

Technical Guideline about Advance Rulings on customs classification and origin in North Macedonia.

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1. Introduction

The Guideline on the advance rulings for customs tariff classification and origin of goods imported and exported, serves the following objectives:

- Suggest a clear understanding about advance rulings so that traders can better apply for such a tool of facilitation and improve the legal certainty of doing international trade business,
- Offer an overview of the process for applying, being notified and using issued advance rulings and for dealing with existing divergent views and possibilities or appeal,
- Contribute to the harmonization of national and regional practices in the area of advance rulings and reinforce a fair climate of trade competition.

2. Advance Rulings on Customs tariff classification and/or origin as a major tool for International Trade Facilitation

While importing or exporting, traders face the challenge of the unexpected application of unfavorable regulations and/or the risk of liability to unforeseen customs duties and taxes at the clearance time. This has a direct impact on the expected feasibility and profitability of the business transactions, thus affecting the predictability, which, in the process of international trade operations, is vital for assuring the sustainability of the trading business.

In addition, importers and exporters may be confronted with inconsistent classification and origin decisions depending on, for example, the Customs office of import or export or the rotating allocation of appraisal officers. This leads to uncertainty in the entire trade transaction as these different decisions have an impact on the amount of duties to be paid and ultimately on the end price of the product. Also, divergences between various legal opinions from customs can lead to opportunities for integrity issues and generate conditions of unfair trade competition. This uncertainty can lead to supply chains moving to countries and locations of higher certainty, predictability and reliability, hence affecting the national trade development.

Subsequently, the potential legal disputes on tariff, valuation and origin that may be arising with the Customs authority at the moment of release or clearance, represent additional costs for the parties involved and delays for both the customs revenue collection and for the economic cycle of production and distribution of the traders.

In the context of trade facilitation, internationally accepted as a key driver of economic growth, political stability and peace, there is a need for support and improvement of trade facilitating tools so that the customs procedures on valuation, origin and classification can be applied in a predictable, transparent, and reasonable manner so as to facilitate trade and support the national competition.

A national pre-entry advance ruling programme is to provide decisions on the classification, origin or other characteristics of commodities prior to their importation or exportation. They are legally binding to the national customs administration at the time of clearance, thus adding certainty and predictability to international trade and helping traders to make informed business decisions based on legally binding rulings. Customs related Advance Rulings must allow traders, prior to the import/export transaction, to be certain as to what charges they would have to pay and what regulations they would be subject to.

In addition, through a proper implementation of the advance rulings, the uniform application of customs laws shall guarantee the equal treatment of traders in their dealings with the national customs authorities.

3. The International context of advance rulings programmes

Currently, the design and implementation of such national advance rulings programmes take place in an international context as well as a regional framework of trade facilitation tools and standards as recommended by trade and customs international institutions.

According to the World Trade Organisation (WTO), the international trade policy areas that seem to have the greatest impact on trade volumes and trade costs, on imports' and exports' performance, are the availability of trade-related information, the simplification and harmonization of documents, the streamlining of procedures and the use of automated processes. According to a survey report from the OECD, (OECD, 2011) and using 16 key indicators of trade facilitation, the combined effect of improvements in those areas reaches almost 14.5% reduction of total trade costs for low income countries, 15.5% for lower middle-income countries and 13.2% for upper middle-income countries. Regarding, the impact of trade facilitation improving measures on trade delays and costs, the OECD also identified that the advance rulings procedure was the most impactful single trade facilitation measure. According to those indicators, for advance rulings alone, the impact on trade cost was estimated to be a reduction of around 5,4%.

As a consequence, the Trade Facilitation Agreement (TFA) of the World Trade Organisation (WTO) has been put in force on 22nd February 2017. The article 3 of the TFA stipulates provisions related to advance rulings, where it requires WTO Members to issue advance rulings regarding especially the tariff classification and the preferential and non-preferential origin of goods in accordance with the provisions of that article.

Recognizing the need to promote trade facilitation with a uniform interpretation and application of the Harmonized System, the rules of origin and the WTO Valuation Agreement, the World Customs Organisation (WCO) has provided various guidelines and tools such as the chapter 9 of the Revised Kyoto Convention to assist its Members' customs administrations in the work of issuing, handling and managing the customs related advance rulings.

