in both groups (i.e. the Member States of the first and second phases of monitoring) is consistent leading to the conclusion that the pattern of BTI issued on the basis of incorrect or incomplete information is fairly stable across the EU. Furthermore, bearing in mind the annual numbers of BTI issued in the EU (50,000+/−), the annual number of annulments accounts for a fraction of a percentage of the BTI
issued. The 462 annulments carried during the reference period accounts for 0.48% of the total number of BTI issued during that period.

An error occurred in 1 out of the 24 annulments when the end date of validity shown in the EBTI-3 database differed from the start date of validity, thus giving the impression that the BTI in question had a period when it was valid. At the time of the visit the EBTI-3 system did not prohibit the insertion of a date that differed from the start date of validity when invalidation code 55 was used. However, since the monitoring exercise concluded, a new rule has been introduced into the EBTI-3 system that automatically inserts the start date of validity as the end date of validity when invalidation code 55 is used.

In at least 2 cases BTI had been annulled due to a misunderstanding of the terms connected with annulments. This was a common theme in both phases of the monitoring and the Commission team members took every opportunity to clearly explain the difference between an annulment and a revocation. A decision to annul a BTI was brought before the court by the holder in one Member State. However, it was proved that the applicant had lied about the goods for which the decision had been issued and consequently the appeal was refused.

A number of administrations have legal provisions in their national legislations which allow them to take national measures against traders who deliberately set out to mislead customs or sign a declaration they know to be incorrect. However, any such measures will only be imposed on the basis of national legislation. For example, Maltese legislation allows the administration to impose penalties on traders who have declared their goods using tariff classifications obtained on the basis of false or incorrect information but at the time of the visit to Malta, those provisions had never been used as the occasion had never arisen. Similarly, in Luxembourg, national legislation gives the administration authority to pursue traders who have benefited from a decision that has been annulled, but the circumstances of each situation will be assessed and a decision taken on a case by case basis.

In the case of Finland, while the Unit concerned will not take any further action against the holder of an annulled BTI, the officials carrying out post clearance audits may impose penalties. A similar situation holds in the Czech Republic where the BTI department does not take any further action once a BTI has been annulled but refers the matter to the auditors who will decide what further action to take. Cypriot officials had not had reason to annul a BTI up to the time of the visit but said that if it were to happen, the matter would be referred to the post clearance control section and the audit section for further action regarding penalties to be paid.

**Invalidations (invalidation codes 61, 62 and 63):** Unsurprisingly, the individual cause that annually gives rise to most invalidations is the end of year changes in the nomenclature. Each year the Commission publishes the Implementing Regulation amending Annex I to the regulation on the tariff and statistical nomenclature and on the Common Customs Tariff. At the same time the EBTI-3 system generates invalidation warnings and automatically invalidates BTI with effect from 1 January. The invalidation code used for such circumstances is 61 and it is automatically introduced by the system. Such changes can affect hundreds of tariff headings and consequently thousands of BTI.

During the reference period the total number of BTI invalidated due to nomenclature changes EU-wide was 14,656 decisions. The annual total breakdown for the reference period was 10,097 invalidated in 2007 and 4,559 invalidated in 2008. For the 13 Member States visited during this phase 374 BTI were invalidated during 2007 and 239 during 2008.

In the case of invalidations due to nomenclature changes there is no obligation on administrations to notify the holders of the BTI concerned by the changes as those changes are published in the Official Journal of the European Union at least 2 months before they come into effect and the act of publication is itself a notification of the impending changes. Despite there being no obligation to formally write to the traders concerned, almost all the Member States visited during this phase inform traders that as a result of changes to the nomenclature their BTI decisions will cease to be valid and
they invite them to submit new applications.

Denmark, however, does not write directly to the holders of those BTI but does inform them of the impending end of the validity of their BTI through the medium of electronic newsletters to which traders and the public in general can subscribe. The majority of traders subscribe to it.

Other reasons for invalidating BTI include judgements of the Court of Justice of the EU, classification regulations and changes to the Explanatory Notes to either the Harmonized Commodity Coding System or the Combined Nomenclature. In such cases the administration must manually enter the invalidation code 62 and indicate the end date of validity. The holder must also be notified of the invalidation of his BTI and informed that he has the right to request authorisation to use the decision for an extended period (i.e. period of extended use (see further down in this section)) if he requires it. Similarly invalidations arising from judgements of national courts or tribunals must be invalidated in the database using code 63. Both the invalidation code the end date of validity must be inserted manually in the database and the holders must also be notified.

During the reference period the number of BTI decisions invalidated in the EU using code 62 was 1148, of which 24 were invalidated by the Member States visited during the second phase. For those invalidated using code 63 the EU wide total for the same period was 361 of which 3 were invalidated by Member States concerned by this report. In view of the fact that the administrations visited during this phase are relatively small it is not surprising that the number of invalidations in those Member States is equally very small.

In a number of administrations the date of publication of a measure is the date from which the relevant BTI decisions can start to be invalidated. However, at least one administration said it would not issue a BTI that would go contrary to a decision taken by the Nomenclature Committee and was awaiting publication while other administrations clarified that in the case of a classification regulation invalidation is carried out 20 days after publication when the measure comes into force. One other administration holds the view that once a regulation is published, any BTI affected by it can be invalidated immediately. The holder is notified and the invalidation carried out on the same day. Another administration said it carries out invalidations arising from measures immediately after publication but with affect from 20 days following the publication. The preparatory phase of the measure is used to identify any BTI decisions affected by it.

Officials in one Member State drew attention to an important aspect of invalidating BTI due to a classification regulation or an EU measure: i.e. the fact that those BTI concerned need to be identified and that may also require additional information from the holder and that in turn impacts on how soon after the measure enters into force all BTI concerned are invalidated.

Overall, it is clear that the administrations are aware of the subtleties of the legislation and take precautions to ensure that invalidations are carried out in a correct manner and with least delay.

**Revocations (invalidation codes 64 and 65):** As explained above, invalidations carried out using codes 64 and 65 arise due to errors in the BTI which necessitate that they be recalled. Classification errors can occur when the BTI is being issued and as long as the error is undetected and the holder has not been notified of the error, the holder of the BTI can rely on the legal certainty the BTI gives him. However, in cases of classification error the holder must also be given the opportunity to request a period of extended use when the BTI is revoked. (See below for an explanation of the period of extended use.) For this type of error the invalidation code number is 64.

During the reference period a total of 1837 BTI were revoked by all Member States using code 64. Of that number only 63 BTI were invalidated during the same period by the 13 administrations visited, representing approximately 3.4% of the total number invalidated using code 64.

With regard to errors that are not connected with the tariff classification, they can range from an error
in the name of the holder, the address is incorrect, errors in the names or model numbers of the goods, etc., vital information omitted from the description, etc. The invalidation code for BTI revoked due to such errors is 65. During the reference period the 27 Member States invalidated 1,095 BTI using code 65, but only 49 BTI of that number were invalidated by the 13 administrations visited representing approximately 3.8% of the total for the reference period.

**Period of extended use (period of grace)**

**General background:** A period of extended use or, as it is more commonly known, a "period of grace" is granted to a holder if he has signed binding contracts to purchase and import goods on the basis of the information in a BTI any time before the revocation was notified to him and provided those orders will be fulfilled within the time specified in the regulation but no more than 6 months from the time the BTI has been revoked.

As explained above, a period of extended use is intended to ensure that the decision to revoke a BTI for legal reasons does not have a negative effect on the trader concerned. As the classification in a BTI is legally binding up until it becomes invalid or is revoked for whatever reason a trader can rely on it when importing or exporting goods. However, if at the time of revocation a trader has binding contracts for the delivery of goods referred to in the BTI he should not be penalised because of changes in the law over which he has no control. As stated above, annulment is the result of deliberately misleading the customs and is the fault of the applicant whereas invalidation arises from changes in the nomenclature or legislation and revocation arises from errors and cannot be ascribed to the applicant or holder. However, in the case of errors that do not concern the classification, the holder is not legally entitled to a period of extended use as the classification will remain valid.

A period of grace, in simple terms, merely permits a trader to benefit from a BTI decision he has been issued with and in which, for a specific reason, the tariff classification is no longer correct. It does not in any way grant the trader additional concessions nor absolves the customs from carrying out checks and controls just as they would in ordinary circumstances. However, given that it presents a situation that could be exploited to the advantage of a dishonest trader (e.g. importing larger quantities than agreed when the period of grace was granted and thus benefitting financially), customs administrations must be very careful to ensure that all precautions are taken to avoid the misuse of a period of grace.

**Findings during the monitoring visits:** The first remark must be that requests for periods of extended use are very few so it was not unexpected that many of the administration visited had never been asked for a period of extended use and consequently when discussing it with the monitoring teams were talking in hypothetical terms rather than from experience.

All 13 administrations visited confirmed that if asked to grant a period of grace the first step they would take is to request proof of the contracts for the goods in the BTI. Some also said they may require additional proof that the holder is in fact entitled to be granted a period of grace.

A number of administrations did have experience of this concession but 2 such experiences are worthy of mention given that they hold lessons for all administrations.

The first concerns an administration which granted a period of extended use to the holder of one of its BTI decisions. The request was granted and the trader imported his goods through another Member State (one of the Member States visited during this phase) where the extended BTI was correctly handled. Furthermore, the granting administration did not inform the importing Member State of the situation until after it had granted the extension period. This unfortunate chain of events led to some difficulties for the importing Member State in controlling the implementation of the extension and
furthermore explaining the matter to the national court of auditors.

In the second instance one of the Member States visited received an application from one of its nationals requesting a period of grace for a BTI issued to him by another Member State that had not contacted the national administration of the holder at the time of issuing the BTI. In that case, the Member State that had received the request had to contact the administration that issued it for details. However, it turned out that the request had been submitted outside the deadline for making it so that it was rejected on grounds of being invalid.

Both cases illustrate the necessity for contacting colleagues in other Member States who may be affected by any decision taken that has an impact or influence on them. They also highlight the main difficulty attached to granting periods of grace, i.e. how does an administration control the use of extended BTI?

With regard to the actual methods and procedures in place in the Member States, the majority mentioned that when they notify a holder that his BTI is invalidated they inform him of his right to a period of extended use if he is entitled to one (given that in some cases of invalidation a period of extended use is not granted – see above). In one administration the case handler would process such a request and although there is no legal deadline for submitting a request for a period of grace, a request that arrives outside the deadline indicated in the regulation will always be rejected. The holder of the decision would have the right to appeal against a rejection.

One Member State had granted a number of periods of grace in relation to a classification regulation, none of which had been requested by the holders concerned. This was based on a misunderstanding in the text of the regulation and the administration agreed that its practice had to be changed.

Administrations also recognised the necessity of keeping their colleagues informed when requests for periods of extended use concern them. However, different views emerge in connection with matters of control of such periods of extended use. One administration is not in favour of making Member States responsible for controlling periods of grace, while another would not favour restricting the trader to using one point of customs clearance for goods covered by a period of extended use but feels any control mechanisms should be based on existing control systems (e.g. RIF).

Another Member State had no procedures in place at the time of the visit to control follow up if it granted a period of extended use but said it recognised that such procedures would have to be agreed between its parent administration and the legal service. However, it also said it would inform the post-audit department of its administration if it ever granted a period of extended use. Another administration said that in the case of sensitive products, it would inform the risk management unit if it granted a period of extended use.
11. Diffusion of information concerning BTI and training

Sections 19, 20 and 21 of the Questionnaire

References:
Legal provisions: None
Guidelines: Section 3,

General background: This section of the report looks at the training and diffusion of information both to customs, other governmental ministries or departments and to the general public. In order for any program or system to be a success it is essential that the correct training is provided to those who will be directly involved with it and that the target audience at which the program or system is aimed is informed of the benefits of it and the case of BTI is no different.

Training:

General background: There are two different strands of training available to customs officials in the field of BTI, one offered by the Commission and the other provided at national level. More intensive training will be provided for those officials who will be working in the departments/sections that will deal with BTI in all aspects of issuing. However, it is also important that customs officials, in general, are aware of BTI and know what its purpose is and how they should deal with it if they encounter it in their working lives.

At the time of the visits the Commission was organizing at least 4 basic training sessions annually, 3 in English and 1 in French. (Since then an advanced course has been introduced and it is intended to continue to provide at least one such session annually.) The training courses are limited to a maximum total of 12 participants per session with a maximum of 2 officials per Member State in any year. The Commission training courses are targeted at officials working in the designated customs authorities and who deal with applications and/or issue BTI. The three day sessions concentrate on all procedural aspects including how to upload applications, how to issue and upload BTI, indexing, attaching images, how to make searches in the database, etc.

At the time of writing this report, officials from all Member States have participated in these Commission training courses and it has become customary that any new officials arriving in national BTI sections in the administrations now participate as a matter of course. While it is possible for all the BTI officials in many of the Member States to participate in these sessions at some time, especially those with small administrations, it is and always has been made clear that participants are expected to provide training to their colleagues back in their administrations when it is required.

Findings during the monitoring visits: Most Member States include a brief training segment on BTI in the general training courses given to all customs officials. While not going into specific details concerning the issuing of BTI, they provide details on the nature, objectives and benefits of BTI. Such courses are particularly beneficial to officials who will be working at points of import/export.

In the sphere of training at the national level there are a number of methods used by Member States.
Many Member States have national customs schools or administration training colleges where officials will attend courses which will include some information on BTI and their purpose. All, bar one, of the 13 administrations visited offer some form of "on-the-job" training to new officials in the BTI sector and some offer it in combination with specific courses to those officials. In the one exceptional Member State the only training available at national level is through the medium of courses on specific topics.

Each administration has its own approach to training. One Member State said it organises basic training for all officials that takes 6 weeks to complete. That is then followed up with refresher courses and specific courses targeted at specific officials. However, all customs officials get a basic understanding of BTI its purpose and nature. Some administrations have training centres that provide courses that include modules on BTI but few offer a specific BTI training course. At least one Member State offers courses on the indexation of BTI. The same Member State has prepared a training manual showing officials how to work in EBTI-3. Another Member State, in addition to the general training offered to all customs officials, provide more in-depth training on EBTI to staff members who are BTI case handlers than to other customs officials. A one week specific course on tariff classification and BTI is provided in another Member State and all customs officials are free to apply for it. That course is given by three classification experts.

In Latvia training courses are also organised at Riga Technical University for traders and customs brokers. Experienced classification experts from the customs administration give the lectures. Customs brokers are obliged to follow this course before they can exercise their job and when they have completed the course they are awarded a basic certificate. However, they are also obliged to follow an update course at least every three years.

A number of the administrations have prepared training materials for the courses they provide and one of those administrations said the experience was very time consuming. As already stated, the training officer in one Member State has created a manual explaining how to work in EBTI-3.

In the course of the discussions some Member States made suggestions for future training course that they believe would be of interest to all concerned with issuing BTI and those suggestions are recorded in Part 4 of this report.

**Diffusion of information on BTI.**

**General background:** Evidence of the success of BTI is borne out by the fact that the numbers of BTI issued annually continue to rise. Increased use of BTI also requires that the customs officials directly dealing with BTI are fully aware and trained in how they should deal with them in their daily work but to a lesser degree all customs officials should be aware of the basic facts concerning BTI given the continued rise in use of this facilitation tool. The training given to those officials who encounter BTI in their daily work has been covered in the section above dealing with training.

However, it is also important that any developments in customs legislation or anything that could impact on the classification of goods is made known to all customs officials. Furthermore, the target group at which the EBTI system has been aimed must also be encouraged to use BTI in their import/export transactions and all developments and changes to the legislation, nomenclature, etc. must also be brought to the attention of the traders. The benefits of BTI need to be broadcast to as wide an audience as possible, not only directly to traders but to other governmental departments dealing with trade and economic matters.
Distribution of information within customs administrations

Findings during the monitoring visits: As explained above the diffusion of information concerning changes to the legislation or the tariff nomenclature must be brought to the attention of all customs staff in order that they can fully carry out their responsibilities to the administration and the public. In the past such information would have been distributed in the form of internal memos or other such instruments but with the increased use of electronic communications the methods of diffusion of information have greatly changed.

Information concerning the outcome of Customs Code Committee meetings where matters of interest to the administrations’ BTI officials is disseminated to all concerned officials either through the official organ of the administration or internal memos addressed to the individuals or through information meetings held with the participating official. Given that many of the Member States visited during this phase of the monitoring exercise are amongst the smallest in the EU, generally the delegate to a meeting is a member of a BTI team of one or two other persons. In the cases of Malta and Estonia, both administrations at the time of the visit had 2 and 3 officials, respectively, working in the BTI unit and all were delegates and kept each other fully briefed on decisions taken at Customs Code Committee meetings. However, whereas the Maltese officials did not feel need for an internal report between each other, the Estonian delegate prepares a small report for the team.

In many of the administrations important information on decisions taken, regulations adopted, etc. at Customs Code Committee meetings is passed on to the BTI colleagues by word of mouth and internal notes or memos combined. Given that many of the delegates to the Customs Code Committee Nomenclature meetings also work in the national BTI sectors, which themselves are very small, more widespread diffusion of such information is not really necessary.

However, in the larger administrations the delegates are obliged to prepare reports of the meetings they attend and those reports will be distributed throughout the Tariff Unit. In all administrations visited however, delegates to meetings in Brussels are expected to report the results within a short time of returning home using whatever media are available to them. In a number of administration use is made of the intranet to inform officials of the results of discussion held in Brussels and in at least one all information concerning the customs, i.e. judgments of the Court of Justice, reports of Customs Code Committee meetings, internal notes etc., are uploaded on the intranet. In Denmark news about new regulations, CNENs etc. is made available to both traders and customs officials in a similar manner, but reports from meetings, etc. is will only be made available to customs officials. Cyprus applies almost the same method; internal circulars are also prepared on specific classification issues and they are usually (but not always) also made available to the general public through the internet. Distribution would be limited to customs if there would be a reason to restrict their circulation.

Diffusion of information to the general public

Findings during the monitoring visits: It is policy in 11 of the Member States visited to advise traders who request information concerning tariff classification to apply for BTI. One of those administrations however, does not give that advice to traders who intend to carry out customs formalities in another Member State. One of the two administrations not applying this policy said the reason it does not give such advice is because the national traders wait until the last moment to seek advice and by that time it is too late to issue a BTI for goods that have already arrived at the port. The other administration concerned said the method traders use to seek classification advice determines whether they would offer information on BTI.

A number of administrations also said they organised special seminars targeted at traders, customs clearance, freight and forwarding and other clients of customs. Latvia adopts a more structured approach in that customs brokers are obliged to follow courses before they can exercise their profession and part of that course concerns BTI. They are awarded a certificate at the end of the
course and they must follow an up-date course at least every three years.

Other points of diffusion of information are other ministries and chambers of commerce where traders may enquire about tariff classification. In a number of Member States active promotion of BTI is done in ministries with trade related connections but the majority of Member States visited did not explore that avenue for spreading information on BTI at the time they were visited.

The internet and EBTI

General background: The advances made in methods of communication since 1991 have greatly altered the way organisations and governmental bodies can get their message across to the general public and it is no different with BTI where the internet has a major role to play in the propagation of the message that having a BTI can guarantee legal security with regard to the tariff classification of goods and that in turn gives security to the traders with regard to duties they can expect to pay, any other customs charges and from all that information calculations of prices and profit margins can be made. However, despite the advances in electronic communication some of the administrations still retain call/advice centres that operate in parallel with the website, where the public can have personal contact with an official and when enquiring about tariff classification the administration invites the trader to obtain a BTI.

In keeping with this trend towards electronic communications all governments and the European Commission now maintain web sites. DG TAXUD maintains a web page on which all matters of interest to the general public concerning customs and taxation are posted. (http://ec.europa.eu/taxation_customs/index_en.htm)

There is also a specific page concerning BTI with links to other pages of interest amongst which is the application form, the relevant legislation pertaining to binding decisions and the current list of designated offices for receiving applications and issuing BTI and general information on how to correctly complete an application for a BTI decision. (http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/classification_goods/index_en.htm)

There is also a link to the public EBTI database where it is possible to consult all BTI valid at the time. There are various search criteria available for an enquirer to make searches in the database including by Member States, start and end date of validity, tariff classification, and by keywords. (http://ec.europa.eu/taxation_customs/dds2/ebti/ebti_home.jsp?Lang=en). Those criteria can be used singly or in combinations to make searches in the database.

Findings during the monitoring visits: A number of Member States use the internet to publish a customs newsletter/bulletin in which traders and the general public are informed of any changes to the legislation or procedures that affect BTI. Similarly all changes that are directly affecting the legislation in all areas of customs are published on the Commission’s webpage, and in specific cases where customs matters are affected the information will also be uploaded or links provided on DG TAXUD’s webpage.

Member States' administrations' web sites

General information: The customs administrations of all Member States also have their own national web pages.

Findings during the monitoring visits: During the visits the monitoring teams also looked at the websites of the administrations with an eye to determining how up-to-date they were and to assess the content with regard to BTI. In all cases the administrations had information concerning BTI
on their web pages but the content and nature of that information varied between Member States.

With regard to how information is kept up-to-date, the frequency with which new information is uploaded was varied. In one case the links to the Commission’s website in both English and the national language were obsolete and links to the Bulgarian and Romanian customs were not listed. In a number of Member States updating the administrations’ webpage was carried out infrequently while in another administration any new information or measures were uploaded within 24 hours of the customs being notified.

The monitoring teams in such instances of irregular updating of the webpages emphasised that failure to keep such pages up-to-date defeats the whole purpose and reason for the existence of such pages. Administrations were recommended to update their websites regularly and endeavour to make sure that the latest information is made available to the public as soon as possible.
PART 3

Recommendations to the Member States
Recommendations to the Member States

**General background:** In line with the objectives of the monitoring exercise the different teams assessed the performance of each administration against the EU legislation and the Administrative Guidelines. As would be expected, different results apply to different Member States. Specific recommendations were made to specific Member States but in reality recommendations are applicable to all. Therefore, there is no benefit or advantage to be gained by specifying the Member States to whom specific recommendations have been addressed.

Recommendations are set out below on a Section by Section basis and the absence of a reference to any specific Section is to be taken as indicating that there were no recommendations made by the monitoring teams for the topics covered by that Section. There is also a section on general horizontal recommendations, i.e. recommendations that concern all aspects of the BTI issuing process.

In addition to the recommendations made during the monitoring visits, additional recommendations have been made in the report, pre-empting possible questions or uncertainty with regard to particular situations.

**General recommendations:**

**Information provided verbally must be confirmed in writing:** To avoid any misunderstandings it is recommended that any information provided by applicants over the telephone must always be confirmed by them in writing. Such communications should be retained on file. In the event of an appeal proof of what was discussed and the information given by the applicant may be crucial to the process.

**Retain all information relied upon to determine classification:** Any information that is relied upon when determining the tariff classification of goods in a BTI should be kept on file. While it may not always be possible to retain original documentation, a copy should be made and kept on file. Such information may come from varied sources: e.g. directly from the applicant, the internet, trade literature, specialist publications or scientific journals, etc.

**Access to CircaBC BTI newsgroup:** Member States administrations are recommended to give officials who process applications, draft and issue BTI access to the BTI newsgroup in CircaBC. While that is a decision for each Member State to make, it has benefits for the administration and the BTI issuing processes.

**Develop a checklist:** It is recommended that the administrations give consideration to developing a checklist in order to minimise the risk of some steps in the procedures being overlooked. The BTI processing and issuing procedures are very much dependent on human intervention and consequently the possibility of error or omission is always present. This is especially true in the case of new officials who lack the experience of their more established colleagues and who could innocently overlook an important action in the checking, drafting or issuing stages. Some Member States already have such checklists or variations on such lists which they use and find beneficial.

---

**Section 1 General information concerning the national administrations**
**Recommendations:**

**Maintain viable staffing levels:** Staffing levels in administrations are of primary concern and it is important that adequate personnel levels are maintained to ensure that the obligations of the Member States are fulfilled. Without appropriate staffing levels it is impossible for the administrations to function efficiently and provide the high level of service that traders expect. This is especially true in the context of issuing BTI decisions as in many administrations staff levels are stretched to the limit and that in turn makes it difficult for those working there.

As in the first phase, the monitoring teams found a strong sense of dedication amongst the officials in the Member States visited. Given the overall high standards upheld by the administrations visited it is important that such standards are maintained and where possible improved upon in order to better serve the public.

**Review staffing levels regularly:** In conjunction with maintaining staff numbers at a viable level, it is recommended that all administrations keep a close eye on those personnel numbers and that regular reviews of are undertaken to ensure that potential problems arising from staff shortages are avoided.

**Notify the Commission of all decisions of national courts and tribunals:** It is also recommended that all judgments of national courts and tribunals concerning tariff classification or BTI decisions be notified to the Commission regardless of the language in which those judgments have been handed down.

