

## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COURT OF AUDITORS

## SPECIAL REPORT No 2/2008

**concerning Binding Tariff Information (BTI) together with the  
Commission's replies***(pursuant to Article 248(4), second subparagraph, EC)*

(2008/C 103/01)

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**LIST OF ACRONYMS AND ABBREVIATIONS**

BTI	Binding Tariff Information
CCC	Community Customs Code: Council Regulation (EEC) No 2913/92
CCCIP	Community Customs Code Implementing Provisions: Commission Regulation (EEC) No 2454/93
DG BUDG	Directorate-General for the Budget (Commission)
DG TAXUD	Directorate-General for Taxation and Customs Union (Commission)
EBTI-3 database	European Binding Tariff Information database
EU	European Union
GATT	General Agreement on Tariffs and Trade
IT	Information Technology
OJ	Official Journal
OLAF	European Anti-Fraud Office
WTO	World Trade Organization

**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.

## INTRODUCTION

### Background

1. Upon import or export of a good, an economic operator<sup>(1)</sup> must fill in a declaration for the customs authorities. This declaration should include a tariff code which classifies the good according to its precise nature. The actual code used<sup>(2)</sup> corresponds to a rate of import duties (or export refunds) payable and to the requirements and restrictions<sup>(3)</sup> for importing (or exporting) this good. The economic operator is legally responsible for the correct determination of the code entered in the declaration.

2. This determination of the correct tariff code can present difficulties, for example in respect of innovative products with new technology or products made up of many elements. In order to obtain legal certainty before importing (or exporting) a good, the economic operator may apply for an official classification from the customs authorities. This classification is known as Binding Tariff Information (BTI), which is a written decision sent to the economic operator.

3. In 1993 the BTI procedure became a Community-wide system which provides economic operators with tariff classification decisions which are legally binding for up to six years on the customs authorities throughout the EU vis-à-vis the holder of the BTI. This helps resolve the problem of potential differing classifications for the same good and, at the same time, contributes to a harmonised functioning of the customs union.

### Legal framework

4. The specific provisions for BTI are set out in Article 12 of the Community Customs Code (CCC)<sup>(4)</sup>, together with Articles 5 to 14 of the Implementing Provisions of the Community Customs Code (CCCIP)<sup>(5)</sup>. General provisions concerning BTI decisions and information are also set out in Articles 6 to 11 of the CCC. In 2004, the Commission provided administrative guidelines on the European Binding Tariff Information system and its operation<sup>(6)</sup>.

<sup>(1)</sup> Community customs legislation uses the term 'economic operator' which is synonymous with the term 'trader'.

<sup>(2)</sup> See website: [http://ec.europa.eu/taxation\\_customs/dds/cgi-bin/tarchap?Lang=EN](http://ec.europa.eu/taxation_customs/dds/cgi-bin/tarchap?Lang=EN).

<sup>(3)</sup> Whether an import (or export) licence is required, if preferential tariffs or quotas or any other quantitative restrictions apply and how the goods are to be treated for statistical purposes.

<sup>(4)</sup> Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

<sup>(5)</sup> Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

<sup>(6)</sup> Doc. TAXUD/907/2004-rev.2. The administrative guidelines were presented and accepted on 10 October 2004 in the 353rd meeting of the Customs Code Committee — Tariff and Statistical Nomenclature Section — (BTI sector).

5. The BTI system for tariff classification facilitates trade and customs clearance. It assists the European Union to fulfil its obligations in accordance with Article X of the GATT Agreement by helping to ensure a uniform treatment for the same good in all Member States.

6. More than 46 000 BTI were issued in 2006 and over 167 000 BTI were still valid as at mid-July 2007 (the situation by Member State is given in *Annex I*).

### Organisation and description of the BTI system

7. *Figure 1* presents the BTI system as a flowchart. When an economic operator makes a BTI application, national customs authorities should ensure that the conditions for granting the BTI are met and if so, issue it. They must also enter both the BTI application and the issued BTI into the EBTI-3 database<sup>(7)</sup> managed by the Commission, which is the key element of the system. Applications are accessible in this database to national customs authorities and the Commission only, whereas BTI issued are accessible via internet to the public<sup>(8)</sup>. If a BTI ceases to be valid and is thus invalidated, under certain circumstances the economic operator may apply for a 'period of grace'<sup>(9)</sup> of up to a further 6 months during which he can still use the BTI for imports (and exports). However, in order to be granted a 'period of grace', the economic operator must have concluded binding contracts for the purchase or sale of the goods in question, on the basis of his BTI, before the adoption of the measure<sup>(10)</sup> making the BTI invalid.

### AUDIT SCOPE AND APPROACH

8. The BTI system is intended to help ensure uniform application of customs policy, which is a requirement of the customs union, and consequently also help ensure that the correct duty is levied<sup>(11)</sup>.

9. The audit objectives were:

- (a) to assess whether the Commission adequately manages the BTI system, and whether its procedures and mechanisms ensure that this system is working as intended; and
- (b) to evaluate whether the Member States apply the BTI system in accordance with the legal provisions.

