

GUIDANCE ON BINDING ORIGIN INFORMATION

Disclaimer

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

Table of Contents

Introduction	4
Conditions to apply for a BOI decision.....	5
Means to lodge a BOI application and elements to be provided.....	6
Acceptance of the BOI application.....	12
Taking of the BOI decision.....	13
Use of the BOI decision.....	19
End of validity of the BOI decision.....	21
Exchange of data related to BOI decisions.....	22

INTRODUCTION

The Guidance on Binding Origin Information (BOI), although not legally binding, serves the following objectives:

- Facilitate the uniform implementation of relevant provisions laid down in the Union Customs Code Regulation (EU) No 952/2013 of the European Parliament and of the Council (UCC), Commission Delegated Regulation (EU) 2015/2446 (UCC-DA) and Commission Implementing Regulation (EU) 2015/2447 (UCC-IA).
- Provide guidance to customs authorities in order to harmonise the Member States' practices on issuing a BOI decision.
- Provide information to economic operators on how to apply for a BOI decision.

Customs authorities in the EU have to apply customs legislation in a uniform manner. The uniform interpretation of the rules of origin ensures the same level playing field for operators trading the same goods.

A BOI decision provides legal certainty for economic operators with respect to the determination of origin, facilitates the work of the customs services at the time of the customs clearance and contributes to the uniform interpretation of the rules of origin.

The binding nature of valid BOI decisions is such that they are binding in their entirety on the customs authorities against the holder and on the holder against the customs authorities.

The following procedures and stages related to the issuing of BOI decisions are dealt with:

- Conditions to apply for a BOI decision
- Means to lodge a BOI application and elements to be provided
- Acceptance of the BOI application
- Taking of the BOI decision
- Use of the BOI decision
- End of validity of the BOI decision
- Exchange of data related to BOI decisions

1. CONDITIONS TO APPLY FOR A BOI DECISION

1.1. Establishment, EORI number and representation (art. 18 UCC; art. 22(2) UCC; art. 11(1)(a) UCC-DA)

There is no specific condition laid down in the legislation that the economic operator applying for a BOI decision should be established in the customs territory of the Union.

Even where the applicant for a BOI decision is not established in the customs territory of the Union, the applicant for a BOI decision is to identify himself through an EORI number in the application (Annex A UCC-DA). In order to get this EORI number, an economic operator

established outside the EU registers, in accordance with article 9(2) UCC, with the customs authorities responsible for the place where he first lodges a declaration or applies for a decision.

Any economic operator who applies for a BOI decision can be represented. This representation can be direct, in which case the representative operates in the name and on behalf of the economic operator. Representation is indirect where the representative acts in his own name (he will be the holder of the decision), but on behalf of the economic operator.

A non-EU established economic operator becomes the holder of the BOI decision where he has an EORI number in the EU and has applied for the decision without representation or through direct representation. In case a non-EU established operator uses an indirect representative to apply for a BOI decision, the indirect representative would become the holder of the decision.

1.2. The application is to be submitted to the competent customs authority in the MS where the applicant is established or in the MS where the information is to be used (art. 19(1) UCC-DA)

1.3. The application shall relate to only one type of goods and one set of circumstances for the determination of origin (art.16(3) UCC-IA)

One type of goods means that the goods concerned are classified in the same tariff heading. One set of circumstances for the determination of origin means that the goods were obtained under identical conditions using the same manufacturing process and equivalent materials, as regards notably their originating or non-originating status.

1.4. An applicant may submit only one application for the same goods and the same circumstances determining the origin (art. 33(1) a) UCC)

1.5. The application must be linked with an intended use of the BOI decision or an intended use of a customs procedure (art. 33(1) b) UCC)

1.6. Other conditions (arts. 22(1) UCC; art. 19(2) and (3) UCC-DA)

The application needs to contain all the information required in order for the customs authority to be able to take the decision. The customs authority verifies if all of the information is provided for acceptance of the application. The information deemed necessary by the customs authority enabling the determination of the origin of the goods will be thoroughly verified only after the acceptance of the application. The applicant is responsible for providing all the information for the taking of the decision. While in the process of taking the decision, customs can still request additional information, if necessary.

By submitting an application for a BOI decision, the applicant is considered to agree to all data of the decision, including any photographs, images and brochures, with the exception of confidential information, being disclosed to the public via the internet site of the Commission. Any public disclosure of data must respect the right to personal data protection.