---

**Section 2  Treatment, recording and uploading of BTI applications and treatment of samples**

**Recommendations:**

**Notifications in general:** In compliance with Art.6 of Reg. 2454/93 all applicants should be notified that their applications have been received and accepted and the date from which the 3 month period, referred to in Art. 7 of that regulation, starts running. The legislation does not provide for any exceptions to this obligation and besides, it is a matter of good housekeeping and correct administrative behaviour and in line with the policy of transparency and openness.

Similarly, applicants should always be informed of the receipt of supplementary information or samples sent separately from applications. How this is done is a matter for the administration but a record of such notifications should be retained.

**Notification by telephone:** Administrations are advised that notifications over the telephone are not recommended as there will be no record of what precisely the applicant is told. It is recommended that notifications are sent in written form (i.e. in a letter or by e-mail) and a record of it is kept on file. It is important that customs administrations can prove that they have acted correctly and that all procedural requirements provided for in the legislation have been correctly fulfilled.
Notification of the start of 3 month period: Administrations are reminded that the applicant should always be notified of when the 3 month period referred to in Article 7.1(a) begins and when it is expected that the BTI will be issued.

Additional information: When additional information is provided by applicants over the telephone, administrations are recommended to request a written confirmation of the details from the applicant to ensure that there has been no misunderstanding or omission of facts that could prejudice the decision in the resulting BTI. The form such a written confirmation should take (i.e. letter or e-mail) is a matter for the administration. The aim of this recommendation is to ensure that the responsibility for the content of the application remains on the shoulders of the applicant and to provide protection to the customs should there be a legal challenge to the decision in the BTI.

With regard to additional information not formally provided by the applicant but publicly available on the applicant’s website, it is recommended that before using such information in the process of determining tariff classification, it should be confirmed, in writing, with the applicant that it is indeed applicable and correct. However, the legislation obliges the applicant to provide all necessary information and to confirm that it relates to the application. Searches on the website of the applicant or manufacturer should only be undertaken when trying to confirm or augment information already at hand.

BTI applications and their treatment: Applications with poor or deficient descriptions of goods should be rejected by customs administrations. Descriptions such as "see annex", "see catalogue" or "furniture", etc. are unacceptable. (This very often occurs when a trader wants BTI for a wide range of goods, usually of the same generic group.) Article 6.3 (A) (d) imposes the legal obligation on the applicant to clearly describe the goods for which the BTI is being requested and there is no obligation on the part of the administration to interpret such deficient descriptions. The onus is on the trader to provide all the necessary information to enable customs to issue a BTI. If an administration should attempt to divine the needs of the applicant there is a grave risk involved that the BTI, when issued, will not be for the goods intended by the applicant and that increases the potential for abusive usage of the BTI. Consequently, the applicants should be requested to submit new applications with correctly completed descriptions in field 7 as required by law. However, if all mandatory fields have been completed (even if in a vague manner) the application should be uploaded in the EBTI-3 database and a note added in the official use box explaining that a BTI will not be issued due to the lack of a precise description of the goods.

Contact details: All officials working in the field of BTI should have access to the contact details of their colleagues in the other Member States as such contacts are necessary and beneficial to ensure the correct application of the legislation. It must always be borne in mind that the national customs administrations in the EU do not work in isolation from each other and furthermore, the resulting BTI decisions are binding on the customs authorities of all Member States. Consequently, close contacts between officials in the different Member States is essential for the good working of the EBTI-3 regime.

Prompt uploading of applications in EBTI-3: Member States are obliged to enter all completed applications in the EBTI-3 database as soon as possible. Completed applications are those applications in which all mandatory fields have been completed by the applicant. This category also includes applications with vague or deficient descriptions of goods. The absence of all the necessary information to enable a decision to be taken is not sufficient reason to not enter the application in EBTI-3. The quality and completeness of the information submitted can be verified after it has been published in the database. Delays in uploading completed applications increase the risk of BTI shopping, and consequently the risk of divergent classification.

Prompt referral of applications from regional offices: While the vast majority of
Member States have a single centralised office for the reception of applications from applicants, there are a number of administrations where applications can be submitted to regional customs offices or other municipal bodies. It is essential in those Member States concerned that BTI applications submitted to any office, other than that where applications are treated and processed, are promptly referred to the central BTI issuing office and the administration should continuously guard against any unnecessary delays in this respect.

**Samples:** It is recommended that a formal procedure be put in place in the Member States for the acknowledgement of the receipt of samples. Such a procedure would act as a safeguard in the event of a sample being lost. While it may be almost unknown that a sample has been lost there is no guarantee that it will never happen and therefore all steps should be taken to minimise the risk of it happening and avoid the administration being accused of negligence by the trader.

**Retain samples in a secure space:** It is also recommended that samples are always retained in a secure space designated for that purpose until they are either returned to the applicant or otherwise disposed of. While most administrations have such facilities some cases were found not to be ideal during the monitoring visits.

**Retain samples until the end of the appeal period:** Samples should always be retained until such time as the period during which the decision can be appealed, as provided for in national legislation, has expired.

**Refrigeration facilities:** Member States are also reminded of the necessity to maintain samples, especially perishable samples, in the exact condition they were in when initially taken. This is especially important in the context of foodstuffs as any alterations in the temperature or other elements intended to maintain them in good condition could have an impact on the results of analyses and consequently on the tariff classification in the BTI. Furthermore, in the event of an appeal before a court, it could have a critical impact on the outcome of the case if there are doubts about how such samples were treated or suspicions that they had deteriorated due to negligence at the time they were analysed. Therefore, refrigeration facilities should always be at the disposal of the administrations dealing with BTI applications.

---

**Section 3 BTI applications from other Member States and outside the European Union**

**Recommendations:**

**Checks in the database:** It is perhaps unnecessary to draw attention to the importance of searches in the EBTI-3 database when applications are submitted by or on behalf of traders established in other Member States but administrations are reminded that this is the most effective action to counter BTI shopping.

**Searches should not be restricted to certain Member States’ output:** Searches should not be limited to BTI decisions issued by specific Member States unless there is justification for such a limitation. There is a perception amongst traders that by submitting applications to certain Member States they increase their chances of obtaining BTI decisions they regard as more advantageous to them. Therefore, searches limited to a specific circle of Member States in such situations carry a high risk that a critical BTI issued outside of that limited circle would be overlooked.
Use a broad range of criteria: It is recommended that searches should initially be based on a broad range of criteria. The more criteria used when conducting searches the better the chance of identifying similar, if not identical goods, that already have been classified in BTI. Basing such searches on one or two criteria increases the risk that a relevant BTI decision may not show up in the results. In addition, it is not recommended to base searches around the existence of images alone as many administrations do not attach images as frequently as is optimal.

Prompt uploading of applications in the database: The Member States are reminded that regardless of the source of an application for a BTI, they are obliged by law to introduce all applications without exception into the database as soon as possible after they have been received and accepted by the customs, provided, of course, that all 9 mandatory fields (i.e. boxes 1, 2, 5, 6, 7, 8, 11, 12 and 13) on the application form have been completed. The content of the mandatory fields can be analysed after the application has been uploaded to determine whether the information provided is adequate for the purposes of issuing a BTI.

While accepting that the requirement to upload completed applications in the EBTI-3 database may put a strain on human resources in some Member States, it is a legal obligation on all administrations and consequently the matter of staffing levels must be addressed if that is the reason for noncompliance with this requirement. (See Section 1, first recommendation – “staffing levels”.)

Bilateral contacts between MS: Member States are reminded that bilateral contacts between administrations are an integral part of the procedures for preparing draft BTI and all such contacts should receive the necessary attention to ensure the smooth running at EU level of the processing procedures. All such bilateral queries or contacts should be dealt with in a speedy manner and if it is not possible to give a reply to the specific query within a reasonable time frame, the administration should endeavour to inform the enquiring administration of the situation when it becomes clear that a rapid reply is not possible. All contacts initiated by administrations should be responded to.

Section 4 Processing BTI applications: checks, BTI shopping and the role of laboratories in issuing BTI

Recommendations:

Checks in the database: The recommendations in Section 3, above, concerning checks in the database also apply to this Section in the context of precautions to be taken to reduce the opportunities for BTI shopping. Regardless of the language of the application, the first search should be to determine whether the potential holder identified in the application has received a BTI anywhere in the EU. If the existence of a valid BTI is confirmed attention then turns to the goods for which he has received it. The initial search using the name and address of the potential holder does not require any specific linguistic knowledge neither does the tariff classification but it is accepted that the description of the goods may very well present problems of a linguistic nature. In such cases contact should be made with the administration that has issued the BTI. However, an image attached to the application would greatly enhance understanding of the goods and increase the impact of searches.

Confirm entitlement of holder: This recommendation is closely linked to the preceding one. The administration should always confirm the entitlement of the prospective holder to be issued with a BTI. Grounds for not receiving a BTI include no import/export transaction envisaged, and the prospective holder already possessing a valid BTI issued by any EU administration for identical goods. Administrations are reminded that it is not sufficient to accept the contents of box 11 of the
application at face value.

**Searches should not be restricted to certain Member States’ output:** It is recommended that searches in the database should not be restricted to the output of a limited number of Member States unless justified. A BTI issued in any one of the 28 Member States is equal in law to any other BTI; all have equal validity. Therefore to restrict searches to a limited number of Member States is not justified legally and, furthermore, increases the possibility for divergent classifications to occur. The intelligent use of the Thesaurus and the attachment of images to all BTI applications and decisions would better facilitate understanding of their content. If doubts arise concerning specific decisions, they can be queried with the colleagues in the issuing administrations through informal bilateral consultations.

**Treatment of applications on behalf of traders established outside the EU:** It is the view of the Commission that the legislation makes it implicit that BTI should only be issued to traders established in the EU or to their appointed representatives. While it is a fact that the current legislation on this specific aspect is not clear, Member States should take account of the view of the Commission which recommends that no BTI be issued directly to traders established in a third country.

**Inform administrations of applications:** When a BTI application is received either from an applicant, or on behalf of a holder, established in another Member State, the administration that has received the application should inform the administration of the Member State of the applicant/holder of the fact. While in most cases such applications are motivated by practicalities (i.e. goods will be declared in the Member State and the BTI will be in the national language) there may be occasional cases where the applicant/holder is indulging in BTI shopping.

**Acceleration of document handling:** Administrations are encouraged to continue to strive to improve and streamline their document handling procedures with a view to improving efficiency where possible.

**Use of laboratories:** Member States are advised to make use of the laboratory facilities at their disposal. During the course of the two phases of the monitoring it was noted that occasionally privately commissioned analyses were accepted without question and while it is the responsibility of the applicant to provide correct information, it is also the responsibility of the administration to satisfy itself that the information is correct before issuing a decision that binds it and the other 27 administrations. Therefore it is recommended that the customs laboratory should always be asked to at least examine the results of such privately commissioned analyses and if there are doubts as to the reliability of the results samples should be requested for testing by the laboratory.

**Role of laboratories:** The role of the laboratory is to confirm the nature and characteristics of the goods, unless it has been charged with classification duties within the administration. The laboratory may advise the customs on where it believes the goods are classified but the final decision on the classification must always lie with the customs administration.

**Submit samples early to laboratory:** It is recommended that when an analysis is required the sample should be forwarded to the laboratory as soon as possible so as to allow the chemists time to carry out the necessary tests and report the results back to the customs. Given that many customs laboratories work for other government ministries and are extremely busy, such a policy would go some way to minimising problems of timing with regard to issuing BTI on the part of customs and would lessen the pressure on the laboratories to provide results within an unnecessarily short deadline.

**Establish deadlines for laboratory analyses:** Tying in with the preceding recommendation some form of deadline should be established between customs and laboratories with
a view to avoiding unnecessary delays. In view of the deadlines imposed by the legislation, analyses results should be returned to the customs as soon as they become available in order to allow the administration to assess the results and determine the classification.

How such deadlines are established is a matter for the individual administrations to decide. In certain cases it may be more expedient to treat samples on a case by case basis while in other situations a single universal deadline might be more effective. The main point is that deadlines should be established and adhered to.

Section 5  The DDS and EBTI-3 databases, their maintenance and their role

Recommendations:

**Prompt uploading of BTI:** Member States are reminded of how important it is to promptly publish BTI when they issue them. Similarly, any changes to the status of a BTI should also be entered with minimal delay. See also recommendation concerning applications in Section 3.

**Use "For Official Use" box:** Member States are exhorted to make full use of the "For Official Use" box on the BTI application to record the steps taken during the processing of an application. Information that should be noted includes any reasons for a delay in proceeding with issuing a BTI, correspondence with the applicant (e.g. requests for additional information or samples), the date when a sample has been submitted to the laboratory and when it is returned, or the reasons why it is decided not to issue a BTI. (See also recommendation in Section 2 concerning “BTI applications and their treatment”) It should also be used to indicate when the three month period starts running. Such information not only protects the administration from unjust allegations of negligence but also provides potentially important information to other Member States administrations if the applicant submits fresh applications to them.

**Ensure accuracy of dates and time periods:** Member States are reminded that when entering applications and BTI decisions into EBTI-3, care and attention must be paid to ensure the accuracy of any dates.

**Insert the date of an action:** It is recommended that the date on which an action or event recorded in the “For Official Use” field takes place is also indicated.

**Keep records of all checks:** A record of all checks carried out in the course of processing BTI applications, including those in the database and on the internet, should be retained on the case file. This is obligatory in at least one Member State under the provisions of the national legislation but it should become standard practice in all administrations. Such records are of importance if there is an appeal against the classification given in a BTI or against the decision not to issue a BTI as they provide proof for establishing some, if not all, of the reasons for the decision taken.

**Inform helpdesk of any problems promptly:** If there should be any problems with the IT aspects of the system, or with the databases, administrations should inform their national helpdesks without delay and if the helpdesk cannot resolve the matter, the ITMS helpdesk should be contacted.
Section 6  Rejection of BTI applications

Recommendations:

Unjustified reasons for rejecting a BTI application or refusing to issue a BTI:
The main reasons for rejecting an application or refusing to issue a BTI are covered in more depth in Part 2 (Section 6) of this report. However, a number of reasons put forward by administrations during the visits are not valid. Therefore in cases where (1) a single import transaction is intended, (2) where the goods being imported are not intended for sale on the open market or (3) where the goods concerned by the application are under discussion at the Customs Code Committee, there is no legal justification why such applications should not be treated like any other application. None of the circumstances cited above are legally sanctioned reasons to reject a BTI application or to refuse to issue a BTI. In the case of goods that are under discussion at the Committee it is also recommended that this fact it recorded in the “For Official Use” box on the application form. What the importer does with the goods after importation does not alter the fact that they must be declared to customs and consequently the importer is entitled to request a BTI in order to have legal certainty with regard to how those shall be treated on importation.

Use of "For Official Use" box: The second recommendation in Section 5 is also relevant to this Section. It is recommended that in cases where a Member State does not issue a BTI that a brief explanation should be inserted in the "For Official Use" box at the bottom of the application. Such information is useful in the combat against BTI shopping as well as enhancing transparency.

No import/export transaction envisaged: Applications for BTI where no import or export transaction is envisaged should be entered in the EBTI-3 database although a BTI should not be issued. BTI should only be issued where it is indicated that an import or export transaction is envisaged and for the purposes outlined in Article 12 (7) of the Customs Code (Council Reg. 2913/92).

Request written confirmation of withdrawal of application: When an applicant withdraws his application, the customs administration should always ensure that requests for withdrawal are confirmed in writing.

Section 7  Drafting and issuing of BTI and accelerated procedures

usage of BTI

Recommendations:

Complete address of the holder: It is recommended that when issuing BTI, especially to holders established outside the national territory, that the complete address of the holder be displayed in the BTI. Very often only the city or town of the holder is shown and sometimes a postal code. While such information is part of the address, it is not the full address and in the case of holders established outside the national territory, it is sometimes misleading.

Clarity of descriptions: The descriptions of goods in BTI should be drafted clearly with a view to eliminating ambiguities or misunderstandings. Given the importance of descriptions to customs officials every effort should be made to present a description that clearly identifies the characteristics
of the goods classified in the BTI. In addition to a clear description an image of the goods should also be attached to the BTI in cases where it would increase understanding of the goods.

**Confidentiality:** Although the applicant has the opportunity to indicate the information he regards as confidential when completing the application form, sometimes he does not do so, for whatever reason. However, this does not absolve the administration from taking some responsibility to ensure that commercial details such as product names, trademarks, formulas or recipes are treated as confidential when issuing BTI. If it is felt that certain information should be treated as confidential the administration may either contact the applicant to confirm that it is confidential or on the other hand simply place it in the field "commercial denomination" on the BTI of its own accord. However, it is vital that the provisions concerning confidentiality are respected.

**Contact applicant concerning confidential elements:** In those cases when administrations consider commercial information to be of a confidential nature despite the applicants not having specified it as such, the administrations are recommended to contact the applicants and inform them that the data shall be treated as confidential when the BTI is issued.

**Keeping an administrative diary:** As reported in the global report of the first phase of the EBTI-3 monitoring (see Part 2, Section 7, Findings: Drafting and issuing BTI, on page 79) a number of administrations have introduced different methods to record the in-flow of applications and their progress through the administration. During the second phase the monitoring teams encountered a number of other administrations that had introduced similar diaries/checklists to record their workload. While it is a matter for each administration to decide on the methods best suited to its situation, it is strongly recommended that some form of record should be kept of when applications enter the administration and of the different steps they follow in the course of drafting and issuing the BTI (e.g. request for additional information, sent to and received back from the laboratory, etc.). Such records can also benefit the administration as they can highlight areas where weaknesses need to be addressed and improvements made. It is also in the interests of the administrations to have some record of what they do, how long it takes and in the event of a legal challenge to be able to justify their actions.

**Business continuity plan:** In the situation where an official is absent for a prolonged period of time, administrations should have a clear action plan to avoid unnecessary delays in treating the BTI applications under that officials charge. Similarly, during holiday periods, there should be a continuity plan in place in each administration to ensure the smooth processing and issuing of BTI.

### Section 8 Images and keywords

**Recommendations**

**Attach images to BTI applications:** Where it is feasible, an image of the goods referred to in the BTI application should be attached when the application is published in the EBTI-3 database. Images not only assist customs officers to identify goods, it also helps in the combat against BTI shopping. The same image, and additional images if necessary, can be attached to the BTI also.

**Attach images to BTI:** Images should be attached to BTI as a rule rather than as an exception. While it is obvious that an image of a product may not always be useful or informative, it is recommended that consideration be given to whether a less obvious image, such as of the packaging or container, etc., would help customs officers with the identification of the product. Similar consideration should also be given to labels, instructions for use or dosage, composition tables etc., all
being elements that could prove useful when trying to identify the product.

**Confidentiality and images:** Images are the most effective way of identifying a product but may be problematic when it comes to the confidentiality rules. Some products have simple labels or logos that identify them others have distinctive features that are recognisable by the general public. Therefore as explained in the Administrative Guidelines efforts should be made to hide the brand name or other identifying features when making images for BTI. However, Latvia very often attaches two images of the same product, one for the public with identifying features hidden and the other showing the product as it is which is uploaded in the confidential part of the BTI. Administrations are recommended to adopt a strategy similar to that of the Latvian administration as it ensures the maximum amount of information possible is made public.

**Exercise caution when transferring images from applications to BTI:** Member States are reminded that while images attached to applications can show confidential information because the applications are not made public, they must take care to ensure that images conform to the confidentiality rules when generating a BTI from an application. It is quite easy to overlook such details but every effort must be made to ensure that there are no breaches in confidentiality.

**Clarity of images:** The quality of an image is crucial to how useful it is. While it may not always be possible to take a single image that reveals all details, an image of the item as a single unit is always beneficial. Additional images of identifying feature, details or marks can also be attached if such characteristics could assist in the identification of the product and they can be uploaded in the confidential “Commercial denomination” field in the BTI form. There is no strict limit to the number of images that can be attached to a BTI.

**Generally the same image should not be attached to different BTI:** Generally a unique image should only be attached to one BTI. As each application must relate to one type of goods, it is recommended that if an image is attached to the application it should be carried over to the BTI. However, if an application for a similar product is received it is not advisable to use the identical image again. In cases where different applications for the same goods with the same characteristics but in different sizes or colours or with features that have no bearing on the tariff classification are received from the same applicant on behalf of the same holder, a single BTI can be issued with an image attached and the different model numbers, sizes, colours, etc. can be listed in the confidential information. Exceptions to that principle are discussed in the next recommendation.

*(Please also refer to judgment of the Court of Justice of the EU of 2 December 2010 in Case No. C-199/09 (Schenker SIA) regarding the meaning of "one type of goods" (Official Journal C 30 of 29 01.2011, page 4.)).*

**Images of goods put up for retail sale as a set:** Although goods may be put up for retail purposes as a set it does not automatically follow that for customs purposes they are treated as a single item. In such cases where it is decided that each component should be classified separately, an image of the specific component classified in the BTI as well as an image of the "set" as it will be put up for retail sale should be attached to the BTI and in the case of each BTI for the component parts, it is recommended that the same image of the "set", as put up for retail sale should be used. When viewed separately, the link between the individual BTI for the components would be the image of the “set”.

**Thesaurus keywords:** Every effort should be made to insert at least 5 keywords from the EBTI Thesaurus. The keywords should be chosen carefully with a view to reflecting the nature of the goods being classified. The more keywords attached to a BTI decision, the more accessible that decision becomes to the administrations in the other Member States.

**Insert keywords directly from the Thesaurus:** It became clear to the monitoring teams during visits that whilst most officials endeavour to insert Thesaurus keywords they very often do so
from memory and not directly from the Thesaurus. The result is very often useless for search purposes because the exact keyword as it appears in the Thesaurus is not used but rather a derivative is used instead e.g. “anchors” in the Thesaurus while “anchor” appears in BTI. In such a case “anchor” would not appear as a Thesaurus keyword so it will not be translated into other languages and anyone using those languages would not find the BTI using it as a search word.

**Inform the Commission of errors:** During the monitoring visits a number of administrations complained of errors in the national language version of the Thesaurus. The Commission would like to remind the Member States that when an error is identified in the Thesaurus the administration concerned should inform the Commission immediately indicating which term or terms are incorrect and proposing the correct term that should be used.

**Propose new keywords:** Member States are invited to propose new keywords which they believe would benefit the BTI system. The word should be submitted in the national language with the English equivalent.

---

**Section 9  Appeals**

**Recommendations:**

**Informing the public of appeals procedures:** In a number of Member States it was found that information concerning the appeals procedure was not provided to the applicant at the time of the notification of the BTI. It was felt by those administrations concerned that as the provisions are set out in the legislation it is unnecessary to repeat them when notifying BTI to traders. However, traders should be informed in the notification letter accompanying the BTI of the timetable set out in national law for launching an appeal and details of the body to which the appeal should be addressed. This is especially important to the holders of BTI who are established in another Member State.

**Appeals against rejection of a BTI application:** While Article 243 to 246 (inclusive) of the Customs Code covers the broad principal of appeals it is the Member States that are competent for their implementation. As a consequence different conditions are attached to the appeals mechanism of each Member State, but in general they are fairly similar. However, it was revealed that when a BTI application is rejected, not all Member States consider such a decision as falling under the above mentioned articles. However, the Member States’ attention is drawn to Article 6.3 of the Customs Code which indicates that a decision adopted in writing to reject a request should also refer to the right of appeal while Article 6.4 says that provision may be made for that provision to apply to other decisions.

---

**Section 10 Annulment, invalidation and revocation and period of extended use**

**Recommendations:**

**Transmit data without delay:** Member States are reminded that all data concerning the validity status of BTI should be transmitted to the EBTI-3 database without delay. Failure to do so could lead to an invalid BTI being presented and accepted in a Member State, including the issuing Member State.
Issuing replacement BTI: When issuing replacement BTI, administrations must assess whether or not a new application should be requested from the holder. In those cases arising from an error in the classification (invalidation code 64) the circumstances surrounding the error must be considered in order to determine if a new application is required. If, for example, the error is discovered after the BTI has been issued but before it has been notified to the applicant it would not be necessary to ask for a new application. Similarly if the error is discovered within a short period following the notification (maximum 3 months) it would be unnecessary to request a new application but it is recommended that the applicant submit confirmation in writing that the contents of the original application are still valid and the goods are unchanged. In those cases where the error does not concern the classification in the BTI (invalidation code 65), no new application is required as the error is not concerned with the classification of the goods described therein but is concerned with another element unconnected to the classification (e.g. spelling error in the name of the holder, an error in the address, etc.). In all other cases a new application should be requested before a replacement BTI is issued.

A replacement BTI cannot be issued for a decision that has been annulled: When a BTI decision is annulled (using invalidation code 55) a replacement BTI cannot be issued for it. An annulment legally means the BTI concerned has never existed and consequently it is not possible to replace it. If the holder requires a BTI he must submit a new application.