<sup>(7)</sup> The EBTI-3 database contains the decisions and photographs of the product sent by the Member States to the Commission. The present computerised system was deployed in the Member States at the end of 1999. Some Member States audited (Germany, Hungary and the United Kingdom) use an interface between their national BTI database and the EBTI-3 database.

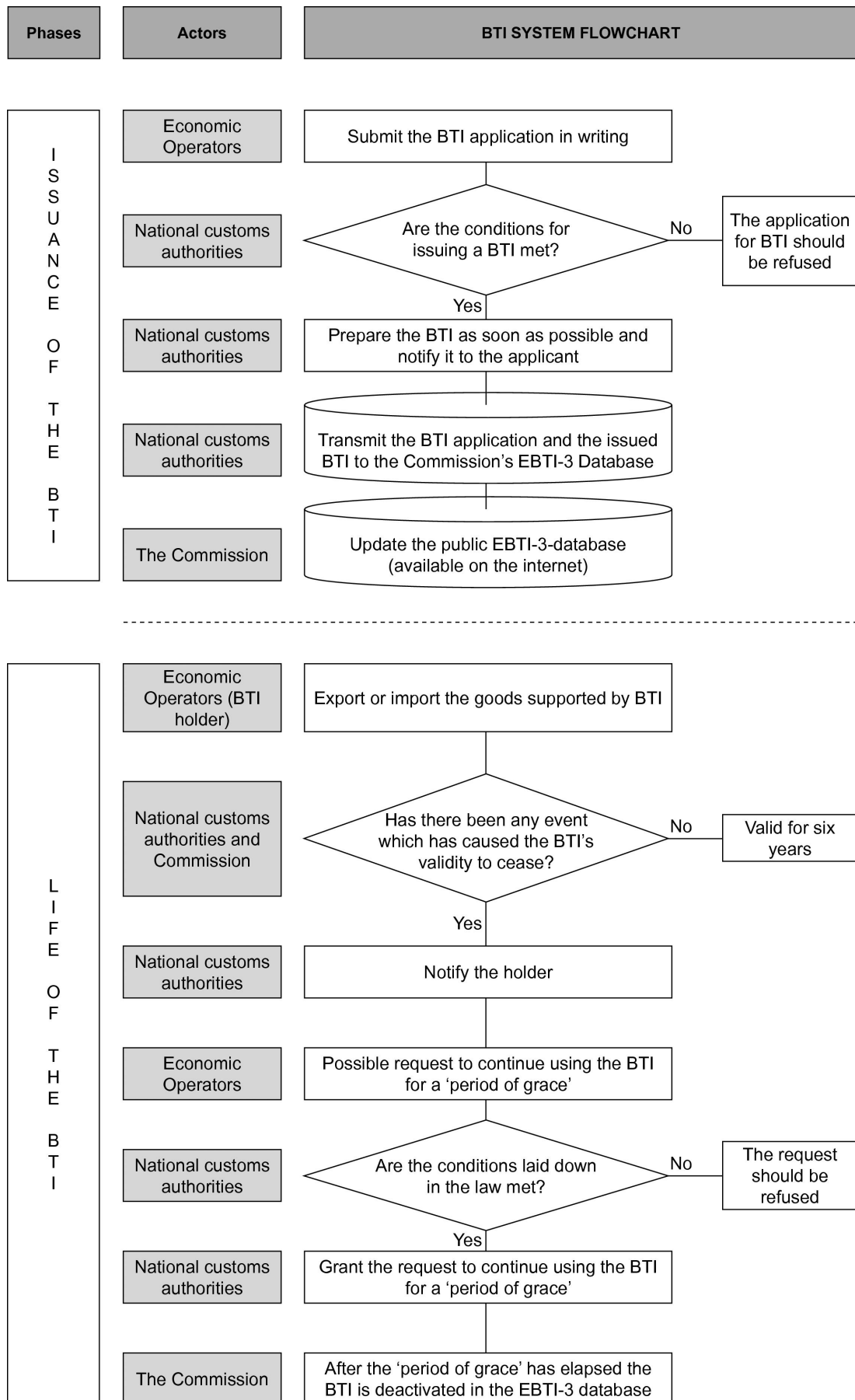
<sup>(8)</sup> [http://ec.europa.eu/taxation\\_customs/dds/cgi-bin/ebtiquer?Lang=EN](http://ec.europa.eu/taxation_customs/dds/cgi-bin/ebtiquer?Lang=EN)

<sup>(9)</sup> Article 12(6) of Regulation (EEC) No 2913/92.

<sup>(10)</sup> For example, where a new regulation is adopted which renders the classification in the BTI obsolete (see Article 12(5)(a) of Regulation (EEC) No 2913/92 for the other cases).

<sup>(11)</sup> The audit concentrated on imports.

