

*What Every Member of the
Trade Community Should Know About:*

Basic Forms of Non- Ferrous Metals



**U.S. Customs and
Border Protection**

U.S. CUSTOMS and BORDER PROTECTION

AN INFORMED COMPLIANCE PUBLICATION

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NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled “Basic Forms of Non-Ferrous Metals”. It provides guidance regarding the classification of these items. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Part 177, CBP Regulations, (19 CFR Part 177), or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to U.S. Customs and Border Protection, Office of International Trade, Executive Director, Regulations and Rulings, 90 K Street N.E. 10th floor, Washington, D.C. 20229-1177.

Harold Singer
Acting Executive Director, Regulations and Rulings
Office of International Trade

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I. INTRODUCTION

Non-Ferrous Metals

Non-ferrous metals (*i.e.*, base metals not composed primarily of iron or steel) are classified under Chapters 74 through 81 of the Harmonized Tariff Schedule of the United States (HTSUS). They consist of the following base metals:

| <u>Chapter</u> | <u>Metal</u> |
|----------------|--|
| 74 | Copper (Cu) |
| 75 | Nickel (Ni) |
| 76 | Aluminum (Al) |
| 78 | Lead (Pb) |
| 79 | Zinc (Zn) |
| 80 | Tin (Sn) |
| 81 | Tungsten (Wolfram)(W), Molybdenum (Mo), Tantalum (Ta), Magnesium (Mg), Cobalt (Co), Bismuth (Bi), Cadmium (Cd), Titanium (Ti), Zirconium (Zr), Antimony (Sb), Manganese (Mn), Beryllium (Be), Chromium (Cr), Germanium (Ge), Vanadium (V), Thallium (Tl), Gallium (Ga), Hafnium (Hf), Indium (In), Niobium (Nb) (Columbium (Cb)) and Rhenium (Re). |

Unwrought Products

All of the HTSUS chapters that provide for non-ferrous metals include headings for “unwrought” products. The term “unwrought” is defined in Section XV, Additional U.S. Note 1, HTSUS, as follows:

For the purposes of this [Section XV], the term “unwrought” refers to metal, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes,¹ briquettes, cubes, sticks, grains, sponge, pellets, flattened pellets, rounds, rondelles, shot and similar manufactured primary forms, but does not cover rolled, forged, drawn or extruded products, tubular products or cast or sintered forms which have been machined or

¹ Anodes that are cast to be further refined by electrolysis and are imported as simple, one-piece cast items are classified as unwrought metals, even if they have cast lugs for suspending. See ENs 74.02 and 75.02. For example, if the anode were used for an electroplating process, it would be classified as an article of base metal rather than an unwrought product. See ENs 74.19, 75.08 and 79.07. This type of anode would generally be of a high purity and fitted or prepared with hooks. On the other hand, if the anode is used for cathodic protection, and it is a finished product, then its classification is determined by its metal component. For example, if it is made of zinc, the good would be classified in HTSUS heading 7907; if of aluminum, in heading 7616, HTSUS, etc. See EN 79.07 and New York Ruling Letter (NY) 815325 (October 12, 1995.) However, please note that if the anode is made of magnesium, it would be considered a part in heading 8543, HTSUS. See Section XVI, Note 2; CBP Ruling Letter NY A80265 (February 28, 1996) and CBP Ruling Letter HQ 965250 (November 20, 2001).

processed otherwise than by simple trimming, scalping or descaling.²

It is important to note that the term “unwrought” is not tied to a particular manufacturing process – such as hot rolling or forging – but rather, it refers to a product at an intermediate stage of the manufacturing process (i.e., forms that have undergone some processing, but must undergo further processing before they appear in an eventual final product). See Anval Nyby Powder AB v. United States, 20 CIT 608, 616 (1996). See also CBP Ruling HQ H027436 (April 16, 2009) (titanium billets classified in subheading 8108.20.00, HTSUS, as unwrought titanium because they had not been worked into a finished condition).

Powders of metals are considered unwrought. For tariff purposes, a powder is defined as “a product of which 90 percent or more by weight passes through a sieve having a mesh aperture of 1 mm.” See Section XV, Note 8(b), HTSUS.