Replacement BTI should have a full 6 year validity period: There is no legal basis for issuing replacement BTI with a validity period of less than 6 years. This applies to BTI that have been revoked using code 65 (i.e. revoked due to an error, other than a classification error). The legislation does not provide for shortening the statutory 6 years by the period of validity of the original BTI.

Eliminate any overlap in the periods of validity of revoked and replacement BTI: There should be no overlap between the period of validity of a revoked BTI and its replacement. The replacement BTI cannot have a start date of validity that pre-dates the end date of validity of the BTI it replaces.

Insert references in revoked and replacement BTI: In the interest of clarity and transparency, when a BTI is issued to replace a BTI revoked for whatever reason there should be a cross reference to both the revoked and replacement BTI in those documents.

No period of validity should appear for BTI that have been annulled: When a BTI is annulled it signifies that it has never legally existed and this fact should be reflected in the information transmitted to the EBTI-3 database. The end date of validity should be the same as the start date of validity.

Grant periods of extended use only upon request: During the visits the monitoring teams encountered situations where administrations had granted periods of grace automatically without being requested to do so. The Member States are reminded that this concession should only be granted if the holder of the BTI decision concerned requests it and provides whatever evidence, written or otherwise, that the administration requests.

Inform another Member State if period of extended use to be used there: If granting a period of extended use that is to be used in another Member State, that Member State should be informed by the administration granting the concession. Full information concerning the goods, quantities for which the concession has been granted and the points of entry of the goods should be conveyed to the administration in whose territory the extended BTI is to be used.
### Section 11 Diffusion of information concerning BTI and training

**Recommendations:**

**Frequently update web pages:** Member States administrations should update their web pages frequently. A single annual update is insufficient as during the period of 1 year there will always be additional legislation (i.e. classification regulations) and sometimes changes to the existing law. It is in the interests of both the administrations and the trader community that such information is made publicly available as soon as possible.

**Links to Commission web pages:** Member States should ensure that their websites have clear links to the Commission's website. It also relieves the administrations from the burden of having to translate legislation or explanatory notes into their languages as they are available directly from the Commission's website.

**Encourage traders to apply for BTI:** It is in the interests of both customs and traders that they apply for BTI. Consequently it is recommended that when a trader seeks information on tariff classification he/she should be encouraged to apply for BTI. BTI promotes uniform classification and application of the customs legislation and at the same time gives legal certainty to traders regarding their goods.

**Spread information about BTI to other bodies:** Information about BTI should also be made available to other governmental and commercial bodies. Trade and commerce ministries or their equivalent, chambers of commerce and trade organisations with a view to spreading knowledge of BTI and encouraging traders to apply for decisions.

**Important information should be made available in at least one other language on administrations’ websites:** While all official languages of the EU are equal in law and Member States issue BTI decisions in their national languages, not all traders doing business in a Member State will be fluent in the national language. Given the international perspective of modern trade patterns and the economic potential of such trade, it is in the interests of all Member States to make information about their national legislation and administrative requirements available to potential foreign traders who are considering establishing businesses in the EU. Therefore it is recommended that information concerning important national legislation (e.g. the national appeals system) be made available in at least one other language. This is particularly relevant to Member States that have less widely spoken languages.
PART 4

Recommendations from the Member States to the Commission
Recommendations from the Member States

**General background:** Given that one of the main objectives of the monitoring exercise was to allow national officials to give “feed-back” to the Commission on how it could improve the procedures and tools available for issuing BTI. This part of the report therefore lists the recommendations made to the Commission by Member States during the visits. Unlike in Part 3, the Member State making the recommendation is identified. The recommendations made cover various aspects of the overall system for issuing BTI and are set out below following the structure of the sections of Part 2 of this report. In the intervening time between the visits and the publication of this report, a number of the recommendations have already been implemented.

There is also a section for general recommendations, i.e. recommendations that are not exclusive to BTI or to any specific section identified in this report.

**General recommendations**

**Recommendations:**

**Lithuania** recommends that the Commission give serious consideration to reimbursing two experts from each Member State to attend meetings of the Customs Code Committee on classification issues as sometimes very specific expertise is required during the discussions.

**Section 2  Treatment, recording and uploading of BTI applications and treatment of samples**

**Recommendations:**

The **Czech administration** recommends that the matter of when the three month period, referred to in Article 7.1 of the Implementing provisions, starts running should be more precisely explained when the Administrative Guidelines are being revised. The administration also considers that clarification of the different dates referred to in the BTI application needs to be clarified in the revised Guidelines.

**Section 4  Processing BTI applications: checks, BTI shopping and the role of laboratories in issuing BTI**

**Recommendations:**

**Cyprus** recommends to the Commission that the timeframe for bilateral consultations should be kept rather short as the administration feels that traders should not suffer due to unnecessarily lengthy consultations, especially if as a result the matter cannot be resolved bilaterally and the matter is referred to the Customs Code Committee.
Estonia recommends that clarification as to who and when the Commission should be contacted in cases of BTI shopping and details of how such communications should be effected is set out in the Administrative Guidelines when they are being revised.

Section 5: Recording the reception of BTI applications and sending them to the database

**Recommendations:**

**Estonia** recommends that the matter of when a BTI application should be published in EBTI-3 is further clarified in the Administrative Guidelines when they are revised.

**Estonia** also recommended that the uses to which the “For Official Use” box on the application form can be put should be clarified in the Administrative guidelines when they are being revised. The administration recommends that examples of the type of information be given.

Section 7 Drafting and issuing BTI and accelerated procedures; usage of BTI.

**Recommendations:**

**Austria** proposed that BTI that have been viewed should be highlighted in colour rather than in the heavy bold script currently used. The colour would make it easier to recognise the viewed decisions.

**Lithuania** proposes more active use be made of CircaBC to discuss classification problems and any issues related to classifications.

**Lithuania** also proposed that when working in the EBTI-3 system, officials should be given the option to extend sessions by up to 15 minutes. **Austria** proposed that the actual session time should be extended but did not indicate any specific time limit. **Austria** also proposed that a warning be generated before a session is about to expire. Five minutes would probably be sufficient as that would allow an official enough time to save information.

**Malta** suggested that the Commission give consideration to translating all non-English language BTI into English with a view to facilitating understanding of them by officials in other Member States.

**Malta** also proposed that it become mandatory to attach images to both applications and BTI decisions as it found that many applications and BTI did not have an image even though the nature of the goods would make an image relevant.

**Cyprus** recommends that when drafting the revised Administrative Guidelines the Commission should clarify ways to identify different BTI resulting from a single application. On the topic of issuing BTI, **Cyprus** also recommended that the EBTI-3 system be updated to ensure that when a BTI is created from an application, the date is automatically the current date and not the date of the latest operation.
Estonia recommends the establishment of a standard checklist for issuing BTI. Portugal echoed that recommendation.

Denmark suggested that a number of functionalities in the system should be upgraded to improve the user friendliness of the system, for example improving the precision of search results or allowing searches to be conducted on the basis of images alone. It also proposed the automatic translation of keywords.

Section 8 Images and keywords

Recommendations:

Finland and Bulgaria both recommended that consideration be given the possibility of forming a project group to discuss how best to improve the Thesaurus. Finland felt that given the limited resources available, a project group might be the solution to making headway in this task.

Both Estonia and Bulgaria proposed consideration be given to organising courses on how to effectively index BTI.

Section 9 Appeals

Recommendations:

Finland suggests to the Commission that where the references to judgments of national courts can be indicated in BTI should be clarified.

Section 10 Annulment, invalidation and revocation and period of extended use

Recommendations:

Cyprus recommended to the Commission that a list be compiled of all judgments of the Court of Justice of the EU that are relevant for classification purposes. The administration is of the opinion that such a list could prove to be a useful reference in the event of future disputes.

Portugal suggested that a more precise clarification of the differences between invalidation codes 55 and 65 be included in the Administrative Guidelines.

Denmark made similar recommendations to the Commission. In the case of the Danish language the word for “annulment” is ambiguous and the definition in the Administrative Guidelines needs to be more precise. Denmark also recommends that the Commission takes steps to publish the “statements” of the Committee, perhaps taking the database established for Rem/Rec as a model.
Section 11 Diffusion of information concerning BTI and training

Recommendations:

Lithuania proposes to the Commission that it consider organising specific training activities on how to draft good product descriptions and on how to get the best out of images.

Cyprus recommends that more explicit training regarding advanced queries and the possibilities offered by such queries should be included in the EBTI-3 training course. Both Luxembourg and Portugal echoed this proposal.

Bulgaria proposes that consideration should be given to organising additional courses for officials and suggested topics such as the legal aspects of BTI and practical indexing of BTI.

Denmark and Estonia also propose courses on the legal aspects of BTI and product descriptions.

Greece suggests that the Commission organise a seminar on BTI problems once the discussions on the future legislation have been completed.

Malta recommends that the Commission give consideration to the possibility of holding a seminar for traders in Malta in order to raise their awareness of BTI and its potential benefits.
Annexes
Annex 1: information on national administrations:

<table>
<thead>
<tr>
<th>Member State and date of visit</th>
<th>Administrative nature of competent authority at the time of visit</th>
<th>Total number of personnel in competent authority at the time of visit</th>
<th>Total number of persons working on BTI at the time of visit</th>
<th>Number of applications received during reference period</th>
<th>Number of BTI issued during the reference period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 44</td>
<td>2008: 73</td>
</tr>
<tr>
<td><strong>Finland</strong> 28 and 29 May 2009</td>
<td>Board of Customs is an agency subordinate to the ministry of Finance</td>
<td>Approximately 2,600</td>
<td>9</td>
<td>2007: 410</td>
<td>2007: 288</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 379</td>
<td>2008: 431</td>
</tr>
<tr>
<td><strong>Austria</strong> 14 and 15 September 2009</td>
<td>Part of the Ministry of Finance</td>
<td>1,771</td>
<td>5</td>
<td>2007: 974</td>
<td>2007: 817</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 894</td>
<td>2008: 888</td>
</tr>
<tr>
<td><strong>Malta</strong> 17 and 18 September 2009</td>
<td>Part of the Ministry of Finance, The Economy and Investment</td>
<td>434</td>
<td>2</td>
<td>2007: 3</td>
<td>2007: 3</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 15</td>
<td>2008: 15</td>
</tr>
</tbody>
</table>
### Annex 1: information on national administrations (contd.)

<table>
<thead>
<tr>
<th>Member State and date of visit</th>
<th>Administrative nature of competent authority at the time of visit</th>
<th>Total number of personnel in competent authority at the time of visit</th>
<th>Total number of persons working on BTI at the time of visit</th>
<th>Number of applications received during reference period</th>
<th>Number of BTI issued during the reference period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bulgaria</strong> 23 and 24 November 2009</td>
<td>Agency within the Ministry of Finance</td>
<td>N/A</td>
<td>9</td>
<td>2007: 80</td>
<td>2007: 66</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 129</td>
<td>2008: 87</td>
</tr>
<tr>
<td><strong>Cyprus</strong> 26 and 27 November 2009</td>
<td>Part of the Ministry of Finance</td>
<td>430</td>
<td>3</td>
<td>2007: 64</td>
<td>2007: 35</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 106</td>
<td>2008: 119</td>
</tr>
<tr>
<td><strong>Luxembourg</strong> 9 and 10 February 2010</td>
<td>Part of the Ministry of Finance</td>
<td>472</td>
<td>2</td>
<td>2007: 30</td>
<td>2007: 26</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 9</td>
<td>2008: 8</td>
</tr>
<tr>
<td><strong>Latvia</strong> 17 and 18 May 2010</td>
<td>Agency, part of the State Revenue Service</td>
<td>1411</td>
<td>5 under supervision of Head of Unit</td>
<td>2007: 188</td>
<td>2007: 156</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 47</td>
<td>2008: 42</td>
</tr>
</tbody>
</table>
### Annex 1: information on national administrations (contd.)

<table>
<thead>
<tr>
<th>Member State and date of visit</th>
<th>Administrative nature of competent authority at the time of visit</th>
<th>Total number of personnel in competent authority at the time of visit</th>
<th>Total number of persons working on BTI at the time of visit</th>
<th>Number of applications received during reference period</th>
<th>Number of BTI issued during the reference period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Denmark</strong> 20 and 21 May 2010</td>
<td>Customs is part of SKAT which itself is part of Ministry of Taxation</td>
<td>7,167 work for SKAT (Customs &amp; Tax) 520 work in Customs.</td>
<td>5</td>
<td>2007: 205</td>
<td>2007: 163</td>
</tr>
<tr>
<td><strong>Estonia</strong> 13 and 14 September 2010</td>
<td>Estonian Tax &amp; Customs board is an institution in the area of government of the Ministry of Finance</td>
<td>1,981 (August 2009)</td>
<td>3</td>
<td>2007: 4</td>
<td>2007: 3</td>
</tr>
<tr>
<td><strong>Greece</strong> 16 and 17 September 2010</td>
<td>Part of the Ministry of Finance</td>
<td>3003</td>
<td>4</td>
<td>2007: 6</td>
<td>2007: 6</td>
</tr>
<tr>
<td><strong>Portugal</strong> 6 and 7 December 2010</td>
<td>Part of the Ministry of Finance</td>
<td>1,656 (December 2009)</td>
<td>9</td>
<td>2007: 107</td>
<td>2007: 126</td>
</tr>
</tbody>
</table>
Annex 1: information on national administrations (contd.)

<table>
<thead>
<tr>
<th>Member State and date of visit</th>
<th>Administrative nature of competent authority at the time of visit</th>
<th>Total number of personnel in competent authority at the time of visit</th>
<th>Total number of persons working on BTI at the time of visit</th>
<th>Number of applications received during reference period</th>
<th>Number of BTI issued during the reference period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2008: 963</td>
<td>2008: 884</td>
</tr>
</tbody>
</table>
Annex 2: BTI applications received annually 2005-2013 (inclusive)

(Reference years shaded)

<table>
<thead>
<tr>
<th>Member State</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>873</td>
<td>736</td>
<td>974</td>
<td>894</td>
<td>833</td>
<td>1,007</td>
<td>748</td>
<td>841</td>
<td>612</td>
</tr>
<tr>
<td>Belgium</td>
<td>480</td>
<td>516</td>
<td>582</td>
<td>557</td>
<td>471</td>
<td>525</td>
<td>475</td>
<td>459</td>
<td>843</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>0</td>
<td>0</td>
<td>80</td>
<td>129</td>
<td>195</td>
<td>145</td>
<td>184</td>
<td>211</td>
<td>208</td>
</tr>
<tr>
<td>Croatia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>59*</td>
</tr>
<tr>
<td>Cyprus</td>
<td>6</td>
<td>9</td>
<td>64</td>
<td>106</td>
<td>80</td>
<td>39</td>
<td>52</td>
<td>68</td>
<td>66</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>742</td>
<td>968</td>
<td>687</td>
<td>963</td>
<td>1,060</td>
<td>960</td>
<td>752</td>
<td>637</td>
<td>1,025</td>
</tr>
<tr>
<td>Denmark</td>
<td>154</td>
<td>165</td>
<td>205</td>
<td>223</td>
<td>399</td>
<td>398</td>
<td>301</td>
<td>542</td>
<td>331</td>
</tr>
<tr>
<td>Estonia</td>
<td>9</td>
<td>8</td>
<td>4</td>
<td>8</td>
<td>9</td>
<td>34</td>
<td>29</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Finland</td>
<td>304</td>
<td>349</td>
<td>410</td>
<td>379</td>
<td>264</td>
<td>339</td>
<td>556</td>
<td>368</td>
<td>332</td>
</tr>
<tr>
<td>France</td>
<td>5,966</td>
<td>5,760</td>
<td>6,452</td>
<td>6,207</td>
<td>6,782</td>
<td>5,861</td>
<td>8,217</td>
<td>9,188</td>
<td>8,746</td>
</tr>
<tr>
<td>Germany</td>
<td>25,652</td>
<td>25,744</td>
<td>34,729</td>
<td>29,521</td>
<td>27,693</td>
<td>25,338</td>
<td>25,554</td>
<td>24,861</td>
<td>24,099</td>
</tr>
<tr>
<td>Greece</td>
<td>2</td>
<td>4</td>
<td>6</td>
<td>9</td>
<td>31</td>
<td>33</td>
<td>53</td>
<td>68</td>
<td>80</td>
</tr>
<tr>
<td>Hungary</td>
<td>190</td>
<td>154</td>
<td>198</td>
<td>302</td>
<td>349</td>
<td>441</td>
<td>550</td>
<td>415</td>
<td>380</td>
</tr>
<tr>
<td>Ireland</td>
<td>1,373</td>
<td>1,104</td>
<td>1,437</td>
<td>1,074</td>
<td>1,965</td>
<td>1,223</td>
<td>1,204</td>
<td>872</td>
<td>927</td>
</tr>
</tbody>
</table>

*Croatia only started to receive applications after 1 July 2013
Annex 2: BTI applications received annually 2005-2013 (inclusive) (Contd.)

<table>
<thead>
<tr>
<th>Member State</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>205</td>
<td>156</td>
<td>320</td>
<td>198</td>
<td>583</td>
<td>532</td>
<td>369</td>
<td>535</td>
<td>626</td>
</tr>
<tr>
<td>Latvia</td>
<td>237</td>
<td>78</td>
<td>188</td>
<td>47</td>
<td>122</td>
<td>221</td>
<td>102</td>
<td>149</td>
<td>99</td>
</tr>
<tr>
<td>Lithuania</td>
<td>68</td>
<td>33</td>
<td>182</td>
<td>44</td>
<td>37</td>
<td>14</td>
<td>40</td>
<td>24</td>
<td>77</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>5</td>
<td>9</td>
<td>30</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Malta</td>
<td>10</td>
<td>1</td>
<td>3</td>
<td>15</td>
<td>19</td>
<td>40</td>
<td>18</td>
<td>43</td>
<td>87</td>
</tr>
<tr>
<td>Netherlands</td>
<td>3,105</td>
<td>3,990</td>
<td>3,812</td>
<td>2,450</td>
<td>3,030</td>
<td>3,852</td>
<td>4,208</td>
<td>3,321</td>
<td>2,600</td>
</tr>
<tr>
<td>Poland</td>
<td>1,206</td>
<td>972</td>
<td>1,294</td>
<td>1,702</td>
<td>1,760</td>
<td>2,081</td>
<td>2,112</td>
<td>1,986</td>
<td>1,842</td>
</tr>
<tr>
<td>Portugal</td>
<td>201</td>
<td>146</td>
<td>107</td>
<td>42</td>
<td>224</td>
<td>179</td>
<td>83</td>
<td>61</td>
<td>105</td>
</tr>
<tr>
<td>Romania</td>
<td>0</td>
<td>0</td>
<td>24</td>
<td>104</td>
<td>312</td>
<td>430</td>
<td>197</td>
<td>258</td>
<td>238</td>
</tr>
<tr>
<td>Slovakia</td>
<td>206</td>
<td>299</td>
<td>444</td>
<td>324</td>
<td>278</td>
<td>433</td>
<td>357</td>
<td>526</td>
<td>438</td>
</tr>
<tr>
<td>Slovenia</td>
<td>188</td>
<td>357</td>
<td>356</td>
<td>288</td>
<td>319</td>
<td>335</td>
<td>291</td>
<td>221</td>
<td>210</td>
</tr>
<tr>
<td>Spain</td>
<td>469</td>
<td>483</td>
<td>358</td>
<td>330</td>
<td>527</td>
<td>905</td>
<td>529</td>
<td>597</td>
<td>719</td>
</tr>
<tr>
<td>Sweden</td>
<td>398</td>
<td>496</td>
<td>738</td>
<td>440</td>
<td>495</td>
<td>889</td>
<td>772</td>
<td>880</td>
<td>866</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>8,527</td>
<td>9,390</td>
<td>7,602</td>
<td>6,418</td>
<td>7,372</td>
<td>6,336</td>
<td>7,387</td>
<td>7,627</td>
<td>7,758</td>
</tr>
</tbody>
</table>
## Annex 3: BTI issued annually 2005-2013 (inclusive)

(Reference years shaded)

<table>
<thead>
<tr>
<th>Member State</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>742</td>
<td>708</td>
<td>817</td>
<td>888</td>
<td>802</td>
<td>931</td>
<td>703</td>
<td>750</td>
<td>587</td>
</tr>
<tr>
<td>Belgium</td>
<td>415</td>
<td>484</td>
<td>518</td>
<td>441</td>
<td>282</td>
<td>554</td>
<td>401</td>
<td>376</td>
<td>732</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>0</td>
<td>0</td>
<td>66</td>
<td>87</td>
<td>162</td>
<td>113</td>
<td>118</td>
<td>119</td>
<td>199</td>
</tr>
<tr>
<td>Croatia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>38*</td>
</tr>
<tr>
<td>Cyprus</td>
<td>4</td>
<td>9</td>
<td>35</td>
<td>119</td>
<td>76</td>
<td>53</td>
<td>75</td>
<td>65</td>
<td>63</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>622</td>
<td>750</td>
<td>868</td>
<td>884</td>
<td>942</td>
<td>811</td>
<td>605</td>
<td>549</td>
<td>1,070</td>
</tr>
<tr>
<td>Denmark</td>
<td>170</td>
<td>144</td>
<td>163</td>
<td>216</td>
<td>306</td>
<td>437</td>
<td>249</td>
<td>387</td>
<td>496</td>
</tr>
<tr>
<td>Estonia</td>
<td>9</td>
<td>9</td>
<td>3</td>
<td>6</td>
<td>7</td>
<td>29</td>
<td>27</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>Finland</td>
<td>249</td>
<td>306</td>
<td>288</td>
<td>431</td>
<td>244</td>
<td>224</td>
<td>594</td>
<td>279</td>
<td>281</td>
</tr>
<tr>
<td>France</td>
<td>6,208</td>
<td>5,781</td>
<td>6,923</td>
<td>5,554</td>
<td>6,881</td>
<td>5,854</td>
<td>7,314</td>
<td>8,704</td>
<td>7,926</td>
</tr>
<tr>
<td>Germany</td>
<td>17,511</td>
<td>19,894</td>
<td>24,408</td>
<td>21,609</td>
<td>21,292</td>
<td>23,621</td>
<td>24,679</td>
<td>24,368</td>
<td>22,355</td>
</tr>
<tr>
<td>Greece</td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>23</td>
<td>30</td>
<td>48</td>
<td>50</td>
<td>63</td>
</tr>
<tr>
<td>Hungary</td>
<td>185</td>
<td>139</td>
<td>211</td>
<td>267</td>
<td>292</td>
<td>432</td>
<td>493</td>
<td>447</td>
<td>385</td>
</tr>
<tr>
<td>Ireland</td>
<td>1,244</td>
<td>1,626</td>
<td>1,267</td>
<td>872</td>
<td>1,272</td>
<td>1,244</td>
<td>1,105</td>
<td>850</td>
<td>833</td>
</tr>
</tbody>
</table>

*Croatia only started issuing BTI from 1 July 2013*
Annex 3: BTI issued annually 2005-2013 (inclusive) (Contd.)