Figure 1  
BTI system



10. The audit included an analysis and assessment of the supervisory and control measures carried out by the Commission and Member States and combined a review of the BTI system with the testing of 185 import operations supported by BTI in order to verify whether the rules in force were being applied.

11. The Court carried out its audit in the following Commission services: DG TAXUD, DG BUDG and OLAF.

12. The audit in the Member States covered the procedures for issuing and managing BTI in Denmark, Germany, Greece, Hungary, Slovenia and the United Kingdom which represented 63,8 % of the BTI issued in the EU in 2005 <sup>(1)</sup>. It also included an analysis of the controls carried out by customs at import and the use of BTI by economic operators. BTI files and import declarations supported by BTI were audited. A total of 340 files were examined during the audit <sup>(2)</sup>.

## OBSERVATIONS

13. In general, the BTI system was found to be well-designed with the legal provisions largely applied by the Member States visited.

14. Weaknesses were however found during the Court's audit (see *Annex II*) which, while not fundamental to the operation of the scheme, should be addressed. They are presented in accordance with the two main areas of the BTI system:

- (a) its management at the Community level;
- (b) its management in the Member States, together with the use of BTI by the economic operators.

### *Management of the BTI system at the Community level*

15. The Commission Unit in DG TAXUD which is responsible for tariff classification, administers BTI at Community level. It drafts the legislation, chairs the 'Tariff and Statistical Nomenclature Section' of the Customs Code Committee, manages the EBTI-3 database and organises the appropriate training for trainers in the Member States.

16. Globally the Court's audit found that the Customs Code Committee allows inconsistent tariff classifications to be resolved, although delays were identified (paragraphs 17 to 19). The EBTI-3 database contains the information on BTI and its availability is

<sup>(1)</sup> For the selection, the Member States were classified according to their length of time in the European Union and the number of BTI they have issued. A risk analysis was then performed in order to select six representative Member States. During the preparation of the audit, Portugal was also visited.

<sup>(2)</sup> 155 BTI files plus 185 import declarations. The amount of customs duties at stake cannot be determined because holders of BTI can import goods EU-wide without having to declare that they have a BTI for these goods.

satisfactory. The training given by the Commission provides the key elements of the system, which can then be passed on to the end users. However, the Commission's monitoring should be improved (paragraphs 20 to 25). The legislation, complemented by the administrative guidelines of the Commission, is adequate but should be strengthened in two areas (paragraphs 26 and 27).

### **Treatment of BTI classification by the Customs Code Committee**

17. Where divergent BTI are issued by different Member States <sup>(3)</sup> an attempt is first made to resolve the issue bilaterally. If this fails, the Commission must, on its own initiative or at the request of a Member State, place the item on the agenda of the next Customs Code Committee meeting <sup>(4)</sup>. In accordance with the Committee procedure, the Commission has to adopt a measure to ensure the uniform application of nomenclature as soon as possible and within six months following the meeting. It is important for divergent BTI to be resolved as quickly as possible so that the correct tariff classification is attributed to the good in question and to reduce the corresponding risk to the collection of the correct customs duties.

18. Between 2004 and 2006, 156 cases concerning classification in BTI were brought before the Customs Code Committee. While the uniform application of the nomenclature is the key impetus for the Customs Code Committee in resolving classification issues, the following situations were identified:

- (a) when the first discussion takes place at the Committee meeting, it is frequently decided that more information is needed in order to decide on the appropriate classification, which means that the case is postponed to a future meeting;
- (b) after the necessary information has been obtained and a proposal for resolving the dispute is brought to the meeting, there is often continuing disagreement between Member States' representatives on the classification to be given, and consequently more than one meeting may be required before an agreement can be reached;
- (c) even when an agreement can be reached relatively quickly, the six-month time limit was found to be difficult to meet due to the time needed for drafting, translating and publishing a legal measure. The Commission also pointed out that it is difficult to complete all the cases within the set time limit because of a lack of human resources.

<sup>(3)</sup> The creation of a centralised EU-wide body to issue all BTI was mentioned in a Member State audited. A thorough evaluation of the associated costs and benefits (financial and non-financial) would however need to be carried out.

<sup>(4)</sup> In accordance with Article 9 of Regulation (EEC) No 2454/93. Between 2004 and 2006 34 such meetings were held.



19. The Commission considers that the present six-month time limit is not realistic and has proposed to amend Article 9 CCCIP so that the time limit for implementing a measure would be counted from the meeting where a measure was approved. However, this could extend the period of time during which differing interpretations on tariff classification for imported or exported goods in different Member States might exist.

### **The financial responsibility of a Member State which has issued an incorrect BTI**

20. Member States are financially responsible for the losses of traditional own resources caused by their administrative errors, regardless of the degree of negligence <sup>(1)</sup>. However, the Commission has not systematically addressed the question of the possible financial responsibility of a Member State after issuing an incorrect tariff classification in a BTI.