2. Means to lodge a BOI application and elements to be provided

2.1 Means to lodge a BOI application (art. 19(3) UCC-DA)

Where the Member State has no electronic system in place for submitting an application for a BOI decision, it allows for submission of a paper based application.

The Union legislation does not provide for a specific application form, nevertheless some Member States customs authorities provide such a form to applicants.

Currently the Member states customs authority only accept paper based applications, however a Member State may decide to put in place an electronic system.

Where there is an electronic system in place for the submission of applications for a decision relating to BOI in a particular MS, all applications will have to be done through that system. (art. 6(1) UCC and 19(3) UCCDA).

The applicant or his representative applies for a BOI in the form required in the MS of application. Applications can be lodged in the following manner:

- applications may take the form of a letter containing the relevant elements ;
- a MS may provide for a form to be filled out. Such applications can be filled out using an electronic platform and then submitted by post;
- a MS that has set up an electronic system for the applications, applications have to be submitted using electronic data processing techniques (EDPT).

Furthermore, since no specific conditions have been elaborated in the legislation for the provision allowing a BOI decision to be applied for by, or taken with regard to, several persons, no practical effect has been given to this provision as far as BOI is concerned (art. 22(1) subparagraph 2 UCC).

2.2. Elements to be provided in the application (annex A-UCC-DA)

The elements to be provided are laid down in Annex A UCC-DA. There is a distinction between elements that are mandatory and not.

1/1 Application code type

There are two cases:

- where the MS does not provide for an application form, the code type “BOI” should be indicated in the application letter.
- where there is an application form, this code type already appears at the head or in the title of the application form;

1/2 Signature/ authentication

Where the application is paper-based, it is to be signed by the person who lodges the application. Where the application is submitted and signed by a representative having signing authority, the empowerment should be held at the disposal of the Customs authority and should be submitted upon request.

If a MS decides to put in place EDPT for the application of a BOI, all applications in that particular MS for a BOI need to be done by those means and the person who lodges the application (applicant or representative) is to be authenticated.

2/1 Other applications and decisions relating to binding information held

The applicant indicates if he has already applied for or received a BOI decision for identical or similar goods and for the same legal basis. If yes, he indicates the registration number of the application and/ or the reference number of the decision.

Where a BOI decision for identical or similar goods and the same legal basis has already been issued but is no longer valid or where the period of validity of a BOI decision is close to expiry, customs authorities could accept the new application if all the other conditions for acceptance are fulfilled. This is necessary for reasons of continuity for the economic operator.

Likewise, the applicant or his representative indicates if he has already applied for or received a BTI decision for identical goods. If yes, he indicates the registration number of the application and/ or the reference number of the decision.

2/2 Decisions relating to binding information issued to other holders

The applicant indicates if he has information about a BOI decision for identical or similar goods and for the same legal basis. If yes, he may indicate all the information he has on this binding information, notably the reference number of which the applicant is aware, the start date of validity of the BOI decision, the nomenclature code indicated on the BOI decision. The purpose of this data element is to ensure the correct and uniform determination of origin in the EU.

The applicant indicates if he has information about a BTI decision for identical goods. If yes, he may indicate all the information he has on this binding information.

2/3 Legal or administrative procedures pending or handed down

The applicant indicates if he has information about any legal or administrative proceedings concerning origin pending within the EU or a court ruling on origin already handed down within the EU for the goods concerned. If yes, he indicates the name and address of the court, the reference number of the case pending and/ or the judgement, and any other relevant information.

The purpose of this data element is to ensure the correct and uniform determination of origin in the EU.

2/4 Attached documents

The applicant indicates the total number of the documents attached and provide a list of the attached information, this contains the type and, if applicable, the identification number and the date of issue of the document(s) attached to the application.

If an attached document contains additional information on a certain data element provided in the application, he indicates a reference to the data element concerned.

3/1 Applicant of the decision

The applicant indicates his name and his address. In case of indirect representation it is the name and address of the representative that is indicated as applicant.

3/2 Applicant of the decision identification

The applicant indicates his Economic Operators Registration and Identification number (EORI number).

In case of indirect representation the EORI number of the representative is indicated.

3/3 Representative

If the applicant is directly represented, the representative should indicate his name and address. If requested, the representative provides evidence of a relevant contract, power of attorney or any other document which provides evidence of the empowerment issued by the economic operator he represents, confirming the representation.