<table>
<thead>
<tr>
<th>Member State</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>132</td>
<td>237</td>
<td>348</td>
<td>189</td>
<td>448</td>
<td>626</td>
<td>457</td>
<td>498</td>
<td>623</td>
</tr>
<tr>
<td>Latvia</td>
<td>258</td>
<td>92</td>
<td>156</td>
<td>42</td>
<td>88</td>
<td>140</td>
<td>125</td>
<td>167</td>
<td>116</td>
</tr>
<tr>
<td>Lithuania</td>
<td>204</td>
<td>32</td>
<td>169</td>
<td>73</td>
<td>30</td>
<td>15</td>
<td>33</td>
<td>31</td>
<td>55</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0</td>
<td>9</td>
<td>26</td>
<td>8</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Malta</td>
<td>11</td>
<td>1</td>
<td>3</td>
<td>15</td>
<td>8</td>
<td>34</td>
<td>15</td>
<td>53</td>
<td>93</td>
</tr>
<tr>
<td>Netherlands</td>
<td>2,782</td>
<td>4,360</td>
<td>3,661</td>
<td>2,817</td>
<td>2,921</td>
<td>3,796</td>
<td>3,723</td>
<td>3,546</td>
<td>2,898</td>
</tr>
<tr>
<td>Poland</td>
<td>1,130</td>
<td>841</td>
<td>1,058</td>
<td>1,400</td>
<td>1,485</td>
<td>1,315</td>
<td>1,452</td>
<td>1,506</td>
<td>1,851</td>
</tr>
<tr>
<td>Portugal</td>
<td>197</td>
<td>128</td>
<td>126</td>
<td>49</td>
<td>185</td>
<td>160</td>
<td>133</td>
<td>66</td>
<td>85</td>
</tr>
<tr>
<td>Romania</td>
<td>0</td>
<td>0</td>
<td>18</td>
<td>46</td>
<td>185</td>
<td>318</td>
<td>273</td>
<td>163</td>
<td>301</td>
</tr>
<tr>
<td>Slovakia</td>
<td>298</td>
<td>265</td>
<td>401</td>
<td>314</td>
<td>243</td>
<td>331</td>
<td>390</td>
<td>448</td>
<td>391</td>
</tr>
<tr>
<td>Slovenia</td>
<td>239</td>
<td>269</td>
<td>379</td>
<td>330</td>
<td>272</td>
<td>317</td>
<td>299</td>
<td>216</td>
<td>197</td>
</tr>
<tr>
<td>Spain</td>
<td>461</td>
<td>514</td>
<td>468</td>
<td>318</td>
<td>496</td>
<td>448</td>
<td>591</td>
<td>732</td>
<td>902</td>
</tr>
<tr>
<td>Sweden</td>
<td>274</td>
<td>362</td>
<td>783</td>
<td>357</td>
<td>487</td>
<td>532</td>
<td>755</td>
<td>782</td>
<td>900</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>8,255</td>
<td>9,140</td>
<td>8,245</td>
<td>6,161</td>
<td>6,737</td>
<td>5,415</td>
<td>6,699</td>
<td>6,658</td>
<td>7,365</td>
</tr>
</tbody>
</table>
## Annex 4A

### Correlation tables

Correspondence between each section of the global report and the questionnaire

<table>
<thead>
<tr>
<th>Sections in Global Report</th>
<th>Corresponding Section(s) in Questionnaire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1</td>
<td>Section 1</td>
</tr>
<tr>
<td>Section 2</td>
<td>Sections 1, 2, 3, 4, 5 and 8</td>
</tr>
<tr>
<td>Section 3</td>
<td>Section 7</td>
</tr>
<tr>
<td>Section 4</td>
<td>Sections 4, 7 and 8</td>
</tr>
<tr>
<td>Section 5</td>
<td>Sections 7, 8, 11, 18 and 19</td>
</tr>
<tr>
<td>Section 6</td>
<td>Section 6</td>
</tr>
<tr>
<td>Section 7</td>
<td>Sections 9, 10, 11 and 15</td>
</tr>
<tr>
<td>Section 8</td>
<td>Sections 12 and 13</td>
</tr>
<tr>
<td>Section 9</td>
<td>Section 14</td>
</tr>
<tr>
<td>Section 10</td>
<td>Sections 16 and 17</td>
</tr>
<tr>
<td>Section 11</td>
<td>Sections 19, 20, 21 and 22</td>
</tr>
</tbody>
</table>
Correspondence between the questionnaire and each section of the global report

<table>
<thead>
<tr>
<th>Section in Questionnaire</th>
<th>Corresponding Section in Global Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1</td>
<td>Sections 1 and 2</td>
</tr>
<tr>
<td>Section 2</td>
<td>Section 2</td>
</tr>
<tr>
<td>Section 3</td>
<td>Section 2</td>
</tr>
<tr>
<td>Section 4</td>
<td>Sections 2 and 4</td>
</tr>
<tr>
<td>Section 5</td>
<td>Section 2</td>
</tr>
<tr>
<td>Section 6</td>
<td>Section 6</td>
</tr>
<tr>
<td>Section 7</td>
<td>Sections 3, 4 and 5</td>
</tr>
<tr>
<td>Section 8</td>
<td>Sections 2, 4 and 5</td>
</tr>
<tr>
<td>Section 9</td>
<td>Section 7</td>
</tr>
<tr>
<td>Section 10</td>
<td>Section 7</td>
</tr>
<tr>
<td>Section 11</td>
<td>Sections 5, 7 and 8</td>
</tr>
<tr>
<td>Section 12</td>
<td>Section 8</td>
</tr>
<tr>
<td>Section 13</td>
<td>Section 8</td>
</tr>
<tr>
<td>Section 14</td>
<td>Section 9</td>
</tr>
<tr>
<td>Section 15</td>
<td>Section 7</td>
</tr>
<tr>
<td>Section 16</td>
<td>Section 10</td>
</tr>
<tr>
<td>Section 17</td>
<td>Section 10 and Part 4</td>
</tr>
<tr>
<td>Section 18</td>
<td>Section 5</td>
</tr>
<tr>
<td>Section 19</td>
<td>Sections 5 and 19</td>
</tr>
<tr>
<td>Section 20</td>
<td>Section 11</td>
</tr>
<tr>
<td>Section 21</td>
<td>Section 11</td>
</tr>
<tr>
<td>Section 22</td>
<td>Section 11</td>
</tr>
</tbody>
</table>
**Annex 5: Acronyms and abbreviations**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGRI</td>
<td>Directorate General for Agriculture and Rural Development</td>
</tr>
<tr>
<td>Art./Arts.</td>
<td>Article/Articles</td>
</tr>
<tr>
<td>BTI</td>
<td>Binding Tariff Information</td>
</tr>
<tr>
<td>BUDG</td>
<td>Directorate General for Budget</td>
</tr>
<tr>
<td>CN</td>
<td>Combined Nomenclature</td>
</tr>
<tr>
<td>DDS</td>
<td>Data Dissemination System</td>
</tr>
<tr>
<td>DG</td>
<td>Directorate General</td>
</tr>
<tr>
<td>EBTI</td>
<td>European Binding Tariff Information</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>HS</td>
<td>Harmonized Commodity Description and Coding System (also known as the Harmonized System)</td>
</tr>
<tr>
<td>OJ</td>
<td>Official Journal (the organ of the EU)</td>
</tr>
<tr>
<td>OLAF</td>
<td>European Anti-Fraud Office</td>
</tr>
<tr>
<td>Reg.</td>
<td>Regulation</td>
</tr>
<tr>
<td>SAD</td>
<td>Single Administrative Document</td>
</tr>
<tr>
<td>TAXUD</td>
<td>Directorate General for Taxation and Custom Union</td>
</tr>
</tbody>
</table>
Appendices
Appendix 1

EBTI Questionnaire

(Version 01.01. 2009)
Section 1: The Customs Administration and BTI

1. What is the total number of personnel working for the customs administration?
   
   ______

2.1 Is the customs administration:
   a) Independent  □
   b) Part of a ministry  □
   c) An agency  □

2.2. If the customs administration is part of a ministry please state which ministry that is.
   _________________________________

3. In compliance with Article 6.5 of the Implementing Provisions, the Commission publishes in the "C" series of the Official Journal of the European Union a list of authorities designated to receive applications or issue BTI. Does your administration automatically inform the Commission of any changes to its authorities designated for those purposes?
   Yes  □  No  □

4. How many officials, in total, are dealing with BTI (i.e. recording applications, drafting and issuing BTI)?
   
   ______

5. Of that total given in answer to question 4, please indicate how many of those officials are
   a) Exclusively concerned with recording BTI applications  ______
   b) Exclusively concerned with drafting BTI  ______
   c) Exclusively concerned with issuing BTI  ______
   d) Concerned with two or all three functions  ______
6.1 Do the officials who register applications, draft and issue BTI also have other tasks in the administration?

   Yes ☐   No ☐

6.2 If the answer to question 6.1 is "yes", please indicate approximately, as a percentage of their total working time, how much of their time is devoted to their other tasks?

   ______

7.1 Do officials have experience of tariff classification prior to working on BTI?

   Yes ☐   No ☐

7.2 If the answer to question 7.1 is "yes", is that experience

   a) Targeted at learning how to classify goods in general? ☐

   b) Targeted at learning how to classify specific goods before working on BTI for those goods? ☐

7.3 If the answer to question 7.1 is "yes", please elaborate on the prior experience received by:

   a) Officials concerned with recording BTI applications

       ________________________________________________________________
       ________________________________________________________________
       ________________________________________________________________
       ________________________________________________________________

   b) Officials concerned with drafting BTI

       ________________________________________________________________
       ________________________________________________________________
       ________________________________________________________________
       ________________________________________________________________

   c) Officials concerned with issuing BTI

       ________________________________________________________________
       ________________________________________________________________
       ________________________________________________________________
       ________________________________________________________________

7.4 If the answer to question 7.1 is "no", please briefly explain what measures are taken to ensure officials working on BTI know how to classify goods.

       ________________________________________________________________
       ________________________________________________________________
       ________________________________________________________________
       ________________________________________________________________
8.1 Do the officials concerned with recording applications or drafting and issuing BTI do so only for specific sections of the Combined Nomenclature?

Yes ☐ No ☐

8.2 If the answer to question 8.1 is "yes", please indicate how those sections have been assigned and the number of officials concerned with each group.

Section(s):_____________________ Number of officials: ____________
Section(s):_____________________ Number of officials: ____________
Section(s):_____________________ Number of officials: ____________
Section(s):_____________________ Number of officials: ____________
Section(s):_____________________ Number of officials: ____________

9.1 When recruiting new staff to work in the BTI sector, is it policy to first of all seek recruits from within the customs administration or is it policy to always recruit from the civil service in general?

a) To seek new recruits from within the customs administration. ☐

b) To recruit from the civil service in general. ☐

c) Other. ☐

9.2 If the answer to question 9.1 is c) "Other" please briefly explain what the staff recruitment policy for the BTI sector is in your administration.

___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________
10.1 When your administration is asked for advice on tariff classification, are traders advised to seek a BTI?

Yes ☐ No ☐

10.2 If the answer to question 10.1 is "no", please briefly explain why such information is not given

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

11. Are there any rulings of national tribunals in force in your Member State which concern BTI?

Yes ☐ No ☐

12.1 When national tribunals make rulings that concern BTI, are copies of such rulings forwarded to the Commission

Yes ☐ No ☐

12.2 If the answer to question 12.1 is "no", please briefly explain why your administration does not forward copies of such rulings to the Commission.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________
Section 2: Treatment of BTI applications

13.1 How many BTI applications has your administration received during:

2007: _________

2008: _________

(Explanation: Question 13.1 relates to BTI applications that have officially been received by the administration, i.e. BTI applications in which all the mandatory boxes have been completed).

13.2 When BTI applications are handed in at a customs office designated for receiving them, are they checked to ensure that all mandatory boxes are filled in before they are accepted?

Yes ☐ No ☐

13.3 If the answer to question 13.1 is "no", please briefly explain why such checks are not carried out.

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

14.1 For those BTI applications received via the national postal system, is their receipt acknowledged to the applicant in any way?

Yes ☐ No ☐

14.2 If the answer to 14.1 is "yes", please briefly explain how receipt is acknowledged.

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

14.3 If the answer to 14.1 is "no", please briefly explain why their receipt is not acknowledged.

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________
Section 3: Treatment of BTI applications in Member States with more than one office designated for their reception.

N.B. Section 3 is addressed only to those Member States where applications can be received in a number of different offices.

15.1 How are BTI applications which are sent to the different designated customs offices transmitted to the office designated to issue BTI?
   a) Electronically
   b) Via internal mail
   c) Other.

15.2 If the answer to question 15.1 is c), "Other", please briefly explain.

___________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

16.1 How often are such BTI applications sent to the office issuing BTI?
   a) Immediately, upon receipt
   b) More than once a week
   c) Once a week
   d) Other (e.g. less than once a week)

16.2 If the answer to question 16.1 is d) "Other", please briefly explain

___________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

17.1 Are such applications examined at the regional office to ensure that all mandatory boxes are completed before they are sent to the designated office?

   Yes ☐   No ☐

17.2 If the answer to 17.1 is "no", please briefly explain why they are not examined?
Section 4: Reception and treatment of samples

18. When samples are submitted with BTI applications: (please tick boxes as applicable)
   a) Is their receipt recorded in any way?  Yes □  No □
   b) Are they stored in secure facilities?  Yes □  No □
   c) Is their receipt acknowledged to the applicant? Yes □  No □

19. Can samples which are submitted to customs separately from the BTI application they refer to, be submitted
   a) At any customs office? □
   b) Only at an office designated to receive BTI applications? □
   c) Only at the office where the BTI application to which the sample refers has been submitted □

20. Can samples be submitted directly to the customs laboratory or its equivalent?
    Yes □  No □

21.1 Is the receipt of samples that are sent separately from the BTI application they refer to, acknowledged to the applicant in any way?
    Yes □  No □

21.2 If the answer to question 21.1 is "yes", please briefly explain how receipt of such samples is acknowledged.
    __________________________________________
    __________________________________________
    __________________________________________

21.3 If the answer to 21.1 is "no", please briefly explain if there is a particular reason why receipt of separate samples is not acknowledged.
    __________________________________________
    __________________________________________
    __________________________________________

22.1 When samples are submitted with BTI applications at regional offices designated to receive BTI applications, are they: (please tick boxes as applicable)
   a) Recorded in any way? Yes □  No □
b) Stored in secure facilities? Yes ☐ No ☐

22.2 If the answer to question 22.1 a) is "yes," please briefly explain how their receipt is recorded.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

22.3 If the answer to question 22.1 a) is "no", please briefly explain why their receipt is not recorded.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

22.4 If the answer to question 22.1 b) is "yes", please briefly explain the nature of those secure facilities.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

22.5 If the answer to question 22.1 c) is "yes", please briefly explain what those measures are.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
22.6 If the answer to questions 22.1 b) is "no", please briefly explain what is done to safeguard samples in such circumstances.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

23.1 Are samples that are submitted with a BTI application to designated regional offices sent to the office designated to issue BTI at the same time as the BTI application to which they refer?

Yes ☐ No ☐

23.2 If the answer to question 23.1 is "no", please explain briefly if there is a particular reason why this is so and explain how a link between such samples and the relevant applications is made.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

24.1 Are there facilities available in regional customs offices to permit perishable samples (e.g. samples of foodstuffs) that are submitted with BTI applications to be maintained in good condition?

Yes ☐ No ☐

24.2 If the answer to question 24.1 is "yes", please briefly explain what those facilities are:
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

24.3 If the answer to 24.1 is "no", please briefly explain how such samples are dealt with in regional offices.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 5: Recording the reception of BTI applications and sending them to the database

25. What is the approximate average time lapse between the arrival of a BTI application at customs and it being given a registration number?

_____________________

26 What is the approximate average time lapse from when a BTI application is given a registration number and it being sent to the database?

_____________________

27.1 At what point are BTI applications sent to the EBTI-3 database?

a) Immediately after registration ☐

b) Once all additional information has been received ☐

c) At the same time as the BTI is issued ☐

d) Other ☐

27.2 If the answer to question 27.1 is d) "Other", please briefly explain.

___________________________________________________________________________

__________________________________________________________________________________

___________________________________________________________

___________________________________________________________________________

__________________________________________________________________________________

___________________________________________________________

28.1 If the result of an analysis of the goods is necessary for classification purposes:

a) Can the applicant submit an analysis report made on his behalf?

Yes ☐ No ☐

b) Is the applicant obliged to submit a sample for analysis by the national customs laboratory or its equivalent?

Yes ☐ No ☐

28.2 If the answer to question 28.1 a) is "Yes" are there any conditions laid down for the acceptance of such privately commissioned analyses, e.g. they must be carried out in an accredited laboratory?

Yes ☐ No ☐

28.3 If the answer to question 28.2 is "Yes", please briefly explain what those conditions are.

134
28.4 If the answer to 28.1 b) is "yes", is the applicant systematically obliged to pay for the analysis?

Yes ☐ No ☐

28.5 If the answer to question 28.4 is no, please briefly explain when your administration would oblige an applicant to pay the cost of an analysis.

29.1 Are applicants asked to submit brochures and/or images with their applications?

a) Always: ☐

b) Depending on the goods: ☐

c) Never ☐

29.2 If the answer to question 29.1 is b), "depending on the goods", please briefly explain what criteria are used to determine when such supplementary information is needed.

29.3 If the answer to question 29.1 is c), "never", please briefly explain why applicants are not asked to submit such information with their applications.

30.1 If an applicant submits a sample with the application, is an image of the sample attached to the BTI application when it is sent to the database?

a) Always ☐

b) Sometimes, depending on the goods ☐
c) Never □

30.2 If the answer to question 30.1 is b) "sometimes", please briefly explain what criteria are used to determine when an image should be attached to the BTI application.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

30.3 If the answer to question 29.1 is c) "never", please briefly explain any particular reasons why images are not attached to applications published on the database.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

31.1 Are all BTI applications that are sent to the customs given a registration number and sent to the database?

Yes □ No □

31.2 If the answer to 31.1 is "no", please briefly explain which BTI applications are not registered and sent to the database.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

31.3 If the answer to 31.1 is "no", please briefly explain why the BTI applications referred to in answer 31.2 are not registered and sent to the database?

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 6: Rejection of BTI applications.

32.1 How many applications for BTI did the administration reject during:

2007: _________

2008: _________

(Explanation: Question 32.1 refers to BTI applications with all mandatory boxes completed for which the administration has decided not to issue a BTI or which has been otherwise closed during the specified period.)

32.2 Please indicate the three main reasons for not issuing BTI for those applications.

1. ____________________

2. ____________________

3. ____________________

33.1 Were the applicants informed that the applications were rejected and BTI would not be issued?

Yes ☐ No ☐

33.2 If the answer to 33.1 is "yes", please indicate how the applicants were informed that BTI would not be issued.

__________________________________________________________________

33.3 If the answer to 33.1 is "no", please briefly explain why applicants were not informed that BTI would not be issued.

__________________________________________________________________

__________________________________________________________________

__________________________________________________________________

__________________________________________________________________

______________________________

34.1 Is an indication that a BTI application has been rejected inserted in the application on the EBTI database?

Yes ☐ No ☐
34.2 If the answer to 34.1 is "yes", please briefly explain how this is indicated on the BTI application on the EBTI database?
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

34.3 If the answer to 34.1 is "no", please indicate if there are any particular reasons why this is not indicated on the BTI application on the EBTI database.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

34.4 Would your administration support the introduction of formal codes, similar to the BTI invalidation codes in use, to identify the different stages in the processing of applications (e.g. seeking additional information, awaiting decision of Customs Code Committee, request sample, rejection of application, etc.)?

Yes ☐ No ☐

34.5 If the answer to 34.4 is "no", please briefly indicate the reasons your administration would not support such an innovation.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 7: Treatment of BTI applications from applicants in other Member States and third countries.

35. Approximately how many applications each year does your administration receive on behalf of
   a) Holders established in other Member States?

   _______________________

   b) Holders established outside the Community?

   _______________________

(Explanation: This question concerns BTI applications received by your administration on behalf of holders established outside your Member State, regardless of where the applicant himself is established.)

36. Please indicate the five Member States concerned most by question 35 a), in descending order of quantity (i.e. most to least).

   1. _______________________
   2. _______________________
   3. _______________________
   4. _______________________
   5. _______________________

37. Please indicate the five third countries concerned most by question 35 b), in descending order of quantity (i.e. most to least).

   1. _______________________
   2. _______________________
   3. _______________________
   4. _______________________
   5. _______________________
38. On average, how many applications (if any) does your administration receive from applicants established in the Community on behalf of holders established outside the European Union each year?

_____________________

(Explanation: This question concerns BTI applications received by your administration from applicants established in the Community on behalf of holders established outside the Community (e.g. applicant established in Germany and the holder established in the United States).)

39. On average, how many applications (if any) does your administration receive from applicants established outside the Community on behalf of holders established outside the European Union each year?

_____________________

(Explanation: This question concerns BTI applications received by your administration from applicants established outside the Community on behalf of holders also established outside the Community (e.g. the applicant established in Canada and the holder established in China).)

40.1 When a BTI application is received on behalf of a holder established in another Member State, is the customs administration of that Member State consulted to see if that holder has already submitted a BTI application or received BTI issued in that Member State or if there is any reason why a BTI should not be issued?

   a) Always    ☐
   b) Sometimes, at random    ☐
   c) Only if there is suspicion that the holder may be indulging in BTI shopping    ☐
   d) Never    ☐

40.2 If the answer to question 40.1 is not a) "always", please briefly explain why your administration does not contact the administration of the Member State where the holder is established.

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

41.1 When a BTI application is received on behalf of a holder established outside of the Community, does your administration issue a BTI?

   a) Always    ☐
   b) Sometimes, depending on the circumstances    ☐
   c) Never    ☐
41.2 If the answer to question 41.1 is a) "always", please briefly explain why a BTI is issued to a third country holder.

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

41.3 If the answer to question 41.1 is b) "sometimes", please briefly explain what are the circumstances your administration would take into account before deciding whether or not to issue a BTI.

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

41.4 If the answer to question 41.1 is c) "never", please briefly explain the reasons a BTI is refused to a third country holder.

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________

___________________________________________________________________________
Section 8: BTI Shopping.

42.1 When a BTI application is received on behalf of a holder established in another Member State, is the database consulted to see if that holder has applied for a BTI in his own or another Member States?

- a) Always ☐
- b) Sometimes, at random ☐
- c) Only if there is suspicion that the holder may be indulging in BTI shopping ☐
- d) Never ☐

42.2 If the answer to question 42.1 is not a) "always", please briefly explain why the database is not systematically consulted.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

43.1 When a BTI application is received on behalf of a holder established in a third country, is the EBTI-3 database consulted to see if that holder has applied for a BTI from another Member State?

- a) Always ☐
- b) Sometimes, at random ☐
- c) Only if there is suspicion that the holder may be indulging in BTI shopping ☐
- d) Never ☐

43.2 If the answer to question 43.1 is not a) "always", please briefly explain what actions are taken in your administration to detect and eliminate BTI shopping in those circumstances.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
44. When drafting a BTI is the EBTI-3 database systematically consulted to check for BTI shopping?

   a) Always  □
   b) Sometimes □
   c) Never    □

44.2 If the answer to question 44.1 is "sometimes", please briefly explain what criteria are used to determine whether or not to consult the EBTI database.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

44.3 If the answer to 44.1 is c) "never", please briefly explain what precautions your administration takes to reduce the risks of BTI shopping?

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

45. Briefly explain what indications are looked for to indicate BTI shopping?

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

46 Please briefly explain what other actions, besides consulting the EBTI-3 database, are taken by your administration if BTI shopping is suspected?

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
47. Please briefly explain what actions, if any, are taken by your administration if BTI shopping is proved:

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 9: The Work in Progress environment.

48. What is the average length of time that a BTI stays in the work in progress environment, assuming that all information, (samples, analyses, brochures etc.) required to reach a decision have been submitted?

_____________________

49.1 In the event of the unexpected absence of an official (for example due to illness), can other officials gain access to the "work in progress" environment on the absent official's PC?

   Yes ☐        No ☐

49.2 If the answer to 49.1 is "no", please briefly explain what happens to any application the absent official may have in the work in progress environment during the period of his/her absence.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

50. In the case of the unexpected absence of an official, how long is it before his files will be assigned to another colleague?

_____________________

51. Who decides if the files in the work in progress environment of an absent official should be assigned to another colleague?

_____________________

52. How are pending files in the work in progress environment dealt with during periods of annual leave? Please briefly explain your administration's policy.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

Section 10: Drafting and preparing BTI for issue

53.1 When drafting a BTI is there a relationship between the BTI reference number in box 2 of the BTI form and the BTI application registration number in box 5 of that form?

Yes ☐ No ☐

53.2 If the answer to question 53.1 is "yes", please briefly explain what that relationship is.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

54.1 When drafting a BTI, is the registration number of the BTI application inserted in box 5 of the BTI form?

a) Always ☐
b) Sometimes ☐
c) Never ☐

54.2 If the answer to 54.1 is either b)"sometimes" or c) "never", please briefly explain how your administration makes a link between the BTI application and the resulting BTI.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

55.1 When drafting a BTI, which of the following is inserted in box 5 (Date and reference of the application) of the BTI form as the date of the application?

a) The date on which the applicant has signed the application ☐
b) The date when the application is sent to the database ☐
c) The date on which all the required information is received ☐
d) Other ☐
55.2 If the answer to question 54.1 is d) "other", please briefly explain.
___________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

56.1 When drafting BTI, is the description of the goods drafted by:

a) Only using the description given by the applicant  □

b) Only referring to the text of the CN □

c) Referring to Explanatory Notes (HS, CN) □

d) Using a combination of any of the above three options □

e) Other □

56.2 If the answer to question 56.1 is e) "other", please briefly explain.
___________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________

57.1 Does your administration have a checklist against which the draft of the description of goods is compared for clarity of understanding?