21. According to the EBTI-3 database there were 1 080 cases of BTI that were invalidated by the Member States due to an incorrect tariff classification in 2005 and 1 134 in 2006. However not all invalidated BTI necessarily have a financial consequence. There is no reliable estimate of either the number of customs declarations or the amount of import duties affected by invalidated BTI. This is due to the fact that economic operators in possession of a BTI are not obliged to declare this when they import goods (see paragraph 26).

### **Use of the EBTI-3 database**

22. The EBTI-3 database makes it possible for the Commission to query whether the BTI applications, BTI decisions and annulled <sup>(2)</sup> or invalidated BTI are promptly entered in the database. However the Commission has not fully exploited the possibilities offered by the EBTI-3 database to monitor the input of data by the Member States (for example, it is possible to make queries to check the time between the start date of validity of BTI and when it was entered in the database) <sup>(3)</sup>. If more systematic use of the database had been made, some of the delays noted — particularly the slow updating of the database by Member States — would have been detected and remedied earlier.

23. Accurate input in the EBTI-3 database by Member States and improved use of its possibilities would enable both them and the Commission to better monitor BTI applications and BTI decisions in other Member States. The Commission has organised training based on the principle that the Commission trains the trainers who then train users in their Member States. However, this knowledge has not spread to the operating level in the Member States in all cases.

<sup>(1)</sup> In accordance with Judgement C-392/02 of the European Court of Justice (OJ C 330, 24.12.2005, p. 1).

<sup>(2)</sup> Article 8 of Regulation (EEC) No 2913/92.

<sup>(3)</sup> DG TAXUD, which is responsible for the database, only allocates 1,5 persons to this task.

24. The thesaurus which contains the terms used in the EBTI-3 database has not been updated. This reduces the usefulness of the EBTI-3 database as some relevant keywords are not included.

25. The user interface of the public EBTI database was not entirely translated into the languages of the Member States which acceded since 2004. This limits its use in those countries.

### **Adequacy of the legislation**

26. As the holder of a BTI has no legal obligation to present his BTI when declaring the goods at import (or export), these are seldom presented. In practice, if no BTI is declared it is difficult for customs to ascertain whether the declarant does indeed hold a BTI for the goods. Therefore the Commission currently has no reliable estimate of the value or volume of imports covered by a BTI.

27. BTI holders rarely request 'periods of grace' <sup>(4)</sup>. However, when a period of grace is granted, customs authorities have difficulties to monitor that the maximum quantities of the goods allowed in the binding contracts and subject to the period of grace are not exceeded. This is because such goods can continue to be imported in any Member State without an obligation to declare the existence of the 'period of grace'.

### **Management of BTI in the Member States**

28. The six Member States audited have each created a specific unit dealing with BTI. The instructions they use or give to the economic operators were found to be in conformity with the relevant regulations and the administrative guidelines.

29. Based on the 155 BTI files checked, the Court's auditors conclude that the processing of the economic operators' applications and the issuance of the BTI are satisfactory. However some customs checks were not recorded (paragraph 31) and action was not always timely or appropriate (paragraphs 32 to 37). BTI is barely taken into consideration by some Member States in their checks (paragraph 38).

30. 185 import declarations were selected by the Court in order to check whether economic operators correctly use their BTI or if they try to classify goods for which they have a BTI under other tariff codes. No evidence of such errors was detected.

<sup>(4)</sup> See paragraph 7.



## Issue of BTI

31. The Commission's guidelines require customs to check whether the applicant has submitted other BTI applications for the same goods in other Member States and if there are divergent BTI. In three Member States audited the checks were either not done in most cases <sup>(1)</sup> or they were not at all documented <sup>(2)</sup>. These checks are essential for preventing BTI 'shopping', whereby an economic operator applies in different Member States for BTI for the same good in order to use the BTI with the most favourable tariff classification throughout the EU.

32. The customs authorities of the Member States have to enter, without delay, BTI applications and issued BTI into the EBTI-3 database <sup>(3)</sup>. In three Member States visited <sup>(4)</sup> there were systematic delays when entering BTI applications and issued BTI in the EBTI-3 database. In one Member State <sup>(5)</sup> refused BTI applications were not entered in the database even though the reason for refusal was BTI 'shopping'. When BTI applications and issued BTI are not entered in the database, there are no practical means to prevent the issuance of divergent BTI by other Member States for similar goods.

33. There are no specific legislative time limits for issuing BTI. The Commission's administrative guidelines recommend that BTI be issued within 3-4 weeks of application. Four of the Member States audited <sup>(6)</sup> did not achieve this recommendation. Three Member States <sup>(7)</sup> did not notify applicants when they had received all the information needed to reach a decision <sup>(8)</sup>.

## Annulment or invalidation of BTI

34. A BTI should be annulled if it is subsequently found that it has been issued based on incorrect or incomplete information provided by the applicant <sup>(9)</sup>. A BTI should be invalidated if a new legal measure which is inconsistent with the BTI is adopted by the European Union, if the BTI is no longer compatible with the interpretation of the customs nomenclatures, or if the BTI is revoked or amended <sup>(10)</sup>.

<sup>(1)</sup> Denmark.