3/4 Representative identification

If the applicant is directly represented, the representative also indicates his EORI number.

3/6 Contact person responsible for the application

The applicant provides the name and contact details of the person, this includes a telephone number and e-mail address of the person. This contact person is responsible for keeping contact with customs as regards the application and can be contacted by the customs authority for any type of information on the application.

4/1 Place

The applicant indicates the place at which the application was signed or otherwise authenticated (in case of use of EDPT).

4/2 Date

The applicant indicates the date on which he has signed the application, or otherwise authenticated the application (in case of use of EDPT).

4/3 Place where main accounts for customs purposes are held or accessible

He indicates the place where his main accounts for customs purposes are held or accessible only if this place is not located in the same Member State than the Member State already indicated in the data element 3/2 (Applicant identification).

The applicant does not have to give this information if he is an Authorised Economic Operator (AEO).

5/1 Commodity code

The applicant indicates the heading/subheading (customs nomenclature code) of the product subject to the application. This customs nomenclature code must be sufficiently detailed to identify the goods and the rule for the determination of origin.

If the applicant is holder of a BTI for the same goods, he indicates the nomenclature code determined in the BTI decision.

It is important to refer to the correct version of the Harmonised System nomenclature which is updated every 5 years and could in some cases lead to the introduction of new HS headings.

5/2 Description of goods

The applicant describes the goods in order to permit their identification. This description may notably contain: commercial name, commercial reference, size, colour, marks etc.

7/1 Type of transaction

The applicant indicates if the application relates to an intended import or export transaction.

8/4 Samples etc.

The applicant may indicate any photographs, brochures or other documents available on the composition of the goods and their component materials and which may assist in describing the manufacturing process or processing undergone by the materials. A sample only needs to be provided if specifically requested by the customs authority.

8/5 Additional information

The applicant may indicate any additional information, if deemed necessary.

III/1 Legal basis

The applicant indicates the legal basis in order to assess the origin of the product. There are two cases:

- if the application relates to a determination of non-preferential origin, the applicant indicates the article 59 of the UCC;
- if the application relates to a determination of preferential origin, he indicates the article 64 of the UCC and the arrangement with (the) non-EU country(ies) for which preferential measures are in place and he intends to use the BOI decision for.

III/2 Composition of the goods

The applicant indicates the composition of the goods and their ex-works price, where this information is necessary for the determination of the origin.

III/3 Information enabling the determination of origin

The following information is to be provided, where necessary for the application of the rule of origin:

- information about the materials¹ used: origin (determined in the same legal framework than the legal framework used for the final product), tariff classification (at least 4-digits, 6-digits could be necessary depending on the rule), value and weight .

- information about the operation or the processing undertaken: this may include the location of the operations, chronological order of the operations, nature of the operations carried out (production method, machinery used, necessary know-how and any additional information which could be useful).

The applicant also indicates the rule of origin to be applied and the origin envisaged for the goods for which he provides the information.

The information provided enables the customs authorities to determine the origin of the product. However, the accuracy of the information remains the responsibility of the applicant supplying the information.

Separate applications must be filed where the process and the materials used are different between two or more products, even if these products have the same commercial name.

III/4 Indicate which data shall be treated as confidential

The applicant indicates which information shall be treated as confidential.

III/7 Ex-works price

The applicant indicates the ex-works price² of the product for which the determination of origin is requested.

This information enables the customs authorities to determine the origin of the product. However, the accuracy of the information remains the responsibility of the applicant providing the information.

¹ Material means any ingredient, component, part, etc. used in the manufacture of the product

² The term Ex-works price is defined in each legal framework

3. Acceptance of the BOI application

3.1 Receipt and registration of the application (art. 22(2) UCC)

The application should be registered by the competent customs authority. A reference number should be assigned to the application. Every Member State may have his own registration system.

Every receipt and registration of an application should be notified to the applicant. The notification should contain the date of receipt and reference number assigned by the competent customs authority.

This notification can take several forms: e-mail, letter or an electronic notification when the Member State has set up an EDPT system.

3.2 Verify conditions and accept application (art. 22(2) UCC; art. 33(1)(a) and (b) UCC; art. 11(1)(a),(b) and (c) UCC-DA; art. 12(1),(2) and (3) UCC-IA; art.16(3) UCC-IA)

Where the applicant has provided all the mandatory data elements (Annex A UCC-DA), the customs authority verifies whether the conditions for the acceptance of that application are fulfilled within 30 days of receipt of the application for a BOI decision..