Yes □ No □

57.2 If the answer to question 57.1 is "yes", please briefly explain the criteria on the checklist.
___________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
__________________________________________________________________________________
57.3 If the answer to question 57.1 is "no", please briefly explain what quality control is exercised to ensure the clarity of the description of the goods.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

58.1 When drafting a BTI, is any of the following additional information systematically treated as confidential by your administration even if the applicant does not request it?

a) Commercial denomination
   Yes ☐ No ☐

b) Results of analyses
   Yes ☐ No ☐

c) Trade names of goods
   Yes ☐ No ☐

58.2 If the answer to any of the above is "no", please briefly explain why the elements concerned are not systematically treated as confidential, providing information on any criteria used in support of this position.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

59.1 When drafting BTI, does your administration consult the database to reduce the risk of issuing divergent BTI?

a) Always ☐

b) Sometimes ☐

c) Never ☐
59.2 If the answer to 59.1 is b) "sometimes", please briefly explain the criteria used to decide when the database should be consulted.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

59.3 If the answer to 59.1 is c) "never" , please briefly explain what precautions your administration takes to reduce the risks of issuing divergent BTI.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

60.1 If consultation of the database reveals that there may be a divergence:

a) Is/are the other Member State(s) contacted with a view to determining if the divergence can be resolved bilaterally/multilaterally?
   Yes ☐ No ☐

b) Is the Commission contacted? Yes ☐ No ☐

c) Other Yes ☐ No ☐

60.2 If the answer to question 60.1 a) is "no", please briefly explain why the other Member State(s) is/are not contacted.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

60.3 If the answer to question 60.1 b) is "no", please briefly explain why the Commission is not informed

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

60.4 If the answer to question 59.1 c) is "yes", please briefly explain:

___________________________________________________________________________
Section 11: Issuing BTI

61. How many BTI did your administration issue during:

2007: _________

2008: _________

(Explanation: This question refers to the numbers of BTI issued during the specified periods regardless of their start dates of validity.)

62.1 Does your administration have a checklist against which draft BTI is checked before the BTI is issued?

Yes □ No □

(If the answer is "yes", kindly provide a copy of this checklist, preferably electronically.)

62.2 If the answer to question 62.1 is "no", please briefly explain what quality controls, if any, your administration carries out with regard to issuing BTI

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

63.1 When a BTI is issued by your administration, does the start date of validity pre-date the date on which the BTI is issued? (i.e. is the start date of validity earlier than the date on which the BTI is issued?)

a) Always □

b) Sometimes □

c) Never □

63.2 If the answer to question 63.1 is "always" or "sometimes", please briefly explain why this is so.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
64.1 Does your administration offer an accelerated procedure (a so-called "fast track" procedure) for issuing BTI?

Yes ☐ No ☐

64.2 If the answer to question 64.1 is "yes" please briefly outline the conditions for issuing an accelerated BTI.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

64.3 If the answer to question 64.1 is "yes" is there a charge for this service?

Yes ☐ No ☐

64.4 If the answer to question 64.1 is "yes", approximately how many BTI are issued under the accelerating procedure per annum?

_______
Section 12: Images

65.1 Is there a digital photographic camera at the disposal of the officials issuing BTI?

Yes ☐  No ☐

65.2 If the answer to question 65.1 is "yes", is there more than one such camera at the disposal of those officials?

Yes ☐  No ☐

65.3 If the answer to question 65.1 is "no", please briefly explain why this is so.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

65.4 If the answer to question 65.1 is "no", please briefly explain how images of the goods to be attached to BTI are made in those circumstances.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

66.1 Do officials drafting and issuing BTI receive any specific training for taking images for BTI?

Yes ☐  No ☐

66.2 If the answer to question 66.1 is "yes", please briefly explain the nature of that training.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

66.3 If the answer to question 66.1 is "no", please briefly explain why this is the case.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

67.1 When a sample is available to the administration, is an image attached to the BTI application when it is sent to the database?

a)  Always ☐
b) Nearly always, depending on the goods  

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

67.2 If the answer to question 67.1 is b) "nearly always", please briefly indicate the types of goods for which an image would not be attached to the application.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

67.3 If the answer to question 67.1 is c) "sometimes" or d) "rarely", please briefly explain why this is so and what criteria are used to decide whether or not to attach an image to the BTI application.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

67.4 If the answer to question 67.1 is e), please briefly explain why images are never attached to BTI applications when they are sent to the database by your administration.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
68.1. In cases where samples or illustrations with clearly visible trade names or logos are submitted with a BTI application and the applicant has not specified that the product information or images are confidential, is:

a) The applicant contacted and asked to confirm the non-confidential nature of the information?

Yes □ No □

b) The information systematically treated as confidential?

Yes □ No □

c) Other action taken? Yes □ No □

68.2 If the answer to question 68.1 a) and 68.1 b) is "no", please briefly explain why one or other of the proposed choices of action are not pursued?

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

68.3 If the answer to question 68.1 is c) is "other action taken", please briefly explain.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

68.4 If the answer to all three alternatives cited in question 68.1 is "no", please briefly explain how such information is treated.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

155
69.1 If the BTI application has an image attached to it when it is sent to the database, is that image also attached to the BTI that is issued?

Yes ☐ No ☐

69.2 If the answer to question 69.1 is "no", please briefly explain why this is so.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

69.3 If the answer to question 69.1 is "no", is another image of the goods attached to the BTI that is issued?

Yes ☐ No ☐

69.4 If the answer to question 69.3 is "no", please briefly explain why this is so.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 13: Adding keywords to BTI (Indexing)

70. Is there any training on indexing given to officials drafting and issuing BTI?

   Yes □  No □

71.1 Are BTI systematically indexed in your administration?

   Yes □  No □

71.2 If the answer to question 71.1 is "no", please briefly explain why this is so.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

72.1 On average, how many keywords are attached to BTI issued in your administration?

   a) Less than 5  □
   b) Five or more. □

72.2 If the answer to question 72.1 is a) "less than 5", please briefly explain if there is a particular reason why is so.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

73. In your administration, approximately how much time does the average BTI take to index?

______
74.1 Is the EBTI Thesaurus regularly consulted before indexing takes place?

a) Always □

b) Nearly always, depending on the goods □

c) Sometimes □

d) Rarely □

e) Never □

74.2 If the answer to question 74.1 is b) "nearly always, depending on the goods", please briefly indicate when the Thesaurus would not be consulted.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

74.3 If the answer to question 74.1 is c) "sometimes" or d) "rarely", please briefly explain what criteria are used to decide when the Thesaurus should be consulted.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

74.4 If the answer to question 74.1 is e) "never", please briefly explain why the Thesaurus is never consulted.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

158
75.1 When indexing BTI, if the appropriate term cannot be found in the EBTI Thesaurus, what sources do officials use to choose keywords?

a) The Combined Nomenclature
b) The description provided by the applicant
c) Other sources.

75.2 If the answer to question 75.1 is c) "other sources", please briefly explain what those sources are.
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________

159
Section 14: Appeals procedure

76.1 Other than the reference in the "Important Notice" on the BTI form, are holders of BTI made aware in any other way of their right to appeal the decision in their BTI?

Yes ☐ No ☐

76.2 If the answer to question 76.1 is "yes", please briefly explain.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

76.3 If the answer to question 76.1 is "no", please briefly explain why it is not felt necessary to inform holders of their right of appeal.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

77.1 Is there a specific time period laid down in your national legislation during which a holder may launch an appeal?

Yes ☐ No ☐

77.2 If the answer to question 77.1 is "yes", please state what that time period is.

__________

77.3 If the answer to question 77.1 is "yes", is the holder of a BTI informed of that time constraint when the BTI is notified?

Yes ☐ No ☐

78. To which authority is the first appeal made by the holder of a BTI?

______________________________________________

79. In general, approximately how long does the average initial appeal procedure take?

______________________________________________

80.1 Is there a deadline in which an initial appeal must be heard laid down in national legislation?

Yes ☐ No ☐
80.2 Is the answer to question 80.1 is "yes", what is that deadline?

______________

81.1 Is the BTI sector involved in the appeal process when it concerns BTI decisions it has issued?

Yes ☐ No ☐

81.2 If the answer to question 81.1 is "yes", please briefly explain the involvement of the BTI sector in the initial appeals procedure.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

82. How many BTI were appealed by their holders during:

2007: ________
2008: ________

83. How many of those appeals were upheld in favour of the holder during:

2007: ________
2008: ________

84. Approximately how many of the initial appeals that are rejected are further appealed to the court?

___________________________________________________________________________

85. Approximately how many judgements of the national court/tribunal concerning classification and BTI does your administration appeal each year?

___________________________________________________________________________
Section 15: Usage of BTI

86.1 Is any record kept of how often BTI is presented to customs in support of a customs import or export declaration?

Yes □ No □

86.2 If the answer to question 86.1 is "yes", please briefly explain how the usage of BTI is recorded.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

86.3 If the answer to question 86.1 is "yes", approximately what percentage of the total number of customs declarations for imports into your Member State are supported by BTI?

_____________________

86.4 If the answer to question 86.1 is "yes", approximately what percentage of the total number of customs declarations for exports from your Member State are supported by BTI?

_____________________

86.5 If the answer to question 86.1 is "no" please briefly explain if there is a particular reason why this is so.

___________________________________________________________________________
___________________________________________________________________________

87.1 During customs clearance procedures, do customs officials ask importers whether the goods they are clearing are covered by a BTI?

a) Always □

b) Sometimes □

c) Never □
87.2 If the answer to question 87.1 is "sometimes", during approximately what percentage of customs clearance procedures is this question posed?

_______ %

87.3 If the answer to question 87.1 is "no" please briefly explain if there is a particular reason why this is so.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 16: Invalidating and annulling BTI

88. In the event of BTI ceasing to be valid due to any of the measures referred to in Articles 12.5 (a) (i), (ii) and (iii) of the Customs Code, approximately how long from the date of those measures does it take for BTI to be invalidated or annulled?

_____________________

89.1 How are holders informed of the invalidation of their BTI?

a) By letter  □

b) By electronic mail  □

c) Orally  □

d) Other  □

89.2 If the answer to question 89.1 is d) "other", please briefly explain.

___________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

90.1 In cases where BTI are annulled due to incorrect information being submitted at the time of application, are any further measures taken by the customs against the holder?

a) Always  □

b) Sometimes  □

c) Never  □

90.2 Please give a brief explanation of the answer to question 90.1

___________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

164
Section 17: Period of grace

91.1 Are the holders of BTI which are revoked or amended informed that they may request a "period of grace" in certain circumstances?
   a) Always □
   b) Sometimes □
   c) Never □

91.2 If the answer to question 91.1 is b) "sometimes", please briefly explain what criteria are used to decide when the holder should be informed of this right.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

91.3 If the answer to question 91.1 is c) "never", please briefly explain why the holder is never informed of this right.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

92. Approximately how many times has your administration been requested to grant a period of grace during the calendar years:

    2007 ____________
    2008 ____________

93. Is the number of requests to your administration for periods of grace
   a) Increasing? □
   b) Decreasing? □
   c) Remaining static? □

94.1 In cases where a period of grace is requested, is it confirmed that all the conditions for granting it are fulfilled?
   a) Always □
b) Frequently □

c) Randomly □

d) Never □

94.2 If the answer to question 94.1 is b) "frequently", please briefly explain what criteria are used in your administration to decide when fulfilment of all the conditions for granting a period of grace should be confirmed.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

94.3 If the answer to question 94.1 is c "randomly" or d) "never" please briefly explain why the fulfilment of the conditions attached to granting a period of grace are randomly or never confirmed.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 18: Problems encountered when treating BTI applications, drafting and issuing BTI

95.1 Have personnel concerned with the treatment of BTI applications and the drafting and issuing of BTI reported experiencing any consistent problems with:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a)</td>
<td>Accessing the system</td>
</tr>
<tr>
<td>b)</td>
<td>Accessing the database</td>
</tr>
<tr>
<td>c)</td>
<td>With the &quot;work in progress&quot; environment</td>
</tr>
<tr>
<td>d)</td>
<td>With the Thesaurus</td>
</tr>
<tr>
<td>e)</td>
<td>Sending BTI applications or BTI to the database</td>
</tr>
<tr>
<td>f)</td>
<td>Sending images</td>
</tr>
<tr>
<td>g)</td>
<td>Other</td>
</tr>
</tbody>
</table>

95.2 If the answer to question 95.1 includes g) "other", please briefly explain which aspect(s) of the system is/are concerned.

___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________

95.3 Please briefly explain on a separate page each of the consistent problems experienced as indicated in your answer to question 95.1. Please clearly indicate at the head of the page "Reply to question 95.3"
Section 19: Consulting the database

96.1. When drafting and issuing BTI is the database consulted:

   a) Systematically ☐
   b) Only in certain circumstances ☐
   c) Rarely ☐
   d) Never ☐

96.2 If the answer to question 96.1 is b) "only in certain circumstances", please briefly explain what criteria are used to determine those circumstances in which the database should be consulted.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

96.3 If the answer to question 96.1 is c) "rarely" or d)"never", please briefly explain why the database is rarely or never consulted.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

_____________________________________________________________________________
97.1 When consulting the database what criteria are most often used (mark boxes as appropriate in order of most use, e.g. 1, 2, 3, etc.):

- [ ] a) Applicant's name
- [ ] b) Holder's name
- [ ] c) Tariff classification
- [ ] d) Start date of validity
- [ ] e) End date of validity
- [ ] f) Keywords
- [ ] g) Images
- [ ] h) Other

97.2 If h) "other" is included in the response to question 97.1, please briefly explain what the "other" criteria are.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

98.1 Do officials concerned with the treatment of BTI applications and drafting and issuing BTI have access to the TARIC database?

[ ] Yes [ ] No

98.2 If the answer to question 98.1 is "no" please briefly explain how they can confirm which TARIC codes are invalidated.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
99.1 Do customs officers at points of import and export have access to the EBTI database?

Yes ☐ No ☐

99.2 If the answer to question 99.1 is "no", briefly explain how customs officers confirm that a BTI is valid.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

100.1 When consulting BTI issued in other Member States in the languages of those Member States, does your administration use a particular language tool to translate the information in the BTI?

Yes ☐ No ☐

100.2 If the answer to question 100.1 is "yes", please indicate which translation tool your administration uses.

___________________________________________________________________________

100.3 If the answer to question 100.1 is "no", please explain how officials in your administration can determine the content of BTI issued in other languages.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

101.1 Do customs officers at points of import and export have access to the TARIC database?

Yes ☐ No ☐

101.2 If the answer to question 101.1 is "no", briefly explain how customs officers confirm that a TARIC code is valid.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 20: Training

102.1 Is any training on the tariff classification of goods given to officials in the section dealing with BTI?

Yes ☐ No ☐

102.2 If the answer to question 102.1 is "yes" please indicate how this training is provided.

a) Exclusively through "on the job" training ☐

b) Exclusively through specific training courses ☐

c) Through a combination of a) and b) ☐

d) Other ☐

102.3 If the answer to question 102.2 is d) "other", please briefly explain.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

102.4 If the answer to question 102.1 is "no", please briefly explain why your administration does not provide such training to the officials concerned.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

103.1 Is any training on the treatment of BTI applications and the drafting and issuing of BTI given to officials concerned with those tasks?

Yes ☐ No ☐
103.2 If the answer to question 103.1 is "yes" please indicate how this training is provided.

a) Exclusively through "on the job" training ☐
b) Exclusively through specific training courses ☐
c) Through a combination of a) and b) ☐
d) Other ☐

103.3 If the answer to question 103.2 is d) "other", please briefly explain.
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________

103.4 If the answer to question 103.1 is "no", please briefly explain why your administration does not provide such training to the officials concerned.
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________

104.1 Is any training regarding BTI given to customs officers dealing with imports and exports?

Yes ☐ No ☐

104.2 If the answer to question 104.1 is "yes" please indicate how this training is provided.

a) Exclusively through "on the job" training ☐
b) Exclusively through specific training courses ☐
c) Through a combination of a) and b) ☐
d) Other ☐

104.3 If the answer to question 104.2 is d) "other", please briefly explain.
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________

104.4 If the answer to question 104.1 is "no", please briefly explain why your administration does not provide such training to the officials concerned.
N.B. The remaining questions in this Section need only be answered if your administration provides specific training courses for officials treating BTI applications and drafting and issuing BTI.

105. Are the specific courses concerning tariff classification given to officials in the BTI sector:
   a) Targeted exclusively at those officials. ☐
   b) Open to all officials who may wish to attend them. ☐

106. How frequently are those specific training courses provided.
   a) Annually, as part of the Training Programme of the administration ☐
   b) When requested by BTI personnel ☐

107. Are the specific courses concerning the treatment of BTI applications and the drafting and issuing of BTI given to officials in the BTI sector:
   a) Targeted exclusively at those officials? ☐
   b) Open to all officials who may wish to attend them? ☐

108. How frequently are those specific training courses provided?
   a) Annually, as part of the Training Programme of the administration ☐
   b) When requested by BTI personnel ☐

109.1 Are refresher courses offered to personnel already concerned with recording and treating BTI applications and drafting and issuing BTI?
    Yes ☐ No ☐

109.2 If the answer to question 109.1 is "yes", how frequently are refresher courses offered.
    a) At regular intervals ☐
    b) When requested by the officials concerned. ☐

109.3 If the answer to question 109.2 is a) "at regular intervals", please state how often refresher courses are provided.
   ______
110.1 Who conducts the training courses on tariff classification?

<table>
<thead>
<tr>
<th>Option</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) The training officers of the administration</td>
<td></td>
</tr>
<tr>
<td>b) Members of the staff concerned with the tariff classification of goods</td>
<td></td>
</tr>
<tr>
<td>c) Members of staff from other Member States</td>
<td></td>
</tr>
<tr>
<td>d) Training personnel from the WCO</td>
<td></td>
</tr>
<tr>
<td>e) Contracted professional trainers from the private sector</td>
<td></td>
</tr>
<tr>
<td>f) Other</td>
<td></td>
</tr>
</tbody>
</table>

If the answer to question 110.1 is f) "other", please briefly explain who conducts the training courses.

___________________________________________________________________________
___________________________________________________________________________________
___________________________________________________________________________________
___________________________________________________________________________________

111.1 Who conducts the training courses on recording and treating BTI applications and drafting and issuing BTI?

<table>
<thead>
<tr>
<th>Option</th>
<th>Yes/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) The training officers of the administration</td>
<td></td>
</tr>
<tr>
<td>b) Members of the staff concerned with recording and treating applications and drafting and issuing BTI</td>
<td></td>
</tr>
<tr>
<td>c) Members of staff from other Member States</td>
<td></td>
</tr>
<tr>
<td>d) Other (for example contracted professional trainers)</td>
<td></td>
</tr>
</tbody>
</table>
111.2 If the answer to question 111.1 is d) "other", please briefly explain who conducts the training courses.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
__________________________________________________________________________________
___________________________________________________________

112 Are specific training materials, guides or handbooks distributed:

a) During the training courses on tariff classification?
   Yes □ No □

b) During the specific BTI training courses?
   Yes □ No □

113.1 Is any specific training given to officials on how to index BTI?
   Yes □ No □

113.2 If the answer to question 113.1 is "no", please briefly explain why no such training is offered.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Section 21: Diffusion of information to personnel treating BTI applications, drafting and issuing BTI

114.1 When the Customs Code Committee takes a decision regarding classification, how are the officials concerned with treating BTI applications and with drafting and issuing BTI informed of that decision?

a) Via an internal order or similar instrument  □

b) Via the official organ of the Customs  □

c) Via an internal memo addressed to the personnel concerned  □

d) Orally  □

e) Other  □

114.2 If the answer to question 114.1 is e), "other", please briefly explain.

___________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
___________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

114.3 If the answer to question 114.1 is either a) "via an internal order or similar instrument" or c) "via an internal memo", approximately how long, from the time the opinion or decision is taken, does it take for the regulation or internal memo to be issued?

_____________________

114.4 If the answer to 114.1 is d) "orally", on average how long does it take for the concerned personnel to be informed?

_____________________

114.5 If the answer to 114.1 is d) "orally", please briefly explain how your administration can be certain that all concerned personnel are properly informed?

___________________________________________________________________________
________________________________________________________________________________
______________________________________________________________________
___________________________________________________________________________
________________________________________________________________________________


Section 22: Diffusion of information to the general public.

115.1 How does the administration inform the general public that BTI is available? (You may tick more than one box, as appropriate)

- a) In a public notice ☐
- b) Via the Website of the administration ☐
- c) In the course of classification enquiries ☐
- d) Other ☐
- e) No particular effort is made to inform the public of BTI ☐

115.2 In answer to question 115.1, if d) "other" is amongst the boxes ticked above, please briefly explain what those "other" methods used to inform the public of BTI by your administration are.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

115.3 If the answer to question 115.1 is e) "no particular effort is made to inform the public of BTI", please briefly explain why this is the case.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

116.1 Are public notices published in the national press?

- Yes ☐ No ☐

116.2 If the answer to question 116.1 is "no", please briefly explain how such public notices are brought to the attention of the public.

___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

117. Is the information on the administration's website kept up to date with regard to classification decisions and any developments in BTI?

- Yes ☐ No ☐
118.1 Is there an official policy of specifically encouraging traders to apply for BTI?

Yes ☐ No ☐

118.2 If the answer to question 118.1 is "yes", please briefly explain how this is done.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________

118.3 If the answer to question 118.1 is "no", please briefly explain why traders are not encouraged to apply for BTI.
___________________________________________________________________________
___________________________________________________________________________
___________________________________________________________________________
Appendix 2

Information Paper

BTI monitoring visits

to be carried out in the period 2007-2008 (first phase)

Background

Following the introduction of the EBTI-3 system on 19 April 2004 and the accession of the 10 new Member States less than 2 weeks later and the more recent accession of Bulgaria and Romania, now is the appropriate time to start assessing how the new system is working and being implemented in the Member States.

It is accepted that it is essential for all Member States to be included in the programme of visits. However, in view of the fact that there are 27 MS it has been decided to split the programme into two separate phases. It is planned to complete the first phase by December 2008. Details for the second phase have yet to be finalised.

In line with this schedule, it is proposed to visit at 12 countries in the first phase. The remaining 15 will be visited during the second phase which is likely to commence in 2009. The second phase will concentrate on how well the results of the first phase visits have been implemented. The teams visiting each Member State will be made up of Commission officials and custom officials from the Member States (this is discussed in more detail further on).

Objectives:

1. **To monitor how the new EBTI-3 is being implemented**

   The new EBTI-3 system was inaugurated on 19 April 2004. On the whole the launch was been relatively trouble free and by all accounts it is running smoothly throughout the Community. It is time now to monitor how the system is being implemented in a

2. **Identify areas where guidance to MS is required**

   Monitoring visits will highlight those areas or aspects of the system which may require further training or where there are apparent errors in the application of the EBTI by Member States. It is only through seeing how users are applying the system that it will be possible to identify any weaknesses in the training or understanding of what they are doing. The main criteria to assess the implementation of EBTI-3 are set out in the Administrative Guidelines on the EBTI System and its operation.
3. **To identify areas of EBTI-3 that in the opinion of the users could be improved**

While every aspect of the system has been carefully planned and thought through by the developer, it is only through the reports of the users that any shortcomings can be identified. It is intended that these monitoring visits should concentrate on the users in the customs administrations, i.e. officials involved in entering applications and issuing BTIs.

This point is not to be confused with point 2 above. Point 2 concerns those deficiencies identified by the visitors. This point is to learn from the users those aspects of the system which they have identified as being ones they need more information or training on or which they feel could be improved and made more user friendly.

4. **To facilitate an exchange of information between MS and MS and MS and the Commission**

Through direct contacts with users in the different Member States visited it is intended to learn of solutions adopted by individual MS to resolve specific problems. By exchanging such information between the 27, it will be possible to either adopt such solutions at Community level or to prohibit them if they run contrary to the legal provisions of the articles of the CC or IPCC governing BTI.

**Composition of teams**

1. **Composition of visiting teams**

The teams conducting these visits will be composed of three officials from Member States customs administrations and at least two officials from the Commission.

2. **Profile of Member States officials accompanying Commission**

Participants from Member States should fulfil all of the criteria set out below.

1. Customs officials
2. Processing and issuing BTI
3. Knowledge of classification
4. Knowledge of English a necessity. Other linguistic knowledge a bonus.

Member States delegations have been canvassed as to which countries they would particularly like to visit.

**Questionnaire**

In order to prepare the participants in the visits, a questionnaire will be submitted to each Member State to be visited, no later than 16 weeks (4 months) before the visit starts. The Member State will have at least 8 weeks to complete the questionnaire and return it to the
Commission. After six weeks a reminder of the deadline will be sent to the Member State (if it has not already replied).

The Commission would ideally require a minimum of 8 weeks to analyse the responses and prepare an assessment for distribution to the other participants. In order to assess the veracity of the situation responses will be compared with evidence from a random selection of BTI applications and BTI in the database. Where the evidence does not support the response and no obvious reasons for that are apparent, it may merit further discussion during the visit.

The questionnaire has been divided into three parts. Member States will be required to complete and submit it electronically. Many of the questions posed in the questionnaire are drawn from the administrative guideline which set out how administrations are to behave when dealing with all aspects of BTI.