<sup>(2)</sup> Germany and Greece.

<sup>(3)</sup> In accordance with Article 8(1) of Regulation (EEC) No 2454/93.

<sup>(4)</sup> Germany, Hungary and Slovenia.

<sup>(5)</sup> Hungary.

<sup>(6)</sup> Denmark, Germany, Greece, Slovenia.

<sup>(7)</sup> Denmark, Greece, Slovenia.

<sup>(8)</sup> In accordance with Article 6(4) of Regulation (EEC) No 2454/93.

<sup>(9)</sup> Article 8 of Regulation (EEC) No 2913/92.

<sup>(10)</sup> Articles 9 and 12(5) of Regulation (EEC) No 2913/92.

35. The customs authority which issued the BTI is required to notify the Commission of its annulment or invalidation as soon as possible <sup>(11)</sup>. In two of the Member States <sup>(12)</sup> audited delays were found in entering these annulments or invalidations in the EBTI-3 database. In another Member State <sup>(13)</sup> around 3 000 invalidated or annulled BTI were still recorded as valid in the EBTI-3 database due to interface problems between the national IT system and the EBTI-3 database. If invalidated or annulled BTI are not transmitted to the EBTI-3 database promptly, customs authorities and economic operators may understand that those BTI are still valid and can be used by their holders.

36. In two cases of divergent BTI identified by a Member State <sup>(5)</sup>, consultation with the two other Member States concerned <sup>(14)</sup> started in June 2005 and lasted until the end of May 2006 with one of them <sup>(15)</sup>. Neither the legislation nor the Commission's Guidelines establish a deadline for Member States to reply in such cases.

37. In one Member State <sup>(13)</sup> a BTI was revoked instead of being annulled. The same Member State had granted 13 periods of grace in 2006. None of these was reported to the EBTI-3 database.

## Reconciling BTI with the import declaration

38. When an importer declares a BTI in his import declaration, the latter can be cross-checked to the BTI as part of the customs authorities' checks on tariff classification. This is a further benefit of the BTI system and enhances the controls in Member States. In two Member States visited <sup>(16)</sup> there was no evidence that BTI were being checked in this way.

## CONCLUSIONS AND RECOMMENDATIONS

### General conclusions

39. The Court's audit has confirmed that the Binding Tariff Information system has, in general, been well-designed. BTI is a useful means whereby economic operators can obtain certainty of tariff classification of goods before decisions on imports (or exports) are taken. It promotes uniform tariff classification within the EU which is a WTO requirement and an essential part of the European Community's Customs Union.

<sup>(11)</sup> Article 13 of Regulation (EEC) No 2454/93.

<sup>(12)</sup> Germany and Hungary.

<sup>(13)</sup> United Kingdom.

<sup>(14)</sup> Belgium and the Netherlands.

<sup>(15)</sup> Belgium.

<sup>(16)</sup> Denmark and Greece.

40. When BTI is issued in conformity with the Common Customs Tariff and is correctly and effectively applied, it does help ensure that the appropriate traditional own resources are established in respect of those goods subject to BTI.

41. Although in general the Commission has adequately managed the system, weaknesses were found, notably in the area of supervision. Specific improvements are required to enhance the overall functioning of the system and to ensure that it works fully as intended. The legislative provisions would be strengthened if economic operators were obliged to indicate their BTI in the import declarations.

42. The BTI legal provisions are largely applied in the audited Member States, although the audit did identify various shortcomings which could have an effect on traditional own resources.

### ***Specific conclusions and recommendations***

#### **Treatment of BTI classification in the Customs Code Committee**

43. The Customs Code Committee has to resolve BTI classifications issues when the Member States cannot reach an agreement after bilateral discussions. The present Committee procedure can lead to the overrun of the time limit set in Article 9 of CCCIP thus extending the period of time during which inconsistent tariff classification might exist (see paragraphs 17 to 19).

44. The Commission should make the following improvements:

- (a) the working procedures of the Customs Code Committee should be streamlined and factors which can lead to delays eliminated;
- (b) the maximum time for resolving BTI classification issues should be reassessed;
- (c) the number of staff dealing with BTI in the Commission should be reassessed in relation to the time limits for resolving classification issues.

#### **Financial responsibility of a Member State which has issued an incorrect BTI**

45. Member States are not systematically held accountable for losses resulting from the issue of incorrect BTI. This question needs to be addressed (see paragraphs 20 to 21).

The Commission should evaluate the full financial impact of the issuance of incorrect BTI and make Member States financially responsible for any resulting losses to traditional own resources.

#### **Use of the EBTI-3 database**

46. The centralised EBTI-3 database managed by the Commission should be up-to-date and contain all BTI applications and BTI decisions in order to render the BTI system effective EU-wide. It is thus the key tool of the system, but some of its potential benefits are lost (see paragraphs 22 to 25).