Alloys

The classification of alloys (other than ferroalloys and master alloys as defined in chapters 72 and 74) is subject to Section XV, Notes 5 and 6. Section XV, Note 5 provides as follows:

5. Classification of alloys (other than ferroalloys and master alloys as defined in chapters 72 and 74):
 - (a) An alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals.
 - (b) An alloy composed of base metals of this section and of elements not falling within this section is to be treated as an alloy of base metals in this section if the total weight of such metals equals or exceeds the total weight of the other elements present. See Note 5(a), above.
 - (c) In this section the term “alloys” includes sintered mixtures of metal powders, heterogeneous intimate mixtures obtained by melting (other than cermets) and intermetallic compounds.

Section XV, Note 6 provides:

Unless the context otherwise requires, any reference in the tariff schedule to a base metal includes a reference to alloys which by virtue of Note 5 above, are to be classified as alloys of that metal.

² The term “manufactured primary form” was defined in Anval Nyby Powder AB v. United States, 20 CIT 608, 616 (1996), as “[f]orms that have undergone some processing but must undergo further processing before they appear in an eventual final product.”

Given Note 5(a), it follows that the classification of an alloyed product other than the ferroalloys (Ch. 72) and the master alloys (Ch. 74), will vary depending on the metal which predominates by weight. For example, if an alloyed product consists of 36% metal “A”, 34% metal “B”, and 30% metal “C”, by weight, then that item would be classified under the heading that provides for metal “A”, because it predominates by weight over each of the other metals.

General Explanatory Note (A) to Section XV [Alloys of Base Metals] states that alloys of base metals with as much as 2% (or more) by weight of a precious metal (silver, gold and platinum) are not classified in a chapter for non-ferrous metals. Such items, along with any base metal item clad with precious metals, are classified within Chapter 71. The Note also indicates that alloys of base metals of Section XV that are combined with non-metals or with the metals of heading 2805, HTSUS, are classified as alloys of base metal provided that the total weight of said base metals equals or exceeds the total weight of the other elements present. They are otherwise generally classified in heading 3824, HTSUS.

Note that the addition of alloying elements to a pure metal does not necessarily render it an alloy. The percentage of additive that would change the base metal from “not alloyed” to “alloyed” differs from chapter to chapter, and is set forth in the relevant chapter notes.

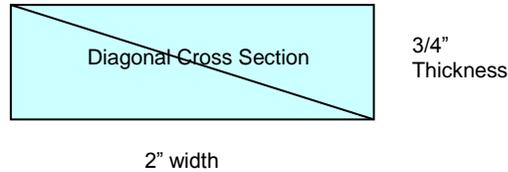
II. BASIC FORMS OF NON-FERROUS METAL PRODUCTS

Non-ferrous metal products are generally imported in the following basic forms: (i) bars and rods; (ii) plates, sheets, strip and foil; profiles; and (iii) tubes and pipes and wire.

Bars and Rods

Bars and rods are rolled, extruded, drawn or forged products, not in coils, which have a uniform solid cross section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including ‘flattened circles’ and ‘modified rectangles’, of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). See Note 1(d) to Chapter 74, HTSUS, and Note 1(a) to Chapter 75, Chapter 76, Chapter 78, Chapter 79, Chapter 80, and, Subheading Note 1 to Chapter 81, HTSUS.

Bars and rods are products with a rectangular (including square), triangular or polygonal cross section that have corners rounded along their whole length. If the product has a rectangular cross sectional shape (including “modified rectangular”), the thickness must exceed 1/10th of the width (i.e. the thickness must be greater than 0.1 x the width or the width equal to or greater than 10 times the thickness).



Using the example pictured above, if the rolled product is of a uniform solid rectangular cross section that is $\frac{3}{4}$ " (0.75 inch) thick, 2 inches wide is not in coiled form, the product is classified as a bar or rod.

$$0.1 (1/10\text{th}) \times 2.0 (\text{width}) = 0.2$$

The thickness (0.75) is > 0.2

$$0.75 \times 10 = 7.5$$

The width (2") < 7.5

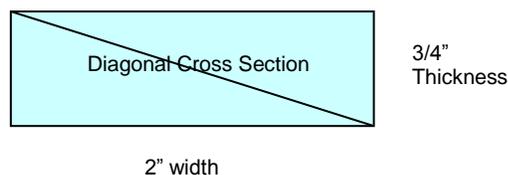
The expression "bars and rods" also covers cast or sintered products, of the same forms and dimensions, which have been subsequently worked after productions (otherwise than by simple trimming or descaling) and does not assume the character of articles or products of other headings. Non-ferrous bars and rods are never in coiled form.