The questionnaire is structured in such a way that it can be incorporated into the report, thus avoiding a lot of repetitious work.

All participants will receive the completed questionnaire before visiting the Member State. As explained above, the Commission (BTI Sector in conjunction with the other sectors of B/3) will assess the replies and then determine which aspects need to be discussed and queried during the visits.

**Reports**

1. **Structure of the reports.**

Reports should follow a strict structure in order to simplify and quicken their production. The outline structure could be as follows:

   a) Introduction: prepared by Commission,
   
   b) Responses to questionnaire: prepared by MS,
   
   c) Reports of the MS participants
   
   d) Overall assessment of the visit and comments of the Commission, listing:
      
      i) Positive points
      
      ii) Aspects on which the Member State has expressed opinions (positive and/or negative) on the system and procedures
      
      iii) Aspects of procedures which are either not working to the optimum or where problems have been identified either by the Member State or participants
      
      v) Follow up to be carried out by Member State
      
      vi) Follow up to be carried out by the Commission
   

   e) Annexes containing
      
      i) General information on the Member State's customs administration
ii) List of participants

The first draft of the report will be sent to the Member State visited and the customs authorities will be given the opportunity to respond to any comments therein. Once agreement has been reached as to the comments the final version will be drafted.

2. Distribution of reports

Reports will be issued to all MS as they become available. This would help administrations to look at their own systems in the light of the assessments formed as a result of the individual visits. It would also give those Member States due to be visited an opportunity to examine their own practices and to identify where improvements can be made.

It is proposed that reports be limited to either one (EN) or two (EN and FR) languages.

Follow up

The follow up to the visits will depend entirely on the findings set out in the report. Follow up will fall both on the Member State and occasionally on the Commission too. It is intended that the second phase of visits should assess how well the follow up has been implemented by the Member States.
Appendix 3

Relevant Articles from Council Regulation (EEC) No. 2913/92
(also known as the Customs Code)

(Shaded text does not refer to BTI)

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

CHAPTER 2

SUNDRY GENERAL PROVISIONS RELATING IN PARTICULAR TO THE RIGHTS AND OBLIGATIONS OF PERSONS WITH REGARD TO CUSTOMS RULES

Section 1

Right of representation

Article 5

1. Under the conditions set out in Article 64 (2) and subject to the provisions adopted within the framework of Article 243 (2) (b), any person may appoint a representative in his dealings with the customs authorities to perform the acts and formalities laid down by customs rules.

2. Such representation may be:
   — direct, in which case the representative shall act in the name of and on behalf of another person, or
   — indirect, in which case the representatives shall act in his own name but on behalf of another person.

A Member State may restrict the right to make customs declarations:
   — by direct representation, or
   — by indirect representation,

so that the representative must be a customs agent carrying on his business in that country's territory.

3. Save in the cases referred to in Article 64 (2) (b) and (3), a representative must be established within the Community.

4. A representative must state that he is acting on behalf of the person represented, specify whether the representation is direct or indirect and be empowered to act as a representative.
A person who fails to state that he is acting in the name of or on behalf of another person or who states that he is acting in the name of or on behalf of another person without being empowered to do so shall be deemed to be acting in his own name and on his own behalf.

5. The customs authorities may require any person stating that he is acting in the name of or on behalf of another person to produce evidence of his powers to act as a representative.

---

Section 1A

Authorised economic operators

Article 5a

1. Customs authorities, if necessary following consultation with other competent authorities, shall grant, subject to the criteria provided for in paragraph 2, the status of ‘authorised economic operator’ to any economic operator established in the customs territory of the Community.

An authorised economic operator shall benefit from facilitations with regard to customs controls relating to security and safety and/or from simplifications provided for under the customs rules.

The status of authorised economic operator shall, subject to the rules and conditions laid down in paragraph 2, be recognised by the customs authorities in all Member States, without prejudice to customs controls. Customs authorities shall, on the basis of the recognition of the status of authorised economic operator and provided that the requirements relating to a specific type of simplification provided for in Community customs legislation are fulfilled, authorise the operator to benefit from that simplification.

2. The criteria for granting the status of authorised economic operator shall include:

— an appropriate record of compliance with customs requirements,
— a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls,
— where appropriate, proven financial solvency, and
— where applicable, appropriate security and safety standards.

The committee procedure shall be used to determine the rules:

— for granting the status of authorised economic operator,
— for granting authorisations for the use of simplifications,
— for establishing which customs authority is competent to grant such status and authorisations,
— for the type and extent of facilitations that may be granted in respect of customs controls relating to security and safety, taking into account the rules for common risk management,
— for consultation with, and provision of information to, other customs authorities;

and the conditions under which:
— an authorisation may be limited to one or more Member States,
— the status of authorised economic operator may be suspended or withdrawn, and
— the requirement of being established in the Community may be waived for specific
categories of authorised economic operator, taking into account, in particular,
international agreements.

Section 2

Decisions relating to the application of customs rules

Article 6

1. Where a person requests that the customs authorities take a decision relating to the
application of customs rules that person shall supply all the information and documents
required by those authorities in order to take a decision.

2. Such decision shall be taken and notified to the applicant at the earliest opportunity.

Where a request for a decision is made in writing, the decision shall be made within a period
laid down in accordance with the existing provisions, starting on the date on which the said
request is received by the customs authorities. Such a decision must be notified in writing to
the applicant.

However, that period may be exceeded where the customs authorities are unable to comply
with it. In that case, those authorities shall so inform the applicant before the expiry of the
abovementioned period, stating the grounds which justify exceeding it and indicating the
further period of time which they consider necessary in order to give a ruling on the request.

3. Decisions adopted by the customs authorities in writing which either reject requests or
are detrimental to the persons to whom they are addressed shall set out the grounds on which
they are based. They shall refer to the right of appeal provided for in Article 243.

4. Provision may be made for the first sentence of paragraph 3 to apply likewise to other
decisions.

Article 7

Save in the cases provided for in the second subparagraph of Article 244, decisions adopted
shall be immediately enforceable by customs authorities.

Article 8

1. A decision favourable to the person concerned shall be annulled if it was issued on the
basis of incorrect or incomplete information and:
— the applicant knew or should reasonably have known that the information was
incorrect or incomplete, and
— such decision could not have been taken on the basis of correct or complete
information.

2. The persons to whom the decision was addressed shall be notified of its annulment.
3. Annulment shall take effect from the date on which the annulled decision was taken.

**Article 9**

1. A decision favourable to the person concerned, shall be revoked or amended where, in cases other than those referred to in Article 8, one or more of the conditions laid down for its issue were not or are no longer fulfilled.

2. A decision favourable to the person concerned may be revoked where the person to whom it is addressed fails to fulfil an obligation imposed on him under that decision.

3. The person to whom the decision is addressed shall be notified of its revocation or amendment.

4. The revocation or amendment of the decision shall take effect from the date of notification. However, in exceptional cases where the legitimate interests of the person to whom the decision is addressed so require, the customs authorities may defer the date when revocation or amendment takes effect.

**Article 10**

Articles 8 and 9 shall be without prejudice to national rules which stipulate that decisions are invalid or become null and void for reasons unconnected with customs legislation.

**Section 3**

**Information**

**Article 11**

1. Any person may request information concerning the application of customs legislation from the customs authorities.

Such a request may be refused where it does not relate to an import or export operation actually envisaged.

2. The information shall be supplied to the applicant free of charge. However, where special costs are incurred by the customs authorities, in particular as a result of analyses or expert reports on goods, or the return of the goods to the applicant, he may be charged the relevant amount.

**Article 12**

1. The customs authorities shall issue binding tariff information or binding origin information on written request, acting in accordance with the committee procedure.

2. Binding tariff information or binding origin information shall be binding on the customs authorities as against the holder of the information only in respect of the tariff classification or determination of the origin of goods.

Binding tariff information or binding origin information shall be binding on the customs authorities only in respect of goods on which customs formalities are completed after the date on which the information was supplied by them.
In matters of origin, the formalities in question shall be those relating to the application of Articles 22 and 27.

3. The holder of such information must be able to prove that:
   — for tariff purposes: the goods declared correspond in every respect to those described in the information,
   — for origin purposes: the goods concerned and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the information.

4. Binding information shall be valid for a period of six years in the case of tariffs and three years in the case of origin from the date of issue. By way of derogation from Article 8, it shall be annulled where it is based on inaccurate or incomplete information from the applicant.

5. Binding information shall cease to be valid:
   (a) in the case of tariff information:
      (i) where a regulation is adopted and the information no longer conforms to the law laid down thereby;
      (ii) where it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 20 (6):
         — at Community level, by reason of amendments to the explanatory notes to the combined nomenclature or by a judgment of the Court of Justice of the European Communities,
         — at international level, by reason of a classification opinion or an amendment of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the World Customs Organization established in 1952 under the name ‘the Customs Cooperation Council’;
      (iii) where it is revoked or amended in accordance with Article 9, provided that the revocation or amendment is notified to the holder.

      The date on which binding information ceases to be valid for the cases cited in (i) and (ii) shall be the date of publication of the said measures or, in the case of international measures, the date of the Commission communication in the ‘C’ series of the Official Journal of the European Communities;

   (b) in the case of origin information:
      (i) where a regulation is adopted or an agreement is concluded by the Community and the information no longer conforms to the law thereby laid down;
      (ii) where it is no longer compatible with:
         — at Community level, the explanatory notes and opinions adopted for the purposes of interpreting the rules or with a judgment of the Court of Justice of the European Communities,
         — at international level, the Agreement on Rules of Origin established in the World Trade Organization (WTO) or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement;
(iii) where it is revoked or amended in accordance with Article 9, provided that the holder has been informed in advance.

The date on which binding information ceases to be valid for the cases referred to in (i) and (ii) shall be the date indicated when the abovementioned measures are published or, in the case of international measures, the date shown in the Commission communication in the ‘C’ series of the Official Journal of the European Communities.

6. The holder of binding information which ceases to be valid pursuant to paragraph 5 (a) (ii) or (iii) or (b) (ii) or (iii) may still use that information for a period of six months from the date of publication or notification, provided that he concluded binding contracts for the purchase or sale of the goods in question, on the basis of the binding information, before that measure was adopted. However, in the case of products for which an import, export or advance-fixing certificate is submitted when customs formalities are carried out, the period of six months is replaced by the period of validity of the certificate.

In the case of paragraph 5 (a) (i) and b (i), the Regulation or agreement may lay down a period within which the first subparagraph shall apply.

7. The classification or determination of origin in binding information may be applied, on the conditions laid down in paragraph 6, solely for the purpose of:

— determining import or export duties,
— calculating export refunds and any other amounts granted for imports or exports as part of the common agricultural policy,
— using import, export or advance-fixing certificates which are submitted when formalities are carried out for acceptance of the customs declaration concerning the goods in question, provided that such certificates were issued on the basis of the information concerned.

In addition, in exceptional cases where the smooth operation of the arrangements laid down under the common agricultural policy may be jeopardized, it may be decided to derogate from paragraph 6, in accordance with the procedure laid down in Article 38 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats and in the corresponding Articles in other regulations on the common organization of markets.

Section 4

Other provisions

Article 13

1. Customs authorities may, in accordance with the conditions laid down by the provisions in force, carry out all the controls they deem necessary to ensure that customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status are correctly applied. Customs controls for the purpose of the correct application of Community legislation may be carried out in a third country where an international agreement provides for this.
2. Customs controls, other than spot-checks, shall be based on risk analysis using automated data processing techniques, with the purpose of identifying and quantifying the risks and developing the necessary measures to assess the risks, on the basis of criteria developed at national, Community and, where available, international level.

The committee procedure shall be used for determining a common risk management framework, and for establishing common criteria and priority control areas.

Member States, in cooperation with the Commission, shall establish a computer system for the implementation of risk management.

3. Where controls are performed by authorities other than the customs authorities, such controls shall be performed in close coordination with the customs authorities, wherever possible at the same time and place.

4. In the context of the controls provided for in this Article, customs and other competent authorities, such as veterinary and police authorities, may communicate data received, in connection with the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status, between each other and to the customs authorities of the Member States and to the Commission where this is required for the purposes of minimising risk.

Communication of confidential data to the customs authorities and other bodies (e.g. security agencies) of third countries shall be allowed only in the framework of an international agreement and provided that the data protection provisions in force, in particular Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data are respected.

Article 14

For the purposes of applying customs legislation, any person directly or indirectly involved in the operations concerned for the purposes of trade in goods shall provide the customs authorities with all the requisite documents and information, irrespective of the medium used, and all the requisite assistance at their request and by any time limit prescribed.

Article 15

All information which is by nature confidential or which is provided on a confidential basis shall be covered by the duty of professional secrecy. It shall not be disclosed by the competent authorities without the express permission of the person or authority providing it. The communication of information shall, however, be permitted where the competent authorities are obliged to do so pursuant to the provisions in force, particularly in connection with legal proceedings. Any disclosure or communication of information shall fully comply with prevailing data protection provisions, in particular Directive 95/46/EC and Regulation (EC) No 45/2001.
Appendix 4

Relevant provisions in Commission Regulation (EEC) No. 2454/93
(also known as the Implementing Provisions)

(Shaded text does not refer to BTI)

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents.

TITLE II

BINDING INFORMATION

CHAPTER 1

Definitions

Article 5

For the purpose of this Title:

1. *binding information*:

   means tariff information or origin information binding on the administrations of all Community Member States when the conditions laid down in Articles 6 and 7 are fulfilled;

2. *applicant*:

   — tariff matters: means a person who has applied to the customs authorities for binding tariff information,

   — origin matters: means a person who has applied to the customs authorities for binding origin information and has valid reasons to do so;

3. *holder*:

   means the person in whose name the binding information is issued.

CHAPTER 2

Procedure for obtaining binding information — Notification of information to applicants and transmission to the Commission

Article 6

1. Applications for binding information shall be made in writing, either to the competent customs authorities in the Member State or Member States in which the information is to be used, or to the competent customs authorities in the Member State in which the applicant is established.
Applications for binding tariff information shall be made by means of a form conforming to the specimen shown in Annex 1B.

2. An application for binding tariff information shall relate to only one type of goods. An application for binding origin information shall relate to only one type of goods and one set of circumstances conferring origin.

3. (A) Applications for binding tariff information shall include the following particulars:
   (a) the holder's name and address;
   (b) the name and address of the applicant where that person is not the holder;
   (c) the customs nomenclature in which the goods are to be classified. Where an applicant wishes to obtain the classification of goods in one of the nomenclatures referred to in Article 20 (3) (b) and (6) (b) of the Code, the application for binding tariff information shall make express mention of the nomenclature in question;
   (d) a detailed description of the goods permitting their identification and the determination of their classification in the customs nomenclature;
   (e) the composition of the goods and any methods of examination used to determine this, where the classification depends on it;
   (f) any samples, photographs, plans, catalogues or other documents available which may assist the customs authorities in determining the correct classification of the goods in the customs nomenclature, to be attached as annexes;
   (g) the classification envisaged;
   (h) agreement to supply a translation of any attached document into the official language (or one of the official languages) of the Member State concerned if requested by the customs authorities;
   (i) any particulars to be treated as confidential;
   (j) indication by the applicant whether, to his knowledge, binding tariff information for identical or similar goods has already been applied for, or issued in the Community;
   (k) acceptance that the information supplied may be stored on a database of the Commission and that the particulars of the binding tariff information, including any photograph(s), sketch(es), brochure(s) etc., may be disclosed to the public via the Internet, with the exception of the information which the applicant has marked as confidential; the provisions governing the protection of information in force shall apply.

(B) Applications for binding origin information shall include the following particulars:
   (a) the holder's name and address;
   (b) the name and address of the applicant where that person is not the holder;
   (c) the applicable legal basis, for the purposes of Articles 22 and 27 of the Code;
   (d) a detailed description of the goods and their tariff classification;
   (e) the composition of the goods and any methods of examination used to determine this and their ex-works price, as necessary;
(f) the conditions enabling origin to be determined, the materials used and their origin, tariff classification, corresponding values and a description of the circumstances (rules on change of tariff heading, value added, description of the operation or process, or any other specific rule) enabling the conditions in question to be met; in particular the exact rule of origin applied and the origin envisaged for the goods shall be mentioned;

(g) any samples, photographs, plans, catalogues or other documents available on the composition of the goods and their component materials and which may assist in describing the manufacturing process or the processing undergone by the materials;

(h) agreement to supply a translation of any attached document into the official language (or one of the official languages) of the Member State concerned if requested by the customs authorities;

(i) any particulars to be treated as confidential, whether in relation to the public or the administrations;

(j) indication by the applicant whether, to his knowledge, binding tariff information or binding origin information for goods or materials identical or similar to those referred to under points (d) or (f) have already been applied for or issued in the Community;

(k) acceptance that the information supplied may be stored on a public-access database of the Commission; however, apart from Article 15 of the Code, the provisions governing the protection of information in force in the Member States shall apply.

4. Where, on receipt of the application, the customs authorities consider that it does not contain all the particulars required to give an informed opinion, the customs authorities shall ask the applicant to supply the required information. The time limits of three months and 150 days referred to in Article 7 shall run from the moment when the customs authorities have all the information needed to reach a decision; the customs authorities shall notify the applicant that the application has been received and the date from which the said time limit will run.

5. The list of customs authorities designated by the Member States to receive applications for or to issue binding information shall be published in the ‘C’ series of the Official Journal of the European Communities.

**Article 7**

1. Binding information shall be notified to the applicant as soon as possible.

(a) Tariff matters: if it has not been possible to notify binding tariff information to the applicant within three months of acceptance of the application, the customs authorities shall contact the applicant to explain the reason for the delay and indicate when they expect to be able to notify the information.

(b) Origin matters: information shall be notified within a time limit of 150 days from the date when the application was accepted.

2. Binding information shall be notified by means of a form conforming to the specimen shown at Annex 1 (binding tariff information) or Annex 1A (binding origin information). The notification shall indicate what particulars will be treated as confidential. The right of appeal referred to in Article 243 of the Code shall be mentioned.
Article 8

1. In the case of binding tariff information, the customs authorities of the Member States shall, without delay, transmit to the Commission the following:
   (a) a copy of the application for binding tariff information (set out in Annex 1B);
   (b) a copy of the binding tariff information notified (copy No 2 set out in Annex 1);
   (c) the data as given on copy No 4 set out in Annex 1.

In the case of binding origin information they shall, without delay, transmit to the Commission the relevant details of the binding origin information notified.

Such transmission shall be effected by electronic means.

2. Where a Member State so requests, the Commission shall send it without delay the particulars obtained in accordance with paragraph 1. Such transmission shall be effected by electronic means.

3. The electronically transmitted data of the application for binding tariff information, the binding tariff information notified and the data as given on copy No 4 of Annex 1 shall be stored in a central database of the Commission. The data of the binding tariff information, including any photograph(s), sketch(es), brochure(s) and so forth, may be disclosed to the public via the Internet, with the exception of the confidential information contained in boxes 3 and 8 of the binding tariff information notified.

CHAPTER 3

Provisions applying in the event of inconsistencies in binding information

Article 9

1. Where different binding information exists:
   — the Commission shall, on its own initiative or at the request of the representative of a Member State, place the item on the agenda of the Committee for discussion at the meeting to be held the following month or, failing that, the next meeting,
   — in accordance with the Committee procedure, the Commission shall adopt a measure to ensure the uniform application of nomenclature or origin rules, as applicable, as soon as possible and within six months following the meeting referred to in the first indent.

2. For the purpose of applying paragraph 1, binding origin information shall be deemed to be different where it confers different origin on goods which:
   — fall under the same tariff heading and whose origin was determined in accordance with the same origin rules and,
   — have been obtained using the same manufacturing process.
CHAPTER 4
Legal effect of binding information

Article 10

1. Without prejudice to Articles 5 and 64 of the Code, binding information may be invoked only by the holder.

2. (a) Tariff matters: the customs authorities may require the holder, when fulfilling customs formalities, to inform the customs authorities that he is in possession of binding tariff information in respect of the goods being cleared through customs.

(b) Origin matters: the authorities responsible for checking the applicability of binding origin information may require the holder, when completing any formalities, to inform the said authorities that he is in possession of binding origin information covering the goods in respect of which the formalities are being completed.

3. The holder of binding information may use it in respect of particular goods only where it is established:

(a) tariff matters: to the satisfaction of the customs authorities that the goods in question conform in all respects to those described in the information presented;

(b) origin matters: to the satisfaction of the authorities referred to in paragraph 2 (b) that the goods in question and the circumstances determining their origin conform in all respect to those described in the information presented.

4. The customs authorities (for binding tariff information) or the authorities referred to in paragraph 2 (b) (for binding origin information) may ask for the information to be translated into the official language or one of the official languages of the Member State concerned.

Article 11

Binding tariff information supplied by the customs authorities of a Member State since 1 January 1991 shall become binding on the competent authorities of all the Member States under the same conditions.

Article 12

1. On adoption of one of the acts or measures referred to in Article 12 (5) of the Code, the customs authorities shall take the necessary steps to ensure that binding information shall thenceforth be issued only in conformity with the act or measure in question.

2. (a) For binding tariff information, for the purposes of paragraph 1 above, the date to be taken into consideration shall be as follows:

— for the Regulations provided for in Article 12 (5) (a) (i) of the Code concerning amendments to the customs nomenclature, the date of their applicability,

— for the Regulations provided for in Article 12 (5) (a) (i) of the Code and establishing or affecting the classification of goods in the customs nomenclature, the date of their publication in the ‘L’ series of the Official Journal of the European Communities,
— for the Regulations provided for in Article 12 (5) (a) (ii) of the Code concerning amendments to the explanatory notes to the combined nomenclature, the date of their publication in the ‘C’ series of the *Official Journal of the European Communities*,

— for judgments of the Court of Justice of the European Communities provided for in Article 12 (5) (a) (ii) of the Code, the date of the judgment,

— for the measures provided for in Article 12 (5) (a) (ii) of the Code concerning the adoption of a classification opinion, or amendments to the explanatory notes to the Harmonized System Nomenclature by the World Customs Organization, the date of the Commission communication in the ‘C’ series of the *Official Journal of the European Communities*.

(b) For binding origin information, for the purposes of paragraph 1, the date to be taken into consideration shall be as follows:

— for the Regulations provided for in Article 12 (5) (b) (i) of the Code concerning the determination of the origin of goods and the rules provided for in Article 12 (5) (b) (ii), the date of their applicability,

— for the measures provided for in Article 12 (5) (b) (ii) of the Code concerning amendments to the explanatory notes and opinions adopted at Community level, the date of their publication in the ‘C’ series of the *Official Journal of the European Communities*,

— for judgments of the Court of Justice of the European Communities provided for in Article 12 (5) (b) (ii) of the Code, the date of the judgment,

— for the measures provided for in Article 12 (5) (b) (ii) of the Code concerning opinions on origin or explanatory notes adopted by the World Trade Organization, the date given in the Commission communication in the ‘C’ series of the *Official Journal of the European Communities*,

— for the measures provided for in Article 12 (5) (b) (ii) of the Code concerning the Annex to the World Trade Organization's Agreement on rules of origin and those adopted under international agreements, the date of their applicability.

3. The Commission shall communicate the dates of adoption of the measures and acts referred to in this Article to the customs authorities as soon as possible.

CHAPTER 5

Provisions applying in the event of expiry of binding information

*Article 13*

Where, pursuant to the second sentence of Article 12 (4) and Article 12 (5) of the Code, binding information is void or ceases to be valid, the customs authority which supplied it shall notify the Commission as soon as possible

*Article 14*

1. When a holder of binding information which has ceased to be valid for reasons referred to in Article 12 (5) of the Code, wishes to make use of the possibility of invoking
such information during a given period pursuant to paragraph 6 of that Article, he shall notify the customs authorities, providing any necessary supporting documents to enable a check to be made that the relevant conditions have been satisfied.

2. In exceptional cases where the Commission, in accordance with the second subparagraph of Article 12 (7) of the Code, adopts a measure derogating from the provisions of paragraph 6 of that Article, or where the conditions referred to in paragraph 1 of this Article concerning the possibility of continuing to invoke binding tariff information or binding origin information have not been fulfilled, the customs authorities shall notify the holder in writing.
Appendix 5

General Information on completing an application for BTI

EUROPEAN COMMUNITY
Application for Binding Tariff Information (BTI)

General Information

Please read the following information carefully before completing your BTI application.

1. For specific guidance on the completion of this form, please see the general information overleaf.

2. BTI is issued in accordance with Council Regulation (EEC) 2913/92 of 12 October 1992 and Commission Regulation (EEC) No. 2454/93 of 2 July 1993. Copies of these regulations can be obtained from: Office for Official Publications of the European Communities, 2, rue Mercier, L-2985 LUXEMBOURG, or sales points in the Member States. The relevant articles in those Regulations can also be found on the Commission's Taxation and Customs Union Directorate-General's website.