The customs authority receiving the application will examine whether that customs authority can be regarded as the competent one, that is:

- the customs authority in the Member State in which the applicant is established, or
- the customs authority in the Member State in which the BOI decision is to be used.

When it is ascertained that the customs authority receiving the application is the competent one, the following elements will be checked:

- if the BOI application has not already been made, at the same or another customs office, by or on behalf of the holder of a decision in respect of the same goods and under the same circumstances determining the acquisition of origin.

and

- if the application relates to an intended use of the BOI decision or an intended use of a customs procedure.

Where the above conditions are not met the application will not be accepted.

Subsequently, the competent customs authority should check the other conditions of the article 11 UCC-DA, that is, if the applicant has an EORI number.

Furthermore, an application for a BOI decision shall relate to only one type of goods and one set of circumstances for the determination of origin.

It is important to stress that there is no possibility for the applicant/holder to apply in a same or another MS for a BOI decision for the same goods covering the same circumstances determining the acquisition of origin.

If the application complies with the above points it can be accepted, the date of acceptance is the date of submission of the application. However, where the customs authority establishes that there is not enough information to accept the application, it requests the applicant to provide necessary additional information within the 30 day period. This additional information needs to be provided within a reasonable time limit which cannot exceed 30 days. In this case, the date of acceptance of the application is the date when the last piece of information was received by the customs authority.

Where the application does not comply with the above points, the competent customs authority will not accept it and inform the applicant within the 30 days period.

Article 11 (1) (d) UCC-DA states that an application for a decision shall not be accepted where it concerns a decision with the same purpose as a previous decision addressed to the same applicant which, during the one year period preceding the application, was annulled or revoked on the grounds that the applicant failed to fulfil an obligation imposed under that decision. This condition does not apply for the acceptance of a BOI application insofar as a BOI decision is annulled or revoked on other grounds than the failure to fulfil an obligation it imposed.

According to the article 10(a) UCC-DA, the applicant will not have the right to be heard when the application is not accepted.

Where the application is accepted a notification should be sent indicating the starting date of the acceptance of the application.

4. Taking of the BOI decisions

Where an application for a decision relating to binding information is accepted in another Member State than the one in which the applicant is established, the customs authority of the Member State where the application is accepted notifies the customs authority of the Member State where the applicant is established within 7 days from the acceptance of the application (art. 16 (1) UCC-IA).

This notification contains the data submitted in the application and is transmitted by e-mail to the customs authority of the Member State where the applicant is established. The list of e-mail addresses to be used for this purpose is published on the CIRCA BC BOI interest group.

In case the MS where the applicant is established transmits within 30 days from the date of notification any information considered as relevant, this information will be taken into account for the issuing of the BOI decision. Where this information is not transmitted within 30 days to the Member State where the application was submitted, the customs authority where the application was submitted is not bound by the information.

This procedure does not affect the maximum period of time within which the BOI decision needs to be issued to the applicant.

Before taking a BOI decision, the customs authorities of the MS concerned checks if the goods are not subject to a procedure whereby the Commission has notified the customs

authorities of the suspension of issuing decisions for goods where incorrect or non-uniform decisions exist.

4.1 Time limit to take a BOI decision (art. 22(3) UCC and 13(1) UCC-DA)

The BOI decision must be issued within a 120 days period from the date of acceptance of the application.

The 120 days period can be extended by a maximum of 30 days if the customs authorities consider this extension necessary to examine the information provided. Even though the cases will be limited, where a laboratory analysis is considered necessary and it is not possible to complete this within the period of 30 days, that period may be exceeded. The customs authority needs to inform the applicant of the reason for this extension of the time limit.

4.2 Examination of the elements provided in the application

If in the process of examining the elements provided in the application the customs authority finds it does not possess all the information enabling the determination of origin or the information provided is manifestly erroneous, the competent customs authority should ask the applicant to provide the relevant information within a reasonable time limit which cannot exceed 30 days.

Where the customs authority has requested additional information from the applicant, but the applicant has not provided it within the time limit set by the customs authority or the information provided does not enable customs authority to determine the origin, a decision is issued to the applicant indicating the reasons why a BOI cannot be issued. This decision may include a reference to the fact that the applicant can submit a new application once he has all the necessary information.