In 2016, CEFTA parties concluded negotiations on Additional Protocol 5 (AP5) to the CEFTA on Trade Facilitation. The AP5 is based on WTO Trade Facilitation Agreement (TFA) provisions but it takes into account the results of Trade Facilitation self-assessment of all CEFTA Parties and contains detailed information on implementation of the different measures. It also builds on the EU Acquis, on the EU agreements with EFTA states for trade facilitation and on the mutual recognition of Authorized Economic Operators (AEO). AP 5 contributes to the a) simplification of pre-clearance and clearance of goods, b) standardization of documentation requirements and c) harmonization of rules and regulations to eliminate non-tariff barriers.

Eventually, international practices of advance rulings have proven the strategic importance of this trade facilitation tool. In 1991, in the context of the European Community, the advance rulings on tariff classification, called Binding Tariff Information system and centralized in a single data basis called EBTI

(European Binding Tariff Information), was adopted by the Community Customs Code (CCC) and its legal basis have been amended over several years. More recently, on 1st May 2016, the Union Customs Code (UCC) came into effect, so the UCC is currently the legal basis for EU customs matters, introducing new strong considerations related to the issuing, handling, utilisation and management of the tariff classification and origin advance rulings.

The USA and Canada have both of them also developed a national advance rulings system for customs related matters mostly to assure a consistent application of the NAFTA through publishing and centralizing the own advance rulings in their respective systems.

4. Key specific provisions of the national AR scheme

4.1 Who may request and use an advance ruling?

There is no specific condition laid down in the legislation that the economic operator applying for advance ruling decision should be established in the North Macedonia. Even when the applicant is not established in North Macedonia, the applicant needs to identify himself through tax identification number (TIN or EDB in Macedonian) in the application (Annex 1 of the Decree on implementation of CL).

4.2 What type of advance ruling can be applied for?

The Customs Law of North Macedonia prescribes two types of advance rulings that can be applied for: Binding Tariff Information (BTI) and Binding Origin Information (BOI) for preferential and non-preferential origin.

5. Framework of the National Advance Rulings' scheme implementation

5.1 Legal Basis:

5.1.1 Tariff classification – Binding Tariff Information (BTI)

Legal base for application of Binding Tariff Information (BTI) are Customs Law (Art. 10 and 11) and Decree for implementation of Customs Law (Art. 6-10).

5.1.2 Origin – Binding Origin Information (BOI)

Legal base for application of Binding Origin Information (BOI) are Customs Law (Art. 10 and 11) and Decree for implementation of Customs Law (Art. 6-10).

5.2 Organisation:

5.2.1 Tariff classification – Binding Tariff Information (BTI)

The focal contact service within the Customs Administration of North Macedonia (NMCA), acting and involved in the process of treating a request for binding ruling, of analyzing and deciding the tariff of the

goods, of calling for a laboratory analysis, of appeal, and in charge of process of issuing BTI, is **Sector of Customs System, Department for customs tariff and TARIC**.

5.2.2 Origin – Binding Origin Information (BOI)

The focal contact service within the Customs Administration of North Macedonia (NMCA), acting and involved in the process of treating a request for binding ruling, of analyzing and deciding origin of the goods, of calling for a laboratory analysis, of appeal, and in charge of process of issuing the BOI, is **Sector of Customs System, Department for Value and Origin of goods**.

5.3 Processes:

5.3.1 Tariff classification – Binding Tariff Information (BTI)

In accordance with Art. 11 of the Customs Law, the Customs Administration of North Macedonia issues Binding Information on the classification of goods at the Customs Tariff, which is given in writing, and it has the force of the decision issued in the administrative procedure.