The Commission should:

- (a) use more actively the possibilities offered by the EBTI-3 database to identify where Member States are not managing BTI in accordance with the legal provisions;
- (b) better target the training it organises on the EBTI-3 database to the operating level in the Member States;
- (c) update the thesaurus, in order to maximise the usefulness of the EBTI-3 database;
- (d) translate the user interface of the public EBTI database into all languages of those Member States which have acceded since 2004.

#### **Adequacy of legislation**

47. Several weaknesses in the legislation were identified in the course of the audit (see paragraphs 26, 27 and 36):

- (a) in order to facilitate customs checks it is important that BTI are declared when importing the goods, and therefore a holder of a BTI should be obliged to declare his BTI. This could also allow the value and volume of imports covered by BTI to be determined;
- (b) the Commission should examine ways to remedy the control deficiency regarding the period of grace system. For example, the IT system created for managing quotas could be extended to BTI periods of grace;
- (c) the Commission should establish reasonable deadlines for consultation between Member States in order to resolve BTI classification issues. If no agreement can be found within the deadline, the case should be forwarded to the Commission.

**Implementation of the BTI system by the Member States**

48. Whereas the Member States audited have in general correctly applied the legal provisions, some weaknesses in their implementation were noted (see paragraphs 31 to 38).

The Commission should encourage Member States:

- (a) to remedy promptly any systematic problems found regarding their procedures and IT tools;

- (b) to update the EBTI-3 database promptly;
- (c) to check, before granting a BTI, if the applicant has submitted BTI applications for the same goods in other Member States and whether divergent BTI exist;
- (d) to issue BTI as soon as possible in accordance with Article 7(1) of Regulation (EEC) No 2454/93;
- (e) to instruct their customs authorities, to include cross-checks of import declarations against BTIs when performing customs controls.

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 6 March 2008.

*For the Court of Auditors*  
Vitor Manuel DA SILVA CALDEIRA  
*President*

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## ANNEX I

## BTI ISSUED PER MEMBER STATE

Member States	in 2005	in 2006	still valid 16 July 2007	
				of which older than 6 years
BE	415	483	1 861	0
BG	not in the EU	not in the EU	45	0
CZ	622	750	1 928	0
DK	170	141	717	0
DE	17 509	19 891	68 163	0
EE	12	9	21	0
IE	1 240	1 626	5 707	10 <sup>(1)</sup>
EL	3	6	40	0
ES	461	513	2 995	0
FR	6 188	5 762	23 207	2 <sup>(2)</sup>
IT	130	236	847	0
CY	4	9	25	0
LV	258	92	436	0
LT	204	32	389	0
LU	0	9	36	0
HU	185	137	609	0
MT	11	1	11	0
NL	2 780	4 356	12 943	3 <sup>(1)</sup>
RO	not in the EU	not in the EU	14	0
AT	742	708	2 851	0
PL	1 130	841	2 541	0
PT	197	128	898	0
SI	239	265	847	0
SK	298	263	803	0
FI	249	306	1 379	0
SE	274	362	1 781	0
UK	8 255	9 140	36 454	0
Total	41 576	46 066	167 548	15

Source (data and explanations): European Commission/Directorate-General for Taxation and Customs Union/Unit B3.

Notes:

- (1) Ireland and the Netherlands: the BTI older than 6 years were reissued but the dates of issuing were not changed.  
(2) France: there was a typing error in the date of issuing 2 BTI.

## ANNEX II

## OVERVIEW OF OBSERVATIONS FOR THE COMMISSION AND THE SIX MEMBER STATES VISITED

	COM	DK	DE	EL	HU	SI	UK
<b>Management of BTI by the Commission</b>							
The Customs Code Committee procedure can lead to statutory deadlines not being met	×						
Financial responsibility after issuing an incorrect tariff classification in a BTI is not systematically followed-up	×						
The user interface of the public EBTI database is not entirely translated into the languages of those Member States that have acceded since 2004	×						
No systematic use of the EBTI-3 database	×						
Thesaurus in EBTI-3 database has not been updated	×						
Weaknesses in the legislation (non-obligation to declare BTI; periods of grace; time limits)	×						
<b>General management of BTI by the Member States</b>							
Technical difficulties in the interface between the national database and the EBTI-3 database							×
<b>Issue of BTI</b>							
Consultation of the EBTI-3 database not done or not documented		×	×	×			
Economic operators not notified about the receipt of complete application		×		×		×	
Slow transmission of BTI applications or issued BTI to the EBTI-3 database			×		×	×	
<b>Refusal to issue BTI</b>							
Applications not entered in the EBTI-3 database					×		
<b>Annulment/Invalidation of BTI</b>							
Delays when updating the EBTI-3 database			×		×		
The EBTI-3 database not updated							×
BTI was revoked instead of being annulled							×
Slow notification about inconsistent BTI to the Commission					×		
<b>Extension of validity of BTI (period of grace)</b>							
Period of grace not updated in the EBTI-3 database							×
<b>Use of BTI</b>							
Use of BTI not cross-checked with import declarations or no evidence available thereof		×		×			

## THE COMMISSION'S REPLIES

### SUMMARY

II. Although the existence of the BTI system demonstrates the uniform application of policy throughout the union, the primary purpose of BTI is to provide traders with legal certainty with regard to the tariff classification of goods.