4.3 Way to fill out boxes of the decision form (annex A-UCC-DA, Annex 12-02 UCC-IA)

1/1 Decision code type

The decision code type appears at the head or in the title of the decision form.

1/2 Signature/ authentication

The decision is signed by the person who takes the decision on BOI. The stamp of the administration is added to the signature.

In case of use of EDPT, there is an authentication.

1/6 Decision reference number (box 2, 11 and 13 of the BOI decision form)

The decision reference number is structured as follows: XX (country code) – BOI – serial number, according to the annex A-UCC-IA, Title I and II.

1/7 Decision taking customs authority (box 1 of the BOI decision form)

The name and address of the Member State customs authority that issued the decision is to be indicated.

2/1 Other applications and decisions relating to binding information held(box 16 and 17 of the BOI decision form)

If the applicant has indicated he has already applied for or received a BOI decision for identical or similar goods and for the same legal basis, the registration number of the application may be indicated or the reference number of the decision is indicated in the decision.

If the applicant has indicated he has already applied for or received a BTI decision for identical goods, the registration number of the application may be indicated or the reference number of the decision is indicated in the decision.

2/2 Decisions relating to binding information issued to other holders (box 16 and 17 of the BOI decision form)

If the applicant has mentioned he is aware of a BOI decision for identical or similar goods and for the same legal basis in the application, this information is indicated in the decision.

If the applicant or his representative has mentioned BTI decision for identical goods in the application, this information is indicated in the decision.

3/1 Holder of the decision (box 3 of the BOI decision form)

In any case, the applicant of a BOI decision will automatically become the holder of the decision.

The name and the address of the person concerned is to be provided on the decision.

3/2 Holder of the decision identification (box 3 of the BOI decision form)

The EORI number of the holder is provided on the decision.

4/1 Place

Place at which the decision relating to BOI was taken.

4/2 Date

Date on which the decision relating to BOI was issued.

4/6 [Requested] Start date of the decision (box 4 of the BOI decision form)

Date on which the validity of the BOI decision starts. This date refers to the date on which the decision relating to BOI was taken (4/2), the date cannot be retro-active.

4/7 Date of expiry of the decision (see 'General remarks on the BOI decision form')

Date on which the validity of the decision relating to BOI ends, the validity of the BOI ends 3 years after the start date of the validity.

5/1 Commodity code (box 6 of the BOI decision form)

The heading/ subheading or 8-digit Combined Nomenclature code as indicated in the application. The decision is taken in accordance with the commodity code provided in the application.

It is important to refer to the correct version of the Harmonised System nomenclature which is updated every 5 years and could in some cases lead to the introduction of new HS headings.

5/2 Description of goods (box 7 of the BOI decision form)

The goods are to be sufficiently described to allow their recognition without any doubts and enabling to easily relate the goods described in the BOI decision to the goods presented. More specifically, the name of the product and his commercial reference should be sufficient to fulfil this requirement.

6/3 General remarks

The competent customs authority indicates in a specific box the following information:

“Without prejudice to the provisions of article 34(4) and 34(5) of Regulation (EU) n°952/2013 of the European Parliament and the Council this BOI remains valid for 3 years as from the start date of the decision. The holder of the BOI must be able to prove that the goods concerned and the circumstances determining their origin conform in every respect to the goods and the circumstances described in the decision”.

7/1 Type of transaction (box 8 of the BOI decision form)

The competent customs authority indicates the type of transaction envisaged by the applicant in the application. The BOI decision model foresees two boxes: import and export. Only one box should be ticked.

8/4 Samples etc. (box 19 of the BOI decision form)

Elements described in the decision refer to the elements of the application. However, if the samples etc. have not helped the customs authorities to take the decision, these elements should not be transposed in the decision.

8/9 Keywords (box 18 of the BOI decision form)

The relevant keywords by which the customs authority in the issuing Member State has indexed the BOI decision are to be indicated. This indexation (by adding keywords) facilitates the identification of the relevant BOI decisions issued by customs authorities in other MS.

For example, the customs authorities may indicate the description of the goods, type of transaction, the country of import or export, MS of issuing etc.

III/2 Composition of the goods (box 7 of the BOI decision form)

This information is indicated in the decision if it is an element which is relevant for the determination of the origin.