The process sequences for the issuance of BTIs include the following:

- BTI shall be issued on the basis of a written request form submitted by the interested legal person, where the request:
 - Should be submitted on the form from Annex 1 which is an integral part of the Decree for implementation of Customs Law, which can be downloaded on the website of NMCA: www.customs.gov.mk
 - Should be considered complete and regular only if it contains all the information provided in Article 7, paragraph 3, items a) – j) of the Decree for implementation of Customs Law
 - Should refer to only one type of goods.
- Depending on the goods, if required, the manufacturer's certificates (original and translation), technical documentation, photo prospectus, samples or other documents available, containing data necessary for the decision to classify the goods at the Customs tariffs should be submitted beside request.
- If the NMCA determines that the request is not complete, as it does not contain all the information required for the issuance of binding information on the classification, it may request from the applicant to submit the missing information.
- Deadline for BTI begins to run from the moment the NMCA has all the necessary information for issuing.
- If the BTI could not be issued within three months from the date of acceptance of the proper request, the NMCA shall inform the applicant of the reasons for the delay and shall determine the deadline in which NMCA considers it to be issued.
- BTIs are issued on the form, which is contained in Annex 2 of Decree for implementation of Customs Law
- BTI is valid for three years from the date of issue.
- The list of the issued BTI can be found on the website of the NMCA: www.customs.gov.mk

5.3.2 Origin – Binding Origin Information (BOI)

In accordance with Art. 11 of the Customs Law, the Customs Administration of North Macedonia issues Binding Origin Information, which is given in writing, and it has the force of the decision issued in the administrative procedure.

The process sequences for the issuance of BOIs include the following:

- BOI shall be issued on the basis of a written request form submitted by the interested legal person, where the request:
 - Should be submitted on the form from Annex 1 which is an integral part of the Decree for implementation of Customs Law, which can be downloaded on the website of NMCA: www.customs.gov.mk
 - Should be considered complete and regular only if it contains all the information provided in Article 7, paragraph 4, items a) – i) of the Decree for implementation of Customs Law
- Should refer to only one type of goods and one set of circumstances which define the origin of goods.
- BOI is issued in written form given in the Annex 3 of the Decree for implementation of Customs Law.
- BOI is valid within three years from the date of its issuance.
- BOI may cease to be valid even before the expiration of this deadline, in the cases prescribed by Article 11, paragraphs 4-6 of the Customs Law and the corresponding provisions of the Decree for implementation of Customs Law.

5.4 Procedures:

5.4.1 Tariff classification – Binding Tariff Information (BTI)

- Application for BTI Decision (Available in Annex 1 of the Decree for implementation of Customs Law) is submitted of a paper-based application. The application should be registered and a reference number should be assigned to the application. Every receipt and registration should be notified to the applicant (date of receipt and reference number assigned by the NMCA).
- The description of the goods must be clear, precise and detailed in order to identify the goods that are the subject of classification.
- 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 date of issue of the documents attached to the application.
- The NMCA shall notify the applicant, by official letter or by e mail, that the request is non-conforming or incomplete and that applicant needs to provide necessary additional information. This additional information needs to be provided within reasonable time limit. In this case, the date of acceptance of the application is the date when the last data was received by the NMCA.
- If the application does not comply with prescribed conditions the NMCA will not accept it and inform the applicant.
- The NMCA shall issue binding information in emergency procedure. BTI shall be issued within 90 days after the receipt date of orderly request. Where it was not possible to issue a binding

information about classification of goods into the Customs Tariff Schedule within three months after the receipt date of orderly request, the NMCA shall notify the applicant about the reasons for delay and set a timeline within which the information shall be issued.