III. BTI has proved to be a success as witnessed by the continuous annual increase in numbers of BTI issued, and the Commission and Member States are constantly endeavouring to improve the BTI.

- (a) As long as an issue of classification is before the Customs Code Committee, the Administrative Guidelines instruct Member States that no other BTI should be issued until the matter is resolved. The time needed to resolve such cases in the Committee is due to the procedures involved in the Comitology Decision (Council Decision 1999/468/EC of 28 June 1999 (OJ L 184, 17.7.1999)).
- (b) Uses of incorrect BTI with a negative effect on Traditional Own Resources (TOR) are pursued by the Commission where it becomes aware of them via its inspections, investigations and documentary controls. The amounts of TOR potentially involved are very variable and the numbers limited so any estimate is not likely to be meaningful.
- (c) Within the limited human resources available, EBTI-3 database consultations are made on the basis of risk analysis.

In June 2007 the Commission initiated the first phase of an EBTI monitoring action to examine how Member States issue BTI. So far six monitoring visits have been undertaken and a further eight such visits are foreseen for 2008.

- (d) The Commission continuously exhorts Member States to verify whether or not BTI applications or divergent BTI exist by consulting the EBTI-3 database. Given the complexity of, and the many technical elements involved in, tariff classification there can be a variety of reasons why the issuing of BTI may take time.
- (e) The current legislation does not impose an obligation on a trader who holds a BTI to declare or use that BTI when clearing his goods through customs. However, the Modernised Customs Code (MCC), which is expected to be adopted in 2008, will make the BTI binding on the holder. The Implementing Provisions of the MCC will lay down the conditions for the declaration of BTI.

In the context of its trade facilitation function, the value of goods traded using BTI does not impact on the efficiency of the mechanism itself.

- (f) As the Court acknowledges grants of periods of grace are rare. However, the Commission is currently examining how best to tighten up controls on them in discussions with the Member States in the Customs Code Committee.

### IV.

- (a) In an effort to improve the functioning of the Customs Code Committee, the Commission has recently introduced a standardised template for the submission of classification queries.
- (b) Within the limits of available resources the Commission actively analyses data on EBTI-3 as far as the system permits.
- (c) As mentioned in the reply to paragraph III(e), the Modernised Customs Code will make the BTI binding on the holder. The Implementing Provisions of the MCC will lay down the conditions for the declaration of BTI.

**OBSERVATIONS**

16. The Commission is constantly striving to improve the application of the legislation concerning the issuing of BTI. The introduction of the Modernised Customs Code presents the Commission with an opportunity to strengthen the implementing provisions and the administrative Guidelines.

18. The BTI system is a vector for differences of opinion concerning classification being brought to light and resolved, proving that BTI is a useful tool in ensuring the Community complies with its obligations under the GATT.

(a) To speed up the procedure, the Commission has introduced a template for the submission of tariff classification queries. This template requires that all information is provided at the outset. The template has been operational since November 2007.

19. In the context of the Modernised Customs Code, the Commission intends to amend the relevant implementing provision to make the time limit more realistic.

20. Uses of incorrect BTI with a negative effect on Traditional Own Resources (TOR) are pursued by the Commission where it becomes aware of them via its inspections, investigations and documentary controls.

21. The numbers of BTI invalidated due to incorrect classification amount to less than 1 % of the total valid BTI in a given year (there were approximately 170 000 valid BTI in 2007).

22. The EBTI-3 database was designed to ensure the transparency of customs information, to guarantee equality of treatment for all economic operators and to allow customs authorities to verify, when they have to classify specific goods, whether a classification decision has already been taken for similar goods by another European customs authority. It was designed to allow it to fulfil these key aims — not as a means of checking Member State activity.

Nevertheless, within the limited human resources available, the Commission consults the EBTI-3 database on the basis of risk analysis.

23. Accurate and reliable data input is the focus of the Commission's guidelines and training and is an important element of the monitoring visits. The Commission will continue to provide assistance to Member States to achieve improvements.

The Commission provides training to those officials who are nominated by their administrations. How this knowledge is disseminated in the administration is the responsibility of the Member States.

24. The Commission agrees that the thesaurus needs to be updated and is considering how best this can be achieved.

25. The Commission agrees that the public EBTI database should be available in 22 languages. This should be achieved in the first quarter of 2008.

26. The Modernised Customs Code (MCC), which is expected to be adopted in 2008, will make the BTI binding on the holder. The Implementing Provisions of the MCC will lay down the conditions for the declaration of BTI.

27. Despite the very small numbers of 'periods of grace' granted (348 in 2005 and 145 in 2006, representing approximately 0,2 % and 0,1 % respectively of the approximately 170 000 BTI valid at any given time) the matter of tightening control of the use of the 'period of grace' has been discussed with the Member States in the Customs Code Committee. In particular the use of a form to control the amounts which benefit from a period of grace is being considered.