III/4 Indicate which data shall be treated as confidential

The particulars which the applicant has indicated as confidential in the BOI application, as well as any information added by the customs authorities in the issuing Member State which these authorities consider to be confidential should be marked as such in the decision.

Any information, not indicated as confidential in the decision, can be made accessible on the internet.

III/5 Country of origin and legal framework (box 8 of the BOI decision form)

The country of origin as determined by the customs authority for the goods for which the decision is issued and an indication of the legal framework (non-preferential/preferential; reference to the agreement, convention, decision, regulation; other).

In case the preferential origin is not acquired for the goods concerned, the term “non-originating” and an indication of the legal framework should be mentioned in the BOI decision.

III/6 Justification of the assessment of the origin (box 9 of the BOI decision form)

The customs authorities should justify the assessment of the origin. This part should be sufficiently detailed in order to permit to the holder to understand correctly the legal reasoning of the customs authorities.

In case a BOI decision is issued for a new HS heading, introduced by an update of the HS nomenclature, for which no rule of origin is linked to that heading, the origin is determined based on the existing rule for the previous heading.

For example under the HS 2017 a 'selfie-stick' is classified in HS 9620 which was not the case in the previous version of the HS.

Moreover, the calculation of the value added should be indicated when necessary. Moreover, the decision should precise that certain principles of the origin protocol are to be respected (territoriality principle, drawback prohibition rule, direct transport, procedures related to the proofs of origin). A BOI decision as such does not constitute an entitlement to a preferential duty.

Even if those principles are presumed, the competent customs authority can provide some details if it considers it necessary (i.e; details related to the filling of the EUR-MED in case of diagonal cumulation).

III/7 Ex-works price (box 10 of the BOI decision form)

The Ex-works price is to be indicated where that information was used in order to assess the origin.

III/8 Materials used, country of origin, combined nomenclature code and value (box 12 of the BOI decision form)

Information on the principal materials used (country of origin, combined nomenclature code and value) is indicated if required for the determination of origin.

The country of origin of the materials used should be determined in the same legal framework as the legal framework used for the final product. The nomenclature of the product may be at 4-digit level if the list rule does not require more details. The description of the materials used is always required, in particular where the list rule has subdivisions which do not correspond to the tariff classification.

III/9 Description of the processing required in order to obtain origin (box 14 of the BOI decision form)

This part is particularly useful when the list rule is a specific working or processing rule or in case of insufficient working or processing. The customs authority uses the elements developed by the applicant in the application (III/3 – Information enabling the determination of origin) related to the process used and the operations carried out by the producer.

III/10 Language (box 15 of the BOI decision form)

The Customs authority indicates the language in which the BOI is issued.

4.4 Notification of BOI decisions

According to the articles 22(3) UCC; 21 UCC-DA and 18 UCC-IA, the notification of the BOI decision to the holder should be done within 120 days or within the extended time-limit of 150 days after the acceptance of the application and comply with the form laid down in Annex 12-02 UCC-IA.

In MS which have EDPT in place for BOI, the decision is notified electronically, however the decision should be printable under the conditions described in the previous paragraph, this enables the holder to use it in other MS that have no EDPT in place for BOI.

5. Management of the BOI decision

5.1 Use of the BOI decision (art. 23(2), 33(4)b) UCC, DE 2/3 of Annex B-UCC-DA and art. 20 UCC-IA)

The holder of a BOI decision for import or export has to use it whenever an import or export transaction respectively, is performed of goods which are the subject of the BOI decision. The reference number of the BOI needs to be indicated in the customs declaration.

In order to lodge a customs declaration, the UCC provides that the declarant should in principle be established in the customs territory of the Union (Article 170 (2) UCC).

An operator who is not established in the EU, but who is the holder of a BOI decision, will not be able to lodge a declaration himself or by means of a direct representative. In such case, the holder of the BOI decision needs to make use of an indirect representative established in the EU to lodge the customs declaration.

The indirect representative is the “Declarant” to be mentioned in DE 13 05 000 000 (old DE 3/17) and is therefore bound to indicate the reference number of the BOI decision held by his client, who in such case is to be considered as the “Importer”, as it results from the note on DE 13 04 000 000 (old DE 3/15): “Party who makes, or on whose behalf an import declaration is made”.

If the holder or the indirect representative has indicated his BOI decision number in a customs declaration, the customs authority can ask him to provide the relevant BOI decision.