- Where for determination of factual situation for the purposes of issuance of binding information, chemical, physical, technological examination or any other examination of goods is required, and it is not possible to conduct in the customs laboratory, the NMCA shall submit the samples of goods to a suitable professional organization so that the required examination could be conducted.
- Where special costs are incurred by Customs, in particular as a result of analyses or expert reports on goods, or the return of the goods to the applicant, he may be charged the relevant amount.
- The BTI shall be annulled where it is based on inaccurate or incomplete data supplied by the applicant.
- The BTI shall become invalid:
 - where the rules in force are adopted or amended and the information no longer conforms to them;
 - where the information it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 19 of this Law:
 - at national level, by reason of amendments and supplements to the explanatory notes to the nomenclature of the Customs Tariff or by a judgment passed by a competent court and
 - at international level, by reason of a classification opinion or an amendment or supplement of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the World Customs Organisation established in 1952 under the name 'the Customs Cooperation Council' and
 - where the information is revoked or amended, provided that the revocation or amendment is notified to the holder of the information.
- In cases where the binding information on tariff classification is no longer in accordance with the regulation or in line with the information of the Ministry of Finance, the given information shall become invalid as of the day of enforcement or implementation of the regulation adopted or its interpretation.
- The holder of BTI decision has to use it whenever an import or export transaction respectively, is performed of goods which are subject of the BTI decision. The holder of BTI decision present the BTI decision in support of the customs declaration.
- The holder of BTI who does not agree with the issued binding information may, within 8 days after the binding information handover date, submit to the Ministry of Finance its objection in writing for binding information about classification of goods into the Customs Tariff Schedule – in respect of the classification of the goods into the Customs Tariff Schedule, namely the underlying reasons for such classification.
- The objection shall not cause suspension of the implementation of the decision. By way of derogation from previous sentence, the customs authority may suspend the implementation of such a decision completely or partially, for a period that may not exceed 180 days, where sufficient proof and facts are submitted that indicate that the objection is justified or that

greater damage is to be feared for the party with the carrying out of the decision, while the suspension is justified. Where the decision relates to the calculation of import or export duties, suspension of implementation of that decision may be approved only provided the duties are subject to the provision of appropriate guarantee.

- In BTI, the data on holder and commercial name of goods are confidential and they are not published when posting BTI on the NMCA web site.

5.4.2 Origin – Binding Origin Information (BOI)

- Application for BOI Decision (available in Annex 1 of the Decree for implementation of Customs Law) is submitted of a paper-based application. The application should be registered and a reference number should be assigned to the application. Every receipt and registration should be notified to the applicant (date of receipt and reference number assigned by the NMCA).
- The description of the goods must be clear, precise and detailed in order to identify the goods that are the subject of classification.
- 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 date of issue of the documents attached to the application. The NMCA shall notify the applicant, by official letter or by e mail, that the request is non-conforming or incomplete and that applicant needs to provide necessary additional information. This additional information needs to be provided within reasonable time limit. In this case, the date of acceptance of the application is the date when the last data was received by the NMCA.
- If the application does not comply with prescribed conditions the NMCA will not accept it and inform the applicant.
- The NMCA shall issue binding information in emergency procedure. BOI shall be issued within 150 days after the receipt date of orderly request. Also, where it was not possible to issue a BOI within three months after the receipt date of orderly request, the NMCA shall notify the applicant about the reasons for delay and set a timeline within which the information shall be issued.
- Where for determination of factual situation for the purposes of issuance of binding information, chemical, physical, technological examination or any other examination of goods is required, and it is not possible to conduct in the customs laboratory, the NMCA shall submit the samples of goods to a suitable professional organization so that the required examination could be conducted.
- The BOI shall be annulled where it is based on inaccurate or incomplete data supplied by the applicant.
- The binding information regarding the origin of goods shall become invalid:
 - where rules are adopted or amended or an agreement is concluded by the Republic of North Macedonia and the information no longer conforms to the rules in force;
 - where it is no longer compatible with:
 - at national level, the explanatory notes or opinions adopted for the purposes of interpreting rules or with a judgment of a competent court and
 - at international level, 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 and
 - where it is revoked or amended provided the holder is informed of such revocation or amendment.

- Where a regulation is amended or an international agreement is concluded, and the binding information is no longer in accordance with the regulations or is not in accordance with the interpretation by the ministry, the binding information shall cease to be valid on the date when the adopted regulation, international agreement or interpretation takes effect, or on the date it becomes effective.
- The holder of BOI decision must use it whenever an import or export of goods respectively, is performed which are subject of the BOI decision. The holder of BOI decision present the BOI decision in support of the customs declaration.
- Where special costs are incurred by Customs, in particular as a result of analyses or expert reports on goods, or the return of the goods to the applicant, he may be charged the relevant amount.
- The holder of BOI who does not agree with the issued binding information may, within 8 days after the binding information handover date, submit to the Ministry of Finance its objection in writing for binding information about origin of goods – in respect of the determination of origin of goods, namely the underlying reasons for such determination of origin and classification of goods into the Customs Tariff Schedule.
- In BOI data on holder, commercial name of goods and value of used materials are confidential.