29. The Commission will take up with the Member States the shortcomings identified by the Court in relation to the processing of BTI applications and the issuing of BTI. On the occasion of the ongoing monitoring visits to Member States, the Commission has received assurance that appropriate checks, although not recorded, are carried out.

31. The monitoring visits already carried out have revealed a number of different approaches to this matter in Member States ranging from formal checklists to informal notes of checks carried out. However, the Commission shall continue to encourage Member States to adopt a more formal approach to recording them.

32. The Commission, recognising the importance of entering BTI applications and issued BTI without delay in the EBTI-3 database, shall continue to impress on Member States their obligations under the legislation and encourage best practice. The Commission is already in the process of following up with the Member States concerned the instances of non-compliance with legal requirements reported by the Court.

35. With regard to the interface problem of the 3 000 BTI which were still recorded as being valid in the EBTI-3 database although they had been invalidated by a Member State's administration, the Member State concerned has reported that the technical problem has since been solved and the BTI concerned have been invalidated in the EBTI-3.

36. The Commission intends to introduce a strict deadline for replying to inter Member State consultation in the course of revising the implementing provisions in the context of the Modernised Customs Code.

37. The Member State concerned has confirmed to the Commission that it has reviewed its procedures and is now in compliance with its obligations. Follow-up action is continuing.



38. Customs controls are frequently carried out in post-clearance verification and it is during such controls that the existence of a BTI is confirmed.

The current legislation does not impose an obligation on a trader who holds a BTI to declare or use that BTI when clearing his goods through customs. However, the Modernised Customs Code (MCC) will make the BTI binding on the holder, see the reply to paragraph 26.

#### CONCLUSIONS AND RECOMMENDATIONS

39-41. BTI has proved to be a success as witnessed by the continuous annual increase in numbers of BTI issued. The Commission and Member States are constantly endeavouring to improve the BTI system and where problems are detected there are procedures in place to help resolve them.

The expected adoption of the Modernised Customs Code in 2008 will deliver the legislative improvement to which the Court refers in paragraph 41.

42. The Commission has explained the action it takes as regards the possible effects on own resources, see e.g. the reply to paragraph 20.

43. The Commission has recently taken steps to improve and streamline the efficiency of the decision-making process of the Customs Code Committee, see the reply to paragraph 44(a).

44.

(a) The Commission has taken steps to eradicate unnecessary delays due to lack of information by introducing in November 2007 a template for the submission of tariff classification queries.

(b) The Commission is considering amending Article 9 CCCIP in order to make the time limit more realistic.

(c) As from 2008, the Commission will increase the number of staff dealing with BTI.

45. Uses of incorrect BTI with a negative effect on Traditional Own Resources (TOR) are pursued by the Commission where it becomes aware of them via its inspections, investigations and documentary controls.

46. In the majority of cases Member States upload BTI applications and BTI issued on a regular daily basis.

(a) Within the limited human resources available, EBTI-3 database consultations are made on the basis of risk analysis.

(b) Training is provided by the Commission to those officials who are nominated by their administrations. Following the recommendation of the Court the Commission will continue to impress on the Member States the necessity that the persons they nominate to attend the training courses are expected to pass on the information and training they receive to their colleagues.

(c) The Commission recognises the importance of this recommendation and has already discussed methods for updating and further developing the thesaurus.

(d) The translation into 22 languages of the public EBTI database interface will be completed during the first quarter of 2008.

47.

(a) The Modernised Customs Code, which is expected to be adopted in 2008, will make the BTI binding on the holder. The Implementing Provisions of the MCC will lay down the conditions for the declaration of BTI.

(b) The Commission is discussing possible solutions to remedy control deficiencies regarding the period of grace system with the Member States in the Customs Code Committee. In particular the use of a form to control the amounts which benefit from the rare periods of grace granted is being considered. Furthermore, the provisions on the period of grace will be tightened in the implementing provisions of the Modernised Customs Code.

(c) The Commission intends to introduce, in consultation with the Member States, a strict deadline for replying to bilateral consultations.

48. The Commission will continue to encourage the Member States to improve their implementation of BTI as recommended by the Court.

(a) The Commission will continue to encourage and help the Member States to remedy any systemic problems they encounter. Only four Member States have their own national BTI systems and those systems work along side the EBTI-3 which has been developed for and provided by the Commission. Consequently, all problems relating to the EBTI-3 system are remedied by the Commission.

(b) The Commission shall continue to impress on Member States their obligations under the legislation to enter BTI applications and issued BTI without delay in the EBTI-3 database.

(c) The Administrative Guidelines clearly instruct the administrations that they should check the database when they receive an application and before they issue a BTI. How they apply the Guidelines is a matter for each administration.

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- (d) The Commission will continue to encourage Member States to issue BTI as promptly as is commensurate with taking properly-based accurate decisions.
- (e) The Commission will continue to exhort the Member States to continue to control the usage of BTI.
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