The holder of the decision should inform the customs authorities without delay of any factor arising after the decision was taken, which may influence its continuation or content (art. 23(2) UCC).

Customs authorities should make sure that the goods covered by the customs declaration are the same as the goods for which the BOI decision was issued. It is up to the holder or the indirect representative using the BOI decision to prove that in the context of a given customs procedure, the goods in question and the circumstances determining the acquisition of origin correspond in every respect to the goods and the circumstances described in the BOI decision (art. 33(4)(b) UCC). It is up to the indirect representative to make contractual arrangements with the non-EU established holder to ensure that he has all the necessary information.

5.2 Validity period (art. 33(3) UCC)

BOI decisions are valid for a period of three years from the date on which the decision takes effect. However, they can cease to be valid, be annulled or revoked before that period.

5.3 Extended use of BOI decisions (art. 34(9) UCC and 22 UCC-IA)

Upon request, a BOI decision may still be used for the import of goods in respect of binding contracts which were based upon that decision and were concluded before it ceased to be valid or was revoked.

The extended use should not apply where a BOI decision is taken for goods to be exported. The extended use should not exceed six months from the date on which the BOI decision ceases to be valid or is revoked.

In order to benefit from the extended use of a BOI decision, the holder of that decision lodges an application to the customs authority that took the decision within 30 days of the date on which it ceases to be valid or is revoked, indicating the quantities for which a period of extended use is requested and the Member State or Member States in which goods will be cleared under the period of extended use. That customs authority takes a decision on the extended use and notify the holder, without delay, and at the latest within 30 days of the date on which it receives all the information required in order to enable it to take that decision.

5.4 Suspension/re-assessment not applicable to BOI decisions (art. 23(4) UCC and 22 UCC-DA)

Articles 15 to 18 UCC-DA concerning the re-assessment and suspension of decisions do not apply to BOI decisions.

5.5 Actions to ensure the correct and uniform determination of origin laid down in a BOI decision (art. 34(10)UCC; art.23 UCC-IA).

One of the main reasons for making use of BOI decision is to ensure the uniform application of the customs legislation in the framework of origin.

On occasions, there are two situations where the correct and uniform application of the customs legislation is not ensured in the context of BOI decisions.

A first situation is where a Member State has issued a BOI decision with an origin

determination which is deemed incorrect in the opinion of another Member State which received an application for a BOI decision for the same goods or of the Commission.

A second situation is where a non-uniform or divergent origin determination exists. This occurs when two or more BOI decisions confer different origin on goods for identical products classified under the same tariff heading whose origin was determined in accordance with the same origin rules and have undergone the same manufacturing process. In addition, use was made of equivalent originating or non-originating materials in the manufacturing.

Customs authorities of Member States have a responsibility to avoid issuing non-uniform BOI decisions. To this end Member States should consult the excel table containing all notifications, this excel table is compiled by the Commission. Where MS have questions on a specific BOI decision, they can contact the issuing customs authority for further details which can help assessing whether the circumstances for the origin determination are similar or the same.

Both situations could create a different treatment of traders in the EU.

When a Member State discovers what appears to be an incorrect or divergent origin determination, that Member State should contact the Member State that issued the incorrect or divergent BOI decision.

Within 90 days customs authorities can resolve their differences of opinion, either the issuing Member State acknowledges the problem and decides to annul or revoke the BOI decision or the other MS agrees with the reasoning of the issuing Member State. If both sides can agree, they should resolve the matter.

In cases where Member States have failed to resolve their differences of opinion within this period of 90 days, a complete and substantiated submission containing all the relevant information has to be submitted to the Commission.

Upon receipt of the substantiated submission, the Commission assesses the case and send the notification about the suspension to all Member States customs authorities.

Furthermore, in case where the Commission has identified incorrect or non-uniform decisions, the Commission sends the notification about the suspension to all Member States customs authorities. Member States should suspend issuing any BOI decisions for those goods until the situation is resolved. The notification contains the relevant information for Member States to assess whether they are processing such applications.

The correct and uniform determination of origin will be subject to consultation at Union level at the earliest opportunity and no later than 120 days from the date that the Commission notified the customs authorities of the suspension of the issuing of a BOI decision for the goods concerned.

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

Once the divergence has been resolved and the correct and uniform origin determination agreed, the Commission will notify the customs authorities of the Member States that the

suspension has ended and they may resume issuing BOI decision for the goods concerned.