Wire

The term "wire" refers to rolled, extruded, or drawn products, in coils, which have a uniform solid cross section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including 'flattened circles' and 'modified rectangles', of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). See Note 1(f) to Chapter 74, HTSUS, Note 1(c) to Chapter 75, Chapter 76, Chapter 78, Chapter 79, Chapter 80, and Subheading Note 1 to Chapter 81, HTSUS.

Products with a rectangular (including square), triangular or polygonal cross section may have corners rounded along their whole length.

The thickness of such products which have a rectangular (including "modified rectangular") cross section must exceed one-tenth of the width.



In the example pictured above, if the rolled product is a single wire of a uniform solid rectangular cross section that is $\frac{3}{4}$ " (0.75 inch) thick, 2 inches wide, and is in coiled form, the product is classified as wire.

$$0.1 (1/10\text{th}) \times 2.0 (\text{width}) = 0.2$$

$$0.75 \times 10 = 7.5$$

The thickness (0.75) is > 0.2

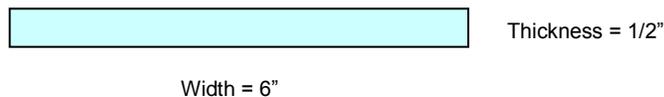
The width (2") < 7.5

Types of wire include the following:

| | |
|--------------------------|--|
| Strand: | Two or more wires twisted together. |
| Rope and Cable: | Two or more strands twisted together. |
| Ribbon: | Classification depends on the dimensions. If it is in coiled form, it may be a wire, sheet or foil product. |
| Insulated electric wire: | This is a product of heading 8544, HTSUS. |
| Welding Wire: | If coated with metal, it is classified based upon the constituent wire material. If coated or cored with flux material, it is classified within heading 8311, HTSUS. |

Plates, Sheets, Strip, and Foil

Plates, sheets, strip and foil are flat-surfaced products (other than unwrought products), coiled or not, of solid rectangular (other than square) cross section with or without rounded corners (including "modified rectangles" of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness which are either: of rectangular (including square) shape with a thickness not exceeding one tenth of the width [see diagram below], or of a shape other than rectangular or square, of any size, provided they do not thereby assume the character of articles or of products of other headings. See Note 1(g) to Chapter 74, HTSUS, Note 1(d) to Chapter 75, Chapter 76, Chapter 78, Chapter 79, Chapter 80, and, Subheading Note 1 to Chapter 81, HTSUS.



For example, if the product pictured above is a product with a uniform solid rectangular cross section (not unwrought) that is $\frac{1}{2}$ " (0.50 inch) thick and 6 inches wide, then product is classified as plate, sheet or strip (it is too thick to be foil, as discussed below).

$0.1 (1/10\text{th}) \times 6.0 (\text{width}) = 0.6$
The thickness (0.5) is < 0.6

$0.50 \times 10 = 5.0$
The width (6") > 5.0

Non-ferrous plates, sheets, strip and foil products may have patterns such as grooves, ribs, checkers, tears, buttons, and lozenges. They can also be perforated, corrugated, polished or coated, provided they do not assume the character of articles or products of other headings.

Foil

Foil products must also satisfy certain dimensional requirements. Copper (Ch. 74), nickel (Ch. 75), lead (Ch. 78) and zinc (Ch. 79) foil cannot be thicker than 0.15 mm. Aluminum (Ch. 76) and tin (Ch. 80) foil cannot be thicker than 0.2 mm. When determining the thickness of a foil, any type of coating such as varnish, lacquer, paint, etc., should be included in the measurement. The thickness of the backing material need not be included.

Backed Foil:

Backed Foil is a separately identifiable type of foil within the subheadings of copper and aluminum. EN 74.10 explains that backed foil can be “backed with paper, paperboard, plastics or similar backing material,” is “used for making fancy goods,” and is generally done for the “convenience of handling or transport or in order to facilitate subsequent treatment, etc.”

Coated Foil:

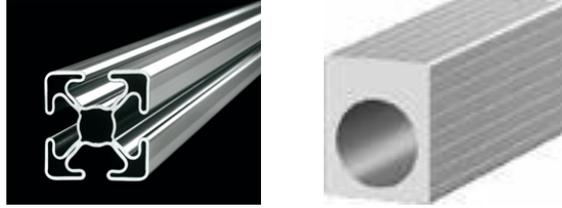
Coated Foil is not backed foil. It is measured and classified differently than backed foil but remains classified within the applicable foil heading. A clarification is noted within the applicable ENs indicating that coatings of varnish, etc., would be included in the thickness measurement of the foil, however, any backings, such as paper, would be excluded from thickness measurement of the foil.