5.5 Communication

The North Macedonia Customs Administration has initiated channels and sources of information on advance rulings through the customs web site, chambers, ministries, programmed information seminars, public /private dialogue sessions, official publication, guidelines, and others.

As a tool for treating the request for rulings decisions the NMCA is consulting and using Decisions on classification of specific goods adopted by the HS Committee of the World Customs Organisation but also the Decisions on classification of specific goods adopted by the European Commission, published in their Official Journal and the respective databases EBTI (European Binding Tariff Information) and ECICS (European Customs Inventory of Chemical Substances).

5.6 Procedures for modification, invalidation and revocation of an issued ruling

Pursuant to Article 11 of the Customs Law, the binding information (BTI and BOI) shall be annulled where it is based on inaccurate or incomplete data supplied by the applicant.

BTI shall become invalid:

- where the rules in force are adopted or amended and the information no longer conforms to them;
- where the information it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 19 of this Law:
 - at national level, by reason of amendments and supplements to the explanatory notes to the nomenclature of the Customs Tariff or by a judgment passed by a competent court and
 - at international level, by reason of a classification opinion or an amendment or supplement of the explanatory notes to the Nomenclature of the Harmonized Commodity

Description and Coding System, adopted by the World Customs Organisation established in 1952 under the name 'the Customs Cooperation Council' and

- where the information is revoked or amended, provided that the revocation or amendment is notified to the holder of the information.

In cases where the BTI is no longer in accordance with the regulation or in line with the information of the Ministry of Finance, the given information shall become invalid as of the day of enforcement or implementation of the regulation adopted or its interpretation.

BOI shall become invalid:

- where rules are adopted or amended or an agreement is concluded by the Republic of Macedonia and the information no longer conforms to the rules in force;
- where it is no longer compatible with:
 - at national level, the explanatory notes or opinions adopted for the purposes of interpreting rules or with a judgment of a competent court and
 - at international level, 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 and
- where it is revoked or amended provided the holder is informed of such revocation or amendment.

The objection shall not cause suspension of the implementation of the decision. By way of derogation from previous sentence, the customs authority may suspend the implementation of such a decision completely or partially, for a period that may not exceed 180 days, where sufficient proof and facts are submitted that indicate that the objection is justified or that greater damage is to be feared for the party with the carrying out of the decision, while the suspension is justified. Where the decision relates to the calculation of import or export duties, suspension of implementation of that decision may be approved only provided the duties are subject to the provision of appropriate guarantee.

5.7 Right of appeal from an adverse decision of an advance ruling

Administrative protection of participants in the customs procedure is enabled by the Law on Administrative Procedure, thus the holder of the binding information may file a complaint with the Ministry of Finance within 8 days after the binding information handover date.

5.8 Right to call for justice at tribunal jurisdictions

Judicial protection of participants in the customs procedure is enabled by the Law on Administrative Dispute, thus the holder of the binding information may initiate an administrative dispute before the Administrative Court of North Macedonia against decision of the Ministry of Finance.

5.9 Procedure to follow when traders are aware of divergent binding opinions for identical products

An economic operator can inform NMCA that there are divergent binding opinions for identical product, in which case NMCA will resolve the matter and annul or revoke wrong binding information.

Also, NMCA can ex officio proceed to annul or revoke wrong binding information.

5.10 Possibility of consultation of previously issued rulings

Business operators and related actors may consult the BTIs and BOIs previously issued by the North Macedonia customs administration for information purpose.

BTIs and BOIs **cannot** be invoked at clearance time by the importer/ exporter or his agent if not the ruling's holder himself.

5.11 Treatment of confidential information

An applicant in application for binding information lists all data that should be treated as confidential data and gives the consent for the submitted data to be kept in the NMCA archive.