6. End of validity of the BOI decisions

6.1 Cessation of validity (art. 34(2) UCC)

BOI decisions are valid for a period of three years from the date on which the decision takes effect. However, a BOI decision ceases to be valid before that period of three years when:

- it no longer conforms to a regulation adopted or an agreement concluded by the Union, with effect from the date of application of that regulation or agreement.
- it is not compatible with the Agreement on Rules of Origin established in the World Trade Organisation (WTO) or with the explanatory notes or an origin opinion adopted for the interpretation of that Agreement, with effect from the date of their publication in the Official Journal of the European Union.

Though the cessation may affect adversely the holder of the BOI decision, the provisions on the right to be heard in article 22(6) UCC are not applicable.

6.2 Annulment (art.27(2) and (3) UCC; art. 34(4) UCC)

By way of derogation from article 23(3) UCC and article 27 UCC, BOI decisions should be annulled where they are based on inaccurate or incomplete information from the applicants.

The customs authority which issued the BOI decision notifies the holder of its annulment. The annulment takes effect from the date on which the initial decision took effect.

The annulment of a BOI decision is subject to the conditions of the art. 22(6) UCC related to the right to be heard.

6.3 Revocation (art. 34(5) and 34(8) UCC)

The customs authorities which took a BOI decision may at any time revoke it where it does not conform to the customs legislation (art. 34(5) and 23(3) UCC) or in case one or more of the conditions for taking that decision were not or are no longer fulfilled (art 34(5) and 28 UCC) .

A BOI decision cannot be revoked upon application by the holder of the decision.

In addition BOI decisions are revoked in the following circumstances

- where they are no longer compatible with a judgment of the Court of Justice of the European Union, with effect from the date of publication of the operative part of the judgment in the Official Journal of the European Union or;
- where the Commission has adopted a decision requesting Member states to revoke a BOI decision to ensure a correct and uniform determination of the origin of goods.

The holder of the decision is notified of its revocation, this revocation takes effect on the date on which the applicant receives it or is deemed to have received it.

The revocation of a BOI decision is subject to the conditions of article 22(6) UCC relating to the right to be heard.

7. Exchange of data relating to BOI decisions

On a quarterly basis MS communicate the relevant details of the BOI decisions or send a 'nil' notification to the Commission. A 'nil' notification indicates that the MS has not issued any BOI decisions during that period.

The dates for notification by MS to the Commission are the following:

15/01/X for the data referring to BOI decisions issued or a nil notification from 1/10/X-1 until 31/12/X-1

15/04/X for the data referring to BOI decisions issued or a nil notification from 1/01/X until 31/03/X

15/07/X for the data referring to BOI decisions issued or a nil notification from 1/04/X until 30/06/X

15/10/X for the data referring to BOI decisions issued or a nil notification from 1/07/X until 30/09/X

MSs communicate the details of the BOI decision or a 'nil' notification by e-mail to TAXUD-BOI@ec.europa.eu

The communication of the relevant details takes the form of an excel file. The Commission puts an excel table indicating the data to be transmitted at the disposal of the MS.

The relevant details of the BOI decisions set out in the article 19 UCC-IA are the following:

- Member State ;
- EORI number of the holder
- BOI reference number;
- Date of start of validity;
- Date of cessation of validity;
- The classification of the goods;
- Description of the goods (preferably in English for ease of consultation by other MS);
- Legal framework;
- Import/Export
- non-preferential origin/ preferential origin
- Origin determined;

The date on which a BOI decision is revoked, annulled, or where an extended use was granted, is also a relevant element that needs to be communicated to the Commission on a quarterly basis together with the reference number of that BOI decision.

The Commission will publish the compiled data of BOI decisions issued in all MS on the CIRCABC BOI interest group.

The excel table containing the compiled data published on CIRCABC BOI interest group by the Commission can be used by the customs authorities to monitor the customs declaration according to the data element 2/3 of the annex B-UCC-DA.

According to the article 19 UCC-DA, the Commission may disclose the non confidential information of the BOI decisions on the Europa internet site. Any public disclosure of data should respect the right to personal data protection.

The following elements will be disclosed to the general public in the form of a pdf file which is accessible through the Europa website.

- Member State ;
- Date of start of validity;
- Date of cessation of validity;
- The classification of the goods ;
- Legal framework;
- non-preferential origin/ preferential origin
- Origin determined.