Profiles

Profiles are rolled, extruded, drawn, forged or formed products, coiled or not, of a uniform cross section along their whole length, which do not conform to any of the definitions of bars, rods, wire, plates, sheets, strip, foil, tubes or pipes. The expression also covers cast or sintered products, of the same forms, which have been subsequently worked after production (other than by simple trimming or descaling), provided that they have not taken on the character of articles or products of other headings. See Note 1(e) to Chapter 74, HTSUS, Note 1(b) to Chapter 75, Chapter 76, Chapter 78, Chapter 79, Chapter 80, and, Subheading Note 1 to Chapter 81, HTSUS.

Hollow profile:

Hollow profile is a tariff term specifically provided for in Chapters 74 and 76. To be classified as a hollow profile, the article must meet the definition of a profile, and would need to have a completely enclosed void along a cross section of the profile, as those pictured below.



In other chapters, hollow profiles such as these would simply be classified as profiles.

Tubes and Pipes

Tubes and pipes are hollow products, coiled or not, which have a uniform cross section with only one enclosed void along their entire length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons, as long as it has a uniform wall thickness.

Products with a rectangular (including square), equilateral triangular or regular convex polygonal cross section, which may have rounded corners along the entire length, are also taken to be tubes and pipes provided the inner and outer cross sections are concentric and have the same form and orientation.

The tubes and pipes of the foregoing cross sections may be polished, coated, bent, threaded, drilled, waisted, expanded, cone-shaped or fitted with flanges, collars or rings. See Note 1(h) to Chapter 74, HTSUS Note 1(e) to Chapter 75, Chapter 76, Chapter 78, Chapter 79, Chapter 80, and, Subheading Note 1 to Chapter 81, HTSUS.

Regardless of chemical composition, all metallic flexible tubing should be classified in heading 8307, HTSUS.

Pipe Fittings:

To be classified as a pipe fitting, the item must be capable of connecting the bores of two tubes; connecting a tube to some other apparatus; or closing the tube aperture. It must also form an integral part of the bore. Examples of pipe fittings include couplings, flanges, elbows, sleeves, reducers and complete union fittings. Fittings equipped with taps, cocks, valves, etc., and articles used for installing or supporting pipes or tubes (hangers, stays, etc.) that do not form an integral part of the bore are not classified as pipe fittings.

Bolts, nuts, screws, etc., made of steel that are suitable for use in assembly of tube or pipe fittings are classified under heading 7318, HTSUS.

Waste and Scrap

The term “waste and scrap” refer to “metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons.” See Note 8(a) to Section XV. EN 72.04(A), which applies mutatis mutandis to the relevant base metal headings, provides in pertinent part that “... the heading excludes articles which, with or without repair or renovation, can be re-used for their former purposes or can be adapted for other uses; it also excludes articles which can be refashioned into other goods without first being recovered as metal.”

For more information, please consult CBP’s Informed Compliance Publication on Waste and Scrap as it Relates to Base Metals of Chapter 81 (March 2010), available at <http://www.cpb.gov>. Although that ICP only discusses the classification of base metals of Chapter 81, HTSUS, the principles it discusses apply to other base metals.

III. QUESTIONS TO ASK

The following information is required to classify a non-ferrous metal product:

What is the composition of the product by weight?

Which manufacturing processes are used to create the product? (e.g., is it rolled, drawn, extruded, forged, tubular, cast, sintered, machined, etc.)?

In what form is the product imported (e.g., in billets, plates, etc.)?

Is the product imported in coils?

What are the dimensions of the product?

IV. ANTIDUMPING AND COUNTERVAILING DUTIES

It is possible that some antidumping and countervailing duty orders might cover non-ferrous metal products. Any current AD/CVD orders covering non-ferrous metal products can be obtained from the U.S. International Trade Commission’s website, available at <http://www.usitc.gov>. The link to “Antidumping and Countervailing Duty” under “Investigations” provides a search mechanism for current orders by country, date and product group. In addition, AD/CVD deposit and liquidation messages are available using the AD/CVD search tool at the U.S. Customs and Border Protection website, available at <http://www.cbp.gov>. Additional information may be obtained by contacting the Office of Field Operations at your local port of entry.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-888-NO-DROGA



U.S. Customs and Border Protection

Visit our Internet web site: <http://www.cbp.gov>