Annexes:

- Annex 1 of the Decree for implementation of Customs Law,
- Annex 2 of the Decree for implementation of Customs Law,
- Annex 3 of the Decree for implementation of Customs Law,
- FAQ (Frequently Asked Questions)

ANNEX 1

FAQ

- **What is an advance ruling?**

Advance rulings are binding decisions by Customs at the request of the person concerned on specific particulars in relation to the intended import or export of goods. Advance rulings facilitate the declaration and consequently the release and clearance process, as assessments in relation with the goods have already been made in advance ruling.

- **What type of advance ruling it is possible to apply for?**

In North Macedonia it is possible to apply for Binding Tariff Information (BTI) and Binding Origin Information (BOI).

- **What is the difference between a binding advance ruling and a legal customs opinion?**

Binding advance ruling has the force of the decision made in the administrative procedure, while a legal customs opinion do not have the power of the solution. Therefore, when requesters disagree with customs' binding information, they have right to appeal.

- **What is the advantage of an advance ruling?**

Advance rulings facilitate the declaration and consequently the release and clearance process, as assessments in relation with the goods have already been made in advance ruling.

- **How to apply for an advance ruling?**

Applications for BTI and BOI decision (Annex 1 of the Decree for implementation of CL) are submitted of a paper-based application. The application should be registered and a reference number should be assigned to the application. Every receipt and registration should be notified to the applicant (date of receipt and reference number assigned by the NMCA).

- **What does it cost to apply for an advance ruling?**

In North Macedonia applicant should pay a 350 MKD administrative fee for advance ruling to be issued.

- **What happens when a ruling is issued?**

NMCA delivers issued BTI or BOI to holder, who can invoke an advance ruling at time and place of clearance.

- **How and when the advance ruling decision is notified?**

Binding Tariff Information (BTI) is published on the NMCA web site. In BTI data on holder and commercial name of goods are confidential and they are not published when posting BTI on the NMCA web site.

- **How to use a BTI ruling?**

The holder of BTI or BOI decision has to use it whenever an import or export transaction respectively, is performed of goods which are subject of the BTI or BOI decision. The holder of BTI or BOI decision present the paper decision in support of the paper customs declaration.

- **Who can consult historical advance rulings?**

Customs officers from Department for customs tariff and from Department for value and origin of goods, which are in charge of process of issuing BOI, can consult historical advance rulings.

- **Who can invoke an advance ruling at time and place of clearance?**

The advance ruling holder may refer to the issued binding information if, in the procedure with binding information on the classification of goods in the Customs Tariff, he / she proves to the customs authority that the goods in question correspond fully to the goods specified in the proposed binding information.

The holder of BOI decision has to use it whenever an import or export transaction respectively, is performed of goods which are subject of the BOI decision. The holder of BOI decision present the paper BOI decision in support of the paper customs declaration.

- **When might an advance ruling not or no longer be valid?**

An advance ruling shall be annulled where it is based on inaccurate or incomplete data supplied by the applicant.

- The BTI shall become invalid: where the rules in force are adopted or amended and the information no longer conforms to them; where the information it is no longer compatible with the interpretation of one of the nomenclatures referred to in Article 19 of this Law:
 - at national level, by reason of amendments and supplements to the explanatory notes to the nomenclature of the Customs Tariff or by a judgment passed by a competent court and
 - at international level, by reason of a classification opinion or an amendment or supplement of the explanatory notes to the Nomenclature of the Harmonized Commodity Description and Coding System, adopted by the World Customs Organisation established in 1952 under the name 'the Customs Cooperation Council' and
 - where the information is revoked or amended, provided that the revocation or amendment is notified to the holder of the information.
- The BOI shall become invalid: where rules are adopted or amended or an agreement is concluded by the Republic of Macedonia and the information no longer conforms to the rules in force; where it is no longer compatible with:
 - at national level, the explanatory notes or opinions adopted for the purposes of interpreting rules or with a judgment of a competent court and

- at international level, 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 and where it is revoked or amended provided the holder is informed of such revocation or amendment.

- **What if applicants do not agree with an advance ruling?**

The holder of the binding information has the right to object to NMCA within 8 days from the date of issuing of the binding information.

- **What about changes to advance rulings?**

Advance rulings may not be amended.