3. An application for BTI may only be made in respect of an import or export operation actually envisaged.

4. A BTI cannot be used for importations or exportations that have already taken place or where customs formalities are still in progress.

5. A separate application must be made for each product.

6. BTI may only be used by the holder or an agent acting in the name and on behalf of the holder.

7. Information entered in boxes 2 and 9 of the application form will be treated as confidential and covered by the obligation of professional secrecy.

8. BTI is provided free of charge. Where customs have incurred specific costs in analysis, obtaining expert advice on samples or returning samples, these may be passed on.

9. You may be requested to supply a translation of any attached document into the official language or one of the official languages of the Member State concerned.

10. In cases where the application contains incorrect or incomplete information, the BTI based on such indications may be annulled.

11. Further information may be obtained from the customs authorities listed in Official Journal C144 of 14 May 2011.
GENERAL INFORMATION ON THE COMPLETION OF THE APPLICATION FOR BINDING TARIFF INFORMATION (BTI)

The following general information provides specific guidance on the completion of the Application for BTI, as contained in Annex 1B of Commission Regulation (EEC) No 2454/93 of 2 July 1993. Please read the following information carefully before completing your application.

BOX 1. Applicant: (full name and address) (Mandatory)

For the purposes of binding tariff information, applicant means a person who has applied or a person in whose name an application has been made for binding tariff information with the customs authorities. Please complete this box before moving to Box 2.

Name and address of the applicant (including email address, if available): five lines with a maximum of 175 characters. Email address should be preceded by the term "mailto:.

Telephone Number (optional): one line with a maximum of 25 characters.

Fax Number (optional): one line with a maximum of 25 characters.

Customs ID (optional): enter your unique identification number issued by the customs authority - enter one line with a maximum of 25 characters.

BOX 2. Holder: (full name and address) (Mandatory)

For the purposes of binding tariff information, holder means the person in whose name the binding information is issued. Please complete this box before moving to Box 3.

Name and Address of the designated Holder of the BTI (including email address, if available): five lines with a maximum of 175 characters. Email address should be preceded by the term "mailto:.

Telephone Number (optional): one line with a maximum of 25 characters.

Fax Number (optional): one line with a maximum of 25 characters.

Customs ID (optional): enter your unique identification number issued by the customs authority - enter one line with a maximum of 25 characters.

BOX 3. Agent or Representative: (full name and address) (Optional)

Complete this box if you wish to nominate an agent or representative who will present the BTI at importation/exportation on behalf of the holder, otherwise leave blank and move to Box 4.

Name and Address of the Agent or representative (including email address, if available): five lines with a maximum of 175 characters. Email address should be preceded by the term "mailto:.

Telephone Number (optional): one line with a maximum of 25 characters.

Fax Number (optional): one line with a maximum of 25 characters.

Customs ID (optional): enter your unique identification number issued by the customs authority - enter one line with a maximum of 25 characters.

BOX 4. Reissue of a BTI (Optional. When this box is completed, all the fields are mandatory.)

A BTI is currently valid for 6 years. If you are already the holder of a BTI the validity of which has expired or will shortly do so, and you wish it to be reissued, you should complete this box, otherwise leave it blank and move to Box 5.

BTI Reference Number: enter the reference of the BTI which the Holder would like reissued. The first two characters indicate the ISO Code of the country where the BTI was issued (a list of ISO Country Codes can be found at Footnote 1), while the remaining 20 characters make up the unique reference assigned by the competent customs authority.

Valid from: enter the date from which the BTI was valid by entering a 4 digit number for the year, followed by a 2 digit number for the month and a 2 digit number for the day.

Nomenclature Code: enter a maximum of 22 characters.
BOX 5. Customs Nomenclature

(Mandatory)

Please indicate in which nomenclature the goods are to be classified, by inserting “x” in one box only. If the nomenclature is not one of those listed, you should specify the nomenclature concerned. Please note that BTIs can only refer to a nomenclature based on the Harmonized Commodity Description and Coding System (HS).

The Harmonised System (HS) is applied worldwide at the 6-digit level. The Combined Nomenclature (CN) is applied in the EU at 8-digit level. TARIC is the 9th and 10th digit applied at EU level to tariff and non-tariff measures such as suspensions, quotas, anti-dumping duty etc. The Export refund nomenclature is linked to the refund of agricultural subsidies. Should you have any doubts regarding nomenclature, you should not hesitate to inquire with the appropriate customs offices.

BOX 6. Type of Transaction

(Mandatory)

You should indicate if your application is in respect of an import or export actually envisaged by inserting “x” in one box only.

BOX 7. The Classification Envisaged

(Mandatory)

Please indicate the heading/subheading under which the goods must be classified. This field has a maximum of 22 characters.

BOX 8. Description of the Goods

(Mandatory)

Please provide a detailed description of the goods permitting their identification and the determination of their classification in the customs nomenclature. You should give details of the composition of the goods and any methods of examination used for its determination where the classification depends on it. This field contains free text with a maximum of 32,768 characters. Any details which the holder considers to be confidential should be entered in Box 9.

BOX 9. Commercial denomination and additional information

(Optional)

Please include here any particulars which you wish to be treated as confidential including the trademark and model number of the goods.

In certain cases, including those where samples are provided, the administration concerned may take photographs (e.g. of the samples provided) or ask a laboratory for an analysis. Please state clearly, if such photographs, analysis results etc. as a whole or partially are to be treated as confidential. Please note that any such information not designated as confidential will be published on the EBTI Database accessible on the Internet.

This field contains free text with a maximum of 32,768 characters.

BOX 10. Samples etc.

(Optional)

You should indicate here whether you are providing a description, samples, brochures, photographs or other documents which may assist the customs authorities in considering this application. You should indicate this by inserting “x” in the appropriate box(es).

If you are providing samples, you should indicate here how the samples are to be disposed of by inserting “x” in the appropriate box.

BOX 11. Other BTIs held and Other Applications for BTI

(Mandatory)

You should provide here details of other applications for BTIs made by the holder at other customs offices or in other Member States, as well as BTIs already issued to the holder, in respect of identical or similar goods. Use a separate sheet of paper where more space is required.

You should indicate “x” in the appropriate box when you have made other applications. If you indicate the box “yes”, you should enter:

- a mandatory part:
  Country of Application: enter the ISO Code of the country (2 characters) (see Footnote 1)
  Place of Application: enter the name of the customs office (Enter a maximum of 35 characters).
  Date of Application: enter a 4 digit number for the year, followed by a 2 digit number for the month and a 2 digit number for the day.

- an optional part (as you may have applications for which there has not yet been issued BTI). This part is mandatory if you have received BTIs following the application.
  BTI Reference: enter the reference number of the BTI. The first two characters indicate the ISO Code of the country where the BTI was issued, while the remaining 20 characters make up the unique reference assigned by the competent customs authority.
**BOX 12. BTI issued to other Holders**

(Mandatory)

If you are aware of BTIs issued to other holders for identical or similar goods, please give any details here. Use a separate sheet of paper where more space is required. Information concerning existing BTI can be consulted at the EBTI database.

You should indicate “x” in the appropriate box if you are aware of other BTIs. If you indicate the box “yes” the following information is optional.

**Issuing Country:** enter the ISO Code for the country (2 characters) (see **Footnote 1** below)

**BTI Reference:** the first two characters indicate the ISO Code of the country where the BTI was issued, while the remaining 20 characters make up the unique reference assigned by the competent customs authority.

**Date of Start of Validity:** enter a 4 digit number for the year, followed by a 2 digit number for the month and a 2 digit number for the day.

**Nomenclature Code:** enter a maximum of 22 characters.

**BOX 13. Date and Signature**

(Mandatory)

After you have checked the application for accuracy and completeness, sign and date it. All separate sheets should also be signed and dated.

**Your reference (optional):** if you have a reference insert it here (one line with a maximum of 35 characters).

**Date:** enter a 4 digit number for the year, followed by a 2 digit number for the month and a 2 digit number for the day.

---

**Footnote 1**


* from 1 May 2004 on
** from 1 January 2007 on
Appendix 6
MODEL OF BINDING TARIFF INFORMATION (BTI) NOTIFICATION FOR

EUROPEAN COMMUNITY

1. Applicant (full name and address)
   
   For Official Use
   Registration Number: 
   Name of Applicant: 
   Date of Receipt: Year ___ Month ___ Day ___
   BTI Application Language:
   Images to be scanned: Yes ___ No ___
   Date of Issue: Year ___ Month ___ Day ___
   Issuing Officer: 
   All Samples returned: 

   Important note
   By signing the declaration, the applicant accepts responsibility for the accuracy and completeness of the information given on this form and on any notification sheets/backup with it. The applicant accepts that this information and any photographs, samples, brochures, etc. can be stored in a database of the European Commission and that the data including any photographs, samples, brochures, etc., submitted with the application or obtained (or otherwise) by the administration, which have not been marked in lines 2 and 5 of the application as being confidential can be disclosed to the public via the Internet.

   Telephone Number: 
   Fax Number: 
   Customer ID: 

   2. Holder (full name and address) (Confidential)
   
   Telephone Number: 
   Fax Number: 
   Customer ID: 

   3. Agent or Representative (full name and address)

   Telephone Number: 
   Fax Number: 
   Customer ID: 

   4. Nature of a BTI
   If you are applying for the release of a BTI, please complete this part:
   BTI Reference Number: 
   Valid from: Year ___ Month ___ Day ___
   
   Telephone Number: 
   Fax Number: 
   Customer ID: 

   5. Customs Nomenclature
   Please indicate in which nomenclature the goods are to be classified:
   - Harmonised System (HS)
   - Combined Nomenclature (CN)
   - TARIQ
   - Other (Specify): 

   Nomenclature Code: ...........................................

   6. Type of Transaction
   Does this application relate to an import or export actually envisaged?
   Yes: ___ No: ___

   7. Classification Envisaged
   Please indicate where, in your view, the goods are classified
   Nomenclature Code: ...........................................

   8. Description of the Goods
   Include, where necessary, the precise composition of the goods, the method of analysis used, the type of manufacturing process undergone, the value (including the components), the use of the goods, the usual trade name and, where appropriate, the packaging for retail sale in the case of sets of goods (Please use a separate sheet, if more space is required).
9. Commercial denomination and additional information* 

(Confidential)

Please indicate which of the information provided in accordance with Box 10 of this application or obtained (or obtainable) by the administration is to be treated as confidential.

18. Samples etc.

Please indicate which, if any, of the following are enclosed with your application

<table>
<thead>
<tr>
<th>Description</th>
<th>Brochures</th>
<th>Photographs</th>
<th>Samples</th>
<th>Other</th>
</tr>
</thead>
</table>

Do you wish your samples to be returned? Yes [ ] No [ ]

Special costs incurred by the Customs authorities as a result of analysis, export permits or the return of samples, may be charged to the applicant.

11. Other BTI Applications* and other BTIs held*

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 [ ] No [ ] If yes, please give details and enclose a photocopy of the BTI:

<table>
<thead>
<tr>
<th>Country of Application</th>
<th>Country of Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Place of Application</td>
<td>Place of Application</td>
</tr>
<tr>
<td>Date of Application</td>
<td>Date of Application</td>
</tr>
<tr>
<td>BTI Reference Code</td>
<td>BTI Reference Code</td>
</tr>
<tr>
<td>Date of Start of Validity</td>
<td>Date of Start of Validity</td>
</tr>
<tr>
<td>Nominal Code</td>
<td>Nominal Code</td>
</tr>
</tbody>
</table>

12. BTIs issued to other Holders*

Please indicate if you are aware of BTIs for identical or similar products, already issued to other holders.

Yes [ ] No [ ] If yes, please give details:

<table>
<thead>
<tr>
<th>Issuing Country</th>
<th>Issuing Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>BTI Reference</td>
<td>BTI Reference</td>
</tr>
<tr>
<td>Date of Start of Validity</td>
<td>Date of Start of Validity</td>
</tr>
<tr>
<td>Nominal Code</td>
<td>Nominal Code</td>
</tr>
</tbody>
</table>

13. Data and Signatures

Your reference

<table>
<thead>
<tr>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
</tr>
<tr>
<td>Month</td>
</tr>
<tr>
<td>Day</td>
</tr>
</tbody>
</table>

Signature:

For Official Use

* Please use a separate sheet of paper, if more space is required.
# Appendix 7

**Model of Binding Tariff Information (BTI) Notification Form**

<table>
<thead>
<tr>
<th>1. Competent customs authority</th>
<th>2. BTI reference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Holder (Name and address)</th>
<th>4. Date of start of validity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidential</td>
<td></td>
</tr>
</tbody>
</table>

**Important notice**

Without prejudice to the provisions of Article 13 (4) and (5) of Council Regulation (EEC) No. 281/92 the BTI remains valid for 6 years as from the date of start of validity.

The information supplied will be stored in a database of the Commission of the European Communities for the purpose of the application of Commission Regulation (EEC) No 2914/92 and the data of the BTI, including any photograph(s), secret(s), instruction(s) etc., but with the exception of the information contained in boxes 3 and 4, may be disclosed to the public on the occasion of the inspection.

The holder shall have the right to appeal against this BTI.

<table>
<thead>
<tr>
<th>5. Data and references of the application</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Justification of the classification of the goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. Description of the goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. Commercial denomination and additional information</th>
<th>Confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9. Justification of the classification of the goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

10. This BTI has been issued on the basis of the following material provided by the applicant:

<table>
<thead>
<tr>
<th>Description</th>
<th>Remarks</th>
<th>Document</th>
<th>Sample</th>
<th>Notes</th>
<th>Other</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Place</th>
<th>Signature</th>
</tr>
</thead>
</table>

Date: 

Group: 
<table>
<thead>
<tr>
<th><strong>EUROPEAN COMMUNITY - BINDING TARIFF INFORMATION</strong></th>
<th><strong>BTI</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Comptent customs authority</strong></td>
<td><strong>BTI number</strong></td>
</tr>
<tr>
<td><strong>Holder (name and address)</strong></td>
<td><strong>Date of start of validity</strong></td>
</tr>
</tbody>
</table>

**Important notice**

Without prejudice to the provisions of Article 17 (4) and (5) of Council Regulation (EEC) No 2861/93, this BTI remains valid for 6 years as from the date of start of validity.

The information supplied will be stored in a database of the Commission of the European Communities for the purpose of the application of Commission Regulation (EEC) No 2451/92 and the data of the BTI, excluding any photographs, sketches, diagrams etc., (but with the exception of the information contained in boxes 9 and 10), may be disclosed to the public via the Internet.

The holder shall have the right to appeal against this BTI.

**Classifications of the goods in the customs nomenclature**

| **Description of the goods** |

**Commercial declarations and additional information**

| **Justification of the classification of the goods** |

**BTI has been issued on the basis of the following material provided by the applicant:**

- Description: Brochure, Photos, Samples, Other

**Place**

**Date**

**Signature**

**Stamp**
<table>
<thead>
<tr>
<th>1. Consenting customs authority</th>
<th>2. BTI reference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3. Holder (Name and address)</th>
<th>4. Date of start of validity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confidential</td>
<td></td>
</tr>
</tbody>
</table>

**Important notice**

Without prejudice to the provisions of Article 12 (6) and (8) of Council Regulation (EEC) No. 2913/92 the BTI remains valid for 6 years from the date of start of validity.

The information supplied will be stored in a database of the Commission of the European Communities for the purpose of the application of Council Regulation (EEC) No. 2913/92 and the data of the BTI (including any photograph(s), drawing(s), brochure(s) etc., but with the exception of the information contained in boxes 3 and 4) may be disclosed to the public via the Internet. The holder shall have the right to appeal against the BTI.

<table>
<thead>
<tr>
<th>5. Date and reference of the application</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Classification of the goods (in customs nomenclature)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. Description of the goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8. Confidential decryption and additional information</th>
</tr>
</thead>
<tbody>
<tr>
<td>confidential</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9. Justification of the classification of the goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

| 10. This BTI has been issued on the basis of the following original provided by the applicant: |
|                                                                                             |
| Description: B - Brochure, R - Photos, S - Sample, O - Other.                              |
|                                                                                             |
| Place:                                                                                       |
|                                                                                             |
| Date:                                                                                         |
|                                                                                             |
| Signature:                                                                                    |
|                                                                                             |
| Stamp:                                                                                        |

206
12. Country reference

13. Language

14. Key words
 ADMINISTRATIVE GUIDELINES ON THE 
EUROPEAN BINDING TARIFF INFORMATION (EBTI) SYSTEM AND 
ITS OPERATION
# TABLE OF CONTENTS

1. OBJECTIVES OF THE GUIDELINES ........................................................................................................... 180
2. INTRODUCTION ........................................................................................................................................ 180
3. PRE-APPLICATION PHASE ....................................................................................................................... 181
4. APPLICATION FOR BTI ............................................................................................................................. 182
5. CONSULTATION OF THE EBTI DATABASE ............................................................................................ 184
6. DEALING WITH DIFFERENT VIEWS ON CLASSIFICATION ................................................................. 185
7. ISSUING A BTI .......................................................................................................................................... 186
   7.1. ISSUING PERIODS ............................................................................................................................... 187
   7.2. THE ROLE OF LABORATORIES ......................................................................................................... 187
   7.3. DRAFTING A BTI ................................................................................................................................. 198
      7.3.1. The description of goods .............................................................................................................. 198
      7.3.2. Justification for the classification ............................................................................................... 210
      7.3.3. Confidentiality ............................................................................................................................... 220
      7.3.4. “Indexation” (adding keywords) ............................................................................................... 222
      7.3.5. Images .......................................................................................................................................... 192
   7.4. ISSUE OF BTI .................................................................................................................................... 224
8. DIVERGENT BTIS ...................................................................................................................................... 224
9. THE LEGAL NATURE OF A BTI .................................................................................................................. 195
10. ANNULMENT OF BTIS (EX TUNC) ......................................................................................................... 226
11. INVALIDATION OF BTIS (EX NUNC) ....................................................................................................... 226
12. PERIOD OF GRACE .................................................................................................................................. 196
13. ROLE OF NATIONAL TRIBUNALS .......................................................................................................... 196
14. CONCLUSION .......................................................................................................................................... 198
OBJECTIVES OF THE GUIDELINES

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

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

INTRODUCTION

The uniform application of the common customs tariff (CCT) is essential to the European Community, as an economic and customs union, since it constitutes the external dimension of the common market. In the absence of a uniform application of the CCT, Member States would apply different customs duties for the same kind of goods. This would 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 common market. Article 23 EC Treaty, dealing with the free movement of goods between Member States, therefore 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 CCT, is also used for purposes other than the levying of customs duties. Such purposes include the collection of external trade statistics, the identification of products subject to import and export restrictions, the identification of products for which export refunds or production aid are granted, the definition of products subject to excise duties or reduced rates of value added tax as well as the definition of rules of origin, etc.

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

In order to ensure legal certainty for economic operators when calculating the price of import or export transactions and to facilitate the work of the customs services as well as to secure a more uniform application of the Common Customs Tariff, the European Binding Tariff Information (EBTI) system was introduced. EBTI has its legal basis in Articles 6-12 of Council Regulation (EEC) No. 2913/92 (here “CC”) and Articles 5-14 of Commission Regulation (EEC) No. 2454/93 (here “CCIP”).

Since its introduction in 1991, the overall number of BTIs has increased steadily. Currently there are over 30,000 BTIs issued every year (the Member States who issue the largest

---


amount of BTIs are Germany, the United Kingdom, France, the Netherlands and Ireland) with a total of approximately 160,000 valid BTIs. All BTIs are stored on a database managed by the Commission (here the “EBTI database”).

Since 1 July 2003, all valid BTIs can be consulted on the web-site of Directorate General for Taxation and Customs Union (here “DG TAXUD”) under the following address: http://europa.eu.int/comm/taxation_customs/databases/database.htm.

In anticipation of the enlargement of the European Union where a further increase of BTIs can be expected, it is advisable to recall the different stages for, and principles governing, issuing BTIs under the EBTI system.

These stages are:

- Pre-application phase;
- Application for BTI;
- Consultation of the EBTI database;
- Dealing with differing views on classification;
- Issuing a BTI;
- Dealing with divergent BTIs;
- Annulment of a BTI;
- Invalidation and revocation of a BTI; and
- Appeals procedures, including the role of national tribunals.

**PRE-APPLICATION PHASE**

Article 11 of the CC obliges the customs authorities to provide information on customs legislation, including on the classification of goods, either verbally or in writing. Under EC law such advice is only legally binding on the customs authorities if issued in writing\(^4\) within the framework of the EBTI system.

When informal advice is being provided outside the EBTI system, it is advisable to keep records of such advice and it is important to inform the recipient of the advice that it is of a non-binding nature. Binding advice can only be obtained via the EBTI system.

---

\(^4\) Under the current law it is not explicitly foreseen to provide advice in electronic form. However, Art. 4a-4c CCIP empower Member States (here “MS”) to replace written formalities by electronic formalities.
4. APPLICATION FOR BTI

Applications for BTIs must be submitted on the Single Application Form\(^5\) which must be correctly completed in accordance with the relevant legal provisions\(^6\) and the “General information on the completion of the application for binding tariff information” which is available on the DG TAXUD web-site\(^7\).

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

The BTI application contains 13 boxes (mandatory and optional) that require to be filled in by the applicant and where he has to indicate, or provide, apart from his name and address:

- whether he wants classification in a nomenclature other than the CN;
- a detailed description of the goods, including their composition;
- samples, photographs, plans, catalogues, etc. which may assist in the classification;
- the classification envisaged\(^8\);
- the agreement to provide a translation of any attached document which is in a language other than that of the Member State concerned;
- whether any particulars are to be treated as confidential;
- whether, to his knowledge, a BTI for identical or similar goods has already been applied for or issued in the EC; and
- his acceptance that the information supplied is stored on the EBTI database and that the non-confidential information can be disclosed to the public via the Internet.

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

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

  Normally applicants/holders are expected to apply for a BTI in the Member State in which they are established. Sometimes (multinational) companies may choose to centralise their import/export transactions in one place which may be situated in a different Member State to the one in which they are established. Nevertheless, customs authorities should be aware of the risk of “BTI shopping”\(^9\) when they receive a BTI application from an applicant/or a holder established in another Member State. In these cases, it is definitely recommended to check on the database whether the same applicant/holder has also applied for a BTI for the same product in another Member State. Furthermore, the Member State where the holder is established should be informed about the receipt of the application and asked for further information.

- “Description of goods” (Box 8):

---


\(^6\) Art. 6 of the CCIP and Annex I B to the CCIP.

\(^7\) [http://europa.eu.int/comm/taxation_customs/databases/bti_en.htm](http://europa.eu.int/comm/taxation_customs/databases/bti_en.htm)

\(^8\) Under the current law the classification envisaged has to be indicated.

\(^9\) “BTI shopping” refers to a practice where the same operator requests a BTI from several Member States and for the same goods, in order to acquire potentially different classification and thus to benefit perhaps unduly from the most favourable treatment.
The description must enable correct identification of the good being classified as it is the link between the BTI and the goods being declared. Normally, quoting the text of the nomenclature should not be deemed to be sufficient.

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

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

The applicant must state whether he has, or is aware of, any BTIs issued for the same or similar products. In the case of multinational companies, in particular, one would expect an awareness of BTIs issued to related companies.

If an administration discovers that an applicant has made another BTI application for the same product in another Member State, the administration is to contact the other Member State to establish who is going to issue a BTI. The key elements to be considered are the place where the holder is established, the Member State where the BTI is going to be used, the language of the application and the date when it was submitted. The Member State that is not going to issue a BTI must inform the applicant that his BTI will be issued by the other Member State. In any event, the application has to be published on the database.

Once an application has been submitted and it is clarified that all mandatory fields are filled in, it should be lodged on the EBTI database without delay according to article 8 of the CCIP.

The time frame for issuing the BTI will run from the day all elements necessary for classification are available to the administration. At this point the applicant should be informed about the receipt of his application as well as the date from which on the fixed issuing period runs.

It is recommended that images are added and transmitted with the BTI application, thus reducing the risk of divergent BTIs inadvertently being issued. Such an approach should also hamper BTI shopping. However, adding an image to a BTI application does not mean that it does not have to be added to the BTI itself.

When an applicant is unable, or unwilling, to provide the necessary information, the application cannot be processed and a BTI should not be issued. In such cases applicants should be given a time limit for the provision of such information. After the expiry of the time limit the applicant should be informed that a BTI in respect of that application will not be issued. It should be noted that also in these cases, the application has to be lodged on the database.

However, when customs authorities do not have enough details to process the BTI application, they must contact the applicant in order to obtain the missing information. Sometimes, the applicant may not know the specifications that are required - such as the fat content, meat content, etc. – but, nevertheless, it remains his responsibility to obtain and provide this information. Such information might only be available as the result of an analysis performed by a private or customs laboratory. The customs authority to which the application
is submitted has no responsibility to perform such analyses on behalf of the applicant, but may decide to do so. In this case, the applicant may be charged for the cost of the analysis in accordance with the legal provisions governing BTI.

It has to be stressed that, according to Article 8(1) of the Implementing Provisions, all applications have to be transmitted to the Commission, even if they are incomplete or withdrawn at a later stage.

5. CONSULTATION OF THE EBTI DATABASE

In order to prevent Member States issuing divergent BTIs, the EBTI database has to be consulted, at least when there is doubt about the correct classification or where different headings merit consideration.

Particular cases, where there may be the risk of BTI shopping, are where:

- the classification is contentious;
- there are significant differences of duty between headings which merit consideration; or
- other Community measures (e.g. import licensing, tariff quota, anti-dumping duty) are involved.

The objective of consulting the database is to find out whether an application has been received for the same or a similar product or whether one or more BTIs have been issued for the same or similar products.

The consultation can be based on a search by reference to the holder, the customs nomenclature code, the description or the commercial denomination. The Member State, having received the BTI application, should not limit the consultation to cover only the BTIs issued by its own administration. Indeed, it is paramount to verify if other Member States have issued BTIs relevant to the BTI application. Thus, the presence of at least one image can give an idea about the product in case of language problems. Furthermore, if following a consultation of the EBTI database a Member State has doubts about the content or the correctness of BTIs found, the customs authority should contact its counterpart in the other Member State which issued a particular BTI.

As a first step in staying “up to date” with what is being done in other Member States the EBTI Internet version should be used and a search performed using the criteria “introduced since” in conjunction with a nomenclature code range. For example, using this method a case handler dealing with textiles can quickly see which kind of BTIs have been issued, in this field of expertise, by other Member States the day before, two days before or a week ago. However, this type of search cannot substitute for a proper consultation of the EBTI database since BTI applications for the same product may be processed simultaneously by different Member States.

---

10 This check will be possible from the date of introduction of the new EBTI 3 version.
11 Under EBTI 3 the search criteria will include the holder's name and also the data in the confidential fields.
12 A list of contact points can be found in the annex.
If it is found that another Member State has issued a BTI for the same product and for the same holder, the application should, of course, be entered into the system. However, a BTI should not be issued, but rather the applicant should be told that the holder is to use the BTI that he already holds. Cases of this kind, especially when the BTI application indicates another customs nomenclature code than the one in the BTI issued, should be reported to the Commission as BTI shopping (e.g. via e-mail).

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

If the EBTI database has been checked and no BTIs have been found for the same or similar products, but the Member State has doubts about the classification, it should consult the other Member States on CIRCA. Such consultations should be limited in time (e.g. 15 days) and, in order to avoid linguistic problems and delays due to translation, the consultation and replies should be drafted in one of the working languages, preferably English. Alternatively, the question could also be put forward to the Customs Code Committee.

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

6. DEALING WITH DIFFERENT VIEWS ON CLASSIFICATION

Different views on classification may arise:

a) where, for the goods concerned, a BTI has not been issued yet, but two or more Member States disagree on the correct classification (e.g. as a result of a discussion on the classification of new products);

b) where one Member State (A) has issued BTIs for the goods concerned under one customs nomenclature code and one other Member State (B) does not agree with this classification.

In all cases, the first step should be to consult the other Member State in order to seek further information on the product and to try to find a solution amongst the Member States involved. This could be done by any means, e.g. CIRCA, telephone, email.

For a):

Whether an agreement can be reached or not, the relevant sector of the Customs Code Committee should be informed (either at its next meeting or via CIRCA/email) by a substantiated and complete submission. If no agreement can be reached, the Customs Code Committee should be asked for its opinion. In this case, the procedures and deadlines set out under point 8 “Divergent BTIs” apply. Once the Committee has rendered an opinion on the classification of a specific type of products, no BTI should be issued contrary to that opinion and its opinions should be respected by all Member States.

For b):

216
Member State B should contact Member State A to discuss and seek more information.

If Member State B, following the consultation, can agree to the classification made by Member State A, a BTI in conformity with the already issued BTI should be issued.

If Member State A, following the consultation, agrees that the classification suggested by Member State B is correct, Member State A should revoke its BTI\textsuperscript{14} and a BTI with the agreed classification should be issued by Member State B. All Member States and the Commission should be informed (via Circa).

If, however, an agreement cannot be reached, Member State B should formally inform the Member State A and the Commission by a substantiated and complete submission, and table the product for consideration by the Customs Code Committee. All other Member States should be informed about the differing views via CIRCA. In this case, the procedures and deadlines set out under point 8 “Divergent BTIs” apply.

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

When this question is tabled for discussion by the Customs Code Committee, the customs authorities of the Member State, in which the application was lodged, should notify the applicant that the issue of the correct classification has been referred to the Committee for a decision and inform him, that a BTI will be issued as soon as a decision has been taken.

7. **ISSUING A BTI**

Under this heading the following subjects will be addressed:

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

\textsuperscript{14} As confirmed by the ruling of the European Court of Justice of 22 January 2004 in joint cases C-133/02 and C-134/02, article 9 in combination with article 12(5)(a)(iii) provides a legal basis for the administrations to revoke a BTI in case of an error/wrong interpretation.
7.1 Issuing periods

Currently, no clear deadline is fixed in the law for the issuing of BTIs. According to article 7 CCIP, a BTI shall be issued in writing as soon as possible. The applicant has to be informed, if it has not been possible to issue a BTI within three months, about the reasons for the delay and given an indication of when the Customs Authority should expect to be able to issue the BTI.

Issuing periods vary from one Member State to another. This leads to substantial differences of competitiveness and efficiency between Member States.\(^ {15}\) In order to harmonise the quality of the service provided by Member States to applicants, it is recommended that Member States issue a BTI within 3 to 4 weeks, after having received all the information required. This time limit seems to be correct vis-à-vis the operator and possible for Member States.

In case laboratory analyses are required to support an application, the application can only be considered complete when the results are available and the time limit for issuing the BTI only starts running from that moment on. However, the situation is different where the laboratory analyses are requested to confirm the information provided, as in this case, the application is already complete.

Certain Member States offer a fast track procedure. Such a procedure should not lead to a situation where the BTI application is not thoroughly examined. Member States should, in such cases, also be prepared to verify subsequently if the conditions for issuing the BTI were met.

7.2 The role of laboratories

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

Laboratory analyses contribute to reaching the following objectives:

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

Monitoring actions have shown that Member States consult laboratories in a very large number of cases to determine or check the compositions of the goods which are the subject of the BTI. The monitoring group recommended, that analysis be carried out very frequently, particularly for BTI delivered for agricultural products, where extensive fraud had been detected by the Commission’s Anti-Fraud Office.

In cases where analysis has been conducted the BTI should indicate the existence and results of a laboratory analysis. If, for reasons of confidentiality, the result of the analysis cannot be

\(^ {15}\) According to the monitoring actions carried out in the past, the issuing of BTIs is very fast in the United Kingdom, where 80% of requests are settled within 5 working days; 1 to 3 weeks in France, as soon as the complete file is forwarded to the central Administration by the local customs office which processes the request (2 weeks), i.e. a total of 3 to 5 weeks; 4 to 8 weeks in Germany.
included in the “description of goods” in box 7, it should be indicated in box 8 “commercial denomination and additional information”.

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

7.3 Drafting a BTI

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

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

A BTI consists of three pages:

- Page 1 is sent to the holder and retained by him;
- Page 2 is retained by the customs administration; and
- Page 3 consists of four further boxes, containing the “keywords” and the name of the contact person who issued the BTI.

Page 1 and 2 are basically identical, the only difference being that Page 1 bears the words “Copy for Holder” whereas Page 2 bears the words “Copy for Member State”. Page 3 is retained by the issuing authority and is for official use only.

A paper copy for the Commission containing the information included in Pages 2 and 3 is no longer needed nor generated by the system as all transmission of data is done electronically.

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

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

7.3.1 The description of goods

A BTI is issued for one type of goods, i.e. for a good within the meaning of the nomenclature “One type of goods” means for example:

- a prefabricated building of heading 9406,
- a disassembled vessel which is to be classified in heading 8901 according to note 1 to Chapter 89,
- an assortment of gaskets and similar joints, dissimilar in composition, of heading 8484,
- a set presented for retail sale using General Rule (GIR) 3 b) or a
- a camera with its corresponding camera case where based on General Rule 5a) it has to be considered as one good.
However, the following could not be considered as “one type of goods”\textsuperscript{16}:

- textile garments of different headings and presented as a set for retail sale (see note 13 to section XI); or
- records presented with the apparatus for which they are intended (note 6 to Chapter 85).

The description of the specific goods should:

- be sufficiently detailed in order to allow the recognition of the goods without any doubt;
- include details other than quotes from customs nomenclatures which lead to the correct classification;
- systematically be structured in the same way, regardless of who is issuing it.

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

While a BTI does not replace the customs controls, it should facilitate and accelerate customs clearance. If there is no doubt about the fact that the goods presented to customs correspond to the goods described in the BTI, then the latter must be accepted, no matter what classification has been assigned. However, if there is ambiguity in the description of goods, the coverage of the BTI can be questioned at the moment of customs clearance, if the customs officer believes that the BTI does not cover the goods presented.

Taking into account the above, it is obvious that a description copying the words of a heading text is meaningless. Bad examples for descriptions are also “laxative”, “engine flush” etc.

In order to ensure an exhaustive and relevant description, the description of goods in a BTI should be structured along the following lines:

- **Denomination** of the goods corresponding to commercial reality (As what are the goods sold?);
- **Physical description** of the goods corresponding to the special characteristics of the product (How to identify the goods?);
- **Function** (what does the product do?) or **use** (what is the product made for?) of the goods corresponding to its final purpose (examples: preparation used as a food additive, fan for automobile radiator, agricultural watering equipment, bubble bath in a plastic mould used as a toy);
- **Composition** of the goods (e.g. hi-fi combination consisting of a tuner, amplifier, CD player, cassette player and record deck; a food preparation based on pork, spices and water) (Which components is the product made of?); and
- **Characteristics of the components** of the goods (Packaging, size, colour, etc. where appropriate).

\textsuperscript{16} In this case, several BTIs might need to be issued.
This box should also contain references to other associated BTIs in cases where goods are presented as a set for classification, but are classified under different headings. In cases where new BTIs are issued for expired/revoked/annulled BTIs, the old BTI number should be included as a reference in the new BTI.

A common approach by Member States would facilitate the EBTI database being consulted and reduce the risk of divergent BTIs being issued.17

7.3.2 Justification for the classification

The BTI issued must be in conformity with EC legislation.

The classification justification should be complete and no abbreviations should be used. It should be structured in the following way to indicate:

- General rules for the interpretation of the Combined Nomenclature;
- Section and Chapter notes;
- Additional notes;
- Classification Regulations;
- Classification opinions;
- HS and CN Explanatory notes;
- Rulings of the European Court of Justice; and
- National tribunal rulings.

The reasons for including and excluding products from a particular heading should be indicated clearly.

7.3.3 Confidentiality

One important aspect in the framework of the EBTI system is confidentiality. According to Article 15 CC, Member States are legally obliged to respect the confidentiality of the information provided.

The matter of confidentiality arises in three areas:

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

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

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

---

17 Please note that with the introduction of the new EBTI 3 version in April 2004 a language dependent text search on the description and commercial denomination will be possible.
A particular issue arises in relation to the provision of supporting material such as samples and brochures. Images of such information may be disclosed to the public. The “Important notice” on the BTI form and the BTI application form draw the attention of the applicant to the fact that, by signing the application form, he also accepts that the information he has not marked as confidential will be disclosed to the public. Furthermore, box 9 of the BTI application form contains a question requiring the applicant to state clearly whether samples, brochures etc. or photos obtained of those samples should be treated as confidential. In cases of doubt, the administration should contact the applicant. In any case, logos of samples should be covered when taking images.

The following information added by the customs authorities should be treated as confidential:

- Commercial trademarks;
- Product references;
- Results of analyses of laboratories.

This means that any commercial information is entered in the confidential box only. Wherever possible, identification markings/part numbers should be included.

Information exchanged between administrations and the Commission:

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

7.3.4 “Indexation”(adding keywords)

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

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

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

Given the subjective nature of indexing, a degree of standardisation is required to ensure that the same structure is followed irrespective of the type of product. The general indexing methodology should follow the same structure as the description and would, therefore, be:
• Keywords defining the type of product;
• Keywords qualifying the physical state of the product;
• Keywords defining or qualifying the function or uses made of a product;
• Keywords qualifying packing where this is relevant;
• Keywords defining or qualifying the factors on which classification is based;
• Keywords defining each of the elements of which a product is composed;
• Keywords qualifying each of the elements of which products are composed.

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

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

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

### 7.3.5 Images

Taking into account the nature of the goods, it is recommended that each BTI should have at least one image attached to it. The reason for this is that helps the customs officials in other Member States to clearly identify the goods for which the BTI is issued. Although an image is no substitute for a clear description of the goods, the information it represents should relate to the goods being classified. An image should refer to the sample(s) provided, the relevant extracts of brochures and datasheets etc. Of course, in some instances it is neither helpful nor informative to attach an image, e.g. in case of a liquid or a powder, and the administration therefore has to decide on a case by case basis.

It is not mandatory to submit images with an application. If no image is submitted with the application, the issuing authority should take a photo and attach it to the BTI application and the BTI where appropriate.

Image information can occur in different forms:

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

Administrations should ensure that images attached to a BTI application or a BTI are of sufficient standard or of sufficient relevance to the goods before including them. If the samples or images available show brand names or logos, these markings should be hidden
before the images are inserted. If logos or brand names cannot be hidden or if the applicant requires the images to be treated as confidential, the images must be made confidential.

The number of images included in a BTI should be determined by the nature of the product. The size of an image should ideally be around 100 Kb, but definitely not exceed 300 Kb as with larger images transmitting (e.g. consulting) series of images over the network becomes slow.

When making images:

- Shoot objects against a neutral background. This reduces the image size as compared to images against a decorated background, without loss of significance.
- Consider whether increasing the resolution is really required to ensure the quality of the image. Two images, one giving an overall view of the object, and another showing some significant detail from close-up, both images at a lower resolution/image size, are better than one large image at a high resolution, such resolution only being justified for the detail in question.
- The colour depth, i.e. the number of colour shades that can be represented, is also of great impact on the image size. Consider whether your image needs to represent subtle shades of colour to convey meaning.

### 7.4 Issue of BTI

When the Member State is satisfied that the application is complete and accurate, and that there are no divergent BTIs for the classification that it intends to state, it should issue the BTI and release it for consultation on the EBTI database (“publish it”).

It should be noted that once a BTI is published on the EBTI database, it can only be amended with regard to three aspects: its end date of validity, the code indicating why it has ceased to be valid and a potential “period of grace”\(^{18}\).

In case of technical problems regarding the transmission of BTIs to the EBTI database, the competent units at the Commission (currently TAXUD/B3 and D3) have to be informed without delay about the nature of the problem and indicating possible solutions.

### 8. DIVERGENT BTIS

It is the task of the Commission and the Member States to ensure a uniform application of the CCT. This will lead to the equal treatment of economic operators and Member States must, therefore, assist in eliminating divergent BTIs.

Experience shows that divergent BTIs cannot be totally avoided. This happens both within national customs administrations and between the Member States in the European Union.

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

---

\(^{18}\) See under point 12.
To this extent, the following procedure has been agreed upon:

The Member States concerned should first try to resolve the divergence amongst themselves. The Member State which notices the divergence is responsible for launching the consultation procedure by contacting the contact point of the other Member State.\(^{19}\)

If they reach agreement, they should inform the other Member States via CIRCA.

If agreement cannot be reached, a complete and substantiated submission must be made to the Commission immediately containing all the information already available from the previous bilateral or multilateral contacts.

Any complete and substantiated submission received in a written form will immediately be inserted in CIRCA in the original language. A TAXUD document with the translations into the 3 working languages of the Committee will be added as soon as available as well as the Commission opinion. The availability of the full information will be notified to the CIRCA members.

If no Customs Code Committee meeting of the relevant sector is held within 15 working days following the notification, Member States that so wish shall make written comments.

If a Customs Code Committee meeting of the relevant sector is held within 15 working days following the notification, Member States shall make their comments during the Committee meeting.

On the basis of the comments received, the Commission should present its complete, substantiated and final opinion in CIRCA within 20 working days.

Any Member State disagreeing with the proposed solution should present its objections, duly substantiated, within 15 working days.

If no objections are raised, the proposed solution should be adopted at the following Customs Code Committee.

If an objection is raised, other MS sharing the same view should also communicate their view via CIRCA within a maximum delay of 10 working days.

In this case, if the Commission so wishes, a revised opinion should be available at least 10 working days before the Committee meeting.

The Committee should in any case express its opinion, and the Commission will take its decisions in accordance with the Committee procedure.

\(^{19}\) See annex.
9. **THE LEGAL NATURE OF A BTI**

According to Art. 12(4) of the CC, BTIs are valid for a period of six years from the date of issue and binding on the customs authorities only in respect of goods on which customs formalities are completed after the date of issue. Hence, BTIs cannot be issued retroactively, i.e. with a start date of validity before the date of issuing.

At the moment BTIs are binding on the customs authorities only. However, if a holder of a BTI does not challenge the classification and makes a customs declaration for the same goods specified in the BTI under another customs nomenclature code than the one in the BTI, this may be considered as fraud under national legislation.

Furthermore, according to Article 10 of the CCIP, the customs authorities may require the holder at the moment of customs clearance to inform them that he is in possession of a BTI for the goods presented.

10. **ANNULMENT OF BTIS (EX TUNC)**

A BTI can be annulled under the provisions of Articles 8 and 12(4) of the CC, if it is based on incorrect/incomplete information provided by the applicant, e.g. incorrect/incomplete description of goods.

The annulment takes effect from the date on which the annulled decision was taken.

The holder must be informed of the decision in writing (letter or electronic message). The appropriate status code as well as an end date of validity has to be set in the database.

No “period of grace” (see under point 12) is granted.

Furthermore, if a BTI is issued in contradiction with existing Community legislation, the BTI is void and no “period of grace” is granted.

11. **INVALIDATION OF BTIS (EX NUNC)**

A BTI ceases to be valid:

- Where a legal measure, e.g. a regulation is adopted by the Community. For the sake of coherence and uniformity in the application of the CCT Member States should not issue new BTIs that are contradictory to a legal measure which has been voted in the Customs Code Committee, even if this measure is not yet published.

- Where the BTI is no longer compatible with the interpretation of one of the customs nomenclatures, e.g. following amendments to the CN Explanatory notes, a judgment of the European Court of Justice, or, on international level, an HS classification opinion or amendments to the HS Explanatory notes.

- Where the BTI is revoked or amended in accordance with Article 9.
  - Revocation can be necessary following:
    - A Commission decision directing a specific Member State to revoke certain BTIs.
- A statement of the Customs Code Committee or bilateral discussions between Member States resulting in an agreement on classification.

- After an administrative review; in case of an administrative mistake.

- Amendment: If a modification becomes necessary, the end date of validity should be set and a new BTI should be issued.

The holder must be informed of the decision in writing (letter or electronic message).

The appropriate status code as well as an end date of validity has to be set in the database.

A period of grace may be granted in accordance with Article 12 (6) of the CC and Article 14 of the CCIP.

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

If a BTI is revoked or ceases to be valid, the customs authority has to inform the holder that he can continue to use the BTI during a given period in accordance with Article 12 (6) of the CC, provided that he has concluded binding contracts for the purchase or sale of goods based on the BTI in question (Article 14 of the CCIP). If the holder wants to make use of this facility, he has to inform the customs authorities. It is suggested that, for practical reasons, the Member State who issued the BTI should be the one to verify that the conditions for the “period of grace” are met. The holder should be asked in which Member State he intends to use the BTI during this period and that Member State should be informed accordingly.

13. ROLE OF NATIONAL TRIBUNALS

It happens that national tribunals in Member States do not hold the same views on classification resulting from consultation between Member States and the Commission. Sometimes national tribunals in different Member States will reach different conclusions. If known, such cases should be referred to the Customs Code Committee.

Furthermore, national tribunals should not issue rulings which conflict with EC law. However, if they do, the authorities of the Member State in question should, if possible, appeal the decision and propose that the national tribunal requests a preliminary ruling from the ECJ in Luxembourg.

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

Member States are encouraged to present classification issues to the Customs Code Committee in important cases before tribunals in Member States. In any event, Member States should not issue a BTI on the basis of a national tribunal decision conflicting with EC customs tariff decisions, unless directed to do so by the Tribunal.

The Commission gives priority to discussion and resolution, in the framework of the Customs Code Committee, of cases where national court rulings might lead to divergent

---

20 The Commission is fully aware of the utility of a Law Table Browser and will take action on this tool in due course, other priorities allowing.
12. **CONCLUSION**

As a conclusion, it should be stressed the ten key elements for an efficient functioning of the EBTI system:

1. Thorough examination of the classification case (fact finding and legal assessment);
2. Consultation of the EBTI database before issuing a new BTI;
3. Structured and exhaustive description of goods;
4. Accurate and complete justification of the classification;
5. Use of at least 5 keywords from the Thesaurus per BTI in compliance with the structure of the description;
6. Adding images to the BTI;
7. Avoiding issuing divergent classification;
8. Contact other Member States (use of the contact list);
9. “Real time” transmission of BTI applications and BTIs to the EBTI database; and
10. Speedy resolution of classification cases at the Customs Code Committee.
Appendix 9

Summary of Special report No.2/2008 of the Court of Auditors and link to the report in Official Journal C 103/2008 of 24 April 2008

Special Report No. 2 concerning Binding Tariff Information (BTI)

SUMMARY

I. Binding Tariff Information (BTI) is a tariff classification decision given in writing by the customs authorities of a Member State at the request of economic operators. It is legally binding on all customs authorities within the European Union vis-à-vis the holder for up to six years from the date of issue.

II. BTI promotes the uniform application of customs policy, which is a requirement of both the Customs Union and the World Trade Organization (WTO), and also helps ensure that the correct duty is levied. It does this by attributing an EU-wide classification to a given good. The economic operators and customs offices thus have certainty about the tariff classification of such goods which the former intend to import (or export).

III. The Court reviewed the Commission’s management role and examined the implementation of BTI in six Member States. Overall, the BTI system was found to be well-designed. In general, the Commission’s management was adequate and the six Member States audited have largely applied the legal provisions on BTI. Nevertheless the main findings set out below demonstrate that improvements are needed in order to enhance the overall functioning of the system:

(a) where two or more Member States have issued different BTI for the same goods (commonly referred to as divergent BTI), the cases are brought to the Customs Code Committee to be resolved, unless the Member States concerned are able to find an agreement on classification. The Court’s audit found situations which may affect the prompt resolution of classification issues. Thus an inconsistent tariff classification may persist for a period of time. This could affect the collection of the correct amount of traditional own resources;

(b) the Commission has not systematically addressed the issue of a Member State’s financial responsibility when the latter has issued an incorrect BTI which leads to losses of traditional own resources. No reliable estimate of the amount of traditional own resources lost due to such incorrect classifications is available;

(c) the Commission has not systematically monitored whether Member States respect Community legislation on BTI;

(d) various shortcomings were noted in Member States, including examples of failure to verify whether other BTI applications or divergent BTI existed for the same goods, the slow issuance of BTI and delays in updating the EBTI-3 database;

(e) when declaring his goods an economic operator has no obligation to present his BTI, and the audit confirmed that BTI are seldom presented. An import declaration can only be easily cross-checked with the relevant BTI when the latter is actually referred to at import. When its existence is not declared, customs officers have difficulty verifying whether the declarant has a BTI for the goods and if the customs classification is correct. The Commission currently has no reliable estimate of the value or volume of imports covered by a BTI;

(f) when a ‘period of grace’ is granted to an economic operator, the goods benefiting from it can be imported in any Member State. However, under the current system, it is difficult for national customs to ensure that only the quantities of goods that were the basis for the period of grace are imported using the BTI.
IV. The main recommendations arising from the Court’s audit are:

(a) the Commission should take measures to shorten the time needed to resolve BTI classification issues;

(b) the Commission should be active in the supervisory process. It should analyse the data in the EBTI-3 database in order to identify risky patterns;

(c) BTI should be obligatorily mentioned in economic operators’ customs declarations, as this would facilitate the customs authorities’ checks.

--------O0O--------

Above is the introductory summary to the report of the European Court of Auditors. The full report was published in Official Journal of the EU No. C103 on the 24 April 2008. The report can be accessed by following the attached link to the Official Journal in which it was published.