

U.S. Customs and Border Protection

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES:

Application for Overflight Program/Advance Notice for Aircraft Landings

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0087.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Overflight Program/Advance Notice for Aircraft Landings. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 26, 2009, to be assured of consideration.

ADDRESS: Direct all written comments to the U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor Washington, D.C. 20229-1177

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor Washington, D.C. 20229-1177, Tel. (202) 325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Overflight Program/Advance Notice for Aircraft Landings

OMB Number: 1651-0087

Form Number: CBP Forms 442 and 442A

Abstract: CBP Forms 442 and 442A are used by private flyers to obtain a waiver for landing requirements and normal CBP processing at designated airports along the southern border. The CBP regulations also require owners and operators of some commercial aircraft to request CBP permission to land at least 30 days before the first flight date. In addition, there is a requirement for pilots of private aircraft to submit notice of arrival and notice of departure information through Advance Passenger Information System (APIS) manifests no later than sixty (60) minutes prior to departure for flights arriving in to or departing from the United States.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension with change to the burden hours due to better estimates by CBP regarding time per response.

Affected Public: Individuals

Estimated Number of Respondents: 760, 655

Estimated Time Per Response: 1.1 minutes

Estimated Total Annual Burden Hours: 13,928

Dated: April 20, 2009

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

BROKER SELF-ASSESSMENT OUTREACH PILOT

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces the commencement of the Broker Self-Assessment (BSA) Outreach Pilot (BSA Pilot). The BSA pilot is voluntary and is intended to be a partnership between U.S. Customs and Border Protection (CBP) and participating customs brokers. The primary goal of the pilot is to facilitate a higher level of broker compliance with CBP laws and regulations. In this regard, the BSA Pilot will allow for customs brokers to ascertain voluntarily with CBP how well they comply with their broker requirements, provide recognition and support to participating brokers, and facilitate legitimate trade so that CBP can focus on higher-risk trade enforcement issues. Under this program test, participating customs brokers will update and improve internal controls, perform periodic testing of these internal controls, and disclose to CBP deficiencies discovered through the testing. Any licensed customs broker, who is a member of the Customs-Trade Partnership Against Terrorism (CTPAT) and who meets the other eligibility requirements of the pilot, may apply to participate. After closure of the application period and review of the applications received, CBP will select a limited number of customs brokers to participate in the BSA Pilot. This document sets forth information on the application process and the requirements for participation in the program test.

DATES: Application to participate in this pilot will be accepted from April 27, 2009 through May 27, 2009.

FOR FURTHER INFORMATION CONTACT: Anita Harris, Trade Liaison, Partnership Programs Branch, Trade Facilitation and Administration Division, Office of International Trade, U.S. Customs and Border Protection, (202) 863-6069, BrokerSelfAssessment@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:**Background**

U.S. Customs and Border Protection (CBP) is strongly committed to encouraging members of the trade community to meet the responsibilities of complying with applicable trade laws and regulations. In furtherance of this goal, CBP announced the Importer Self-Assessment (ISA) program on June 17, 2002, in a general notice published in the **Federal Register** (67 FR 41298). The ISA program is a trade facilitation partnership program that recruits trade compliant companies in order to reduce both CBP and company re-

sources required during entry and post entry, and to build cooperative relationships that strengthen compliance with trade laws. The ISA program is based on the premise that importers with strong internal controls achieve the highest level of compliance with CBP laws and regulations, and provides a means to recognize and support importers that have implemented such systems. The ISA program has successfully facilitated trade by strengthening importer compliance with CBP laws and regulations and by building cooperative relationships between CBP and participating importers. In addition, CBP announced the Importer Self-Assessment Product Safety Pilot (ISA-PS) program on October 29, 2008, in a general notice published in the **Federal Register** (73 FR 64356). The ISA-PS program adopted the self-assessment principles of the ISA program and has allowed for a voluntary approach to product safety compliance.

Description of the Broker Self-Assessment Outreach Pilot

Overview

Based on the effectiveness of the ISA program, CBP is initiating a new outreach initiative called the Broker Self-Assessment (BSA) Outreach Pilot (BSA Pilot). This voluntary pilot will allow CBP to assist and facilitate broker compliance with their existing statutory and regulatory requirements under 19 U.S.C. 1641 and part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111).¹ In this respect, CBP recognizes the importance of customs brokers because they serve as intermediaries between CBP and the trading community and because they have played a significant role in the success of various CBP commercial initiatives, automation efforts, and security programs.

The BSA program is intended to be a partnership program between CBP and licensed customs brokers that will build cooperative relationships and ultimately strengthen broker compliance with trade laws. The BSA program will utilize many of the self-assessment principles of the ISA program while incorporating new methodologies that will provide a more flexible approach to promoting broker compliance. In this regard, the BSA program is based on the premise that customs brokers with strong internal controls achieve the highest level of compliance with CBP laws and regulations. CBP believes that the program will facilitate legitimate trade so that CBP can focus on higher-risk trade enforcement issues.

All licensed customs brokers who are current members of the Customs-Trade Partnership Against Terrorism (C-TPAT) and who meet the other eligibility requirements identified in this document can apply to participate in the BSA Pilot by submitting the informa-

¹ Notwithstanding this pilot, all existing requirements continue to apply.

tion and documentation set forth below. CBP will assess the broker submissions to determine each applicant's readiness to assume the responsibilities of the BSA Pilot. BSA Pilot applications will be accepted from [date of publication in the **Federal Register**] to [30 days from date of publication in the **Federal Register**].

BSA Pilot Participation Requirements

In order to be eligible to participate in the BSA Pilot, a licensed customs broker must:

1. Be a licensed customs broker for a minimum period of five years.
2. Be a member with full benefits of the C-TPAT.
3. Agree to comply with all applicable CBP laws and regulations.
4. Work in an automated environment through the Automated Broker Interface and the Automated Commercial Environment.
5. Possess a broker national permit.
6. Have and maintain a system of business records that demonstrates the accuracy of CBP transactions.
7. Complete a BSA Pilot Questionnaire and agree to:
 - a. Continue to maintain and update its internal controls;
 - b. Perform periodic testing of its internal control system based on risk;
 - c. Make appropriate adjustments to the internal controls system with an eye toward improvement;
 - d. Inform CBP, through certain voluntary disclosures permitted under the BSA Pilot, of deficiencies identified in periodic testing; and
 - e. Maintain an audit trail linking financial records to entries filed with CBP.

Application Process

1. Required Information

A broker who meets the requirements set forth above may apply to participate in the BSA Pilot by submitting certain information and documentation to CBP. The information in this submission will be collectively referred to as the "BSA Pilot Application" and will consist of:

- a. The broker's license number.
- b. The broker's legal entity type (i.e., sole proprietorship, partnership, association or corporation).
- c. The name of the individual qualifying the broker's license.
- d. The broker's national permit number.
- e. The name of the individual qualifying the broker's national permit.
- f. All filer codes assigned to the broker.
- g. All associated Importer of Record numbers utilized by the broker with suffixes.

h. The address of each permitted district office with the name of the individual qualifying the permit in each district.

i. An organizational chart of the brokerage firm which includes all permitted district offices.

j. The volume of entries by entry type code processed by all permitted offices during the previous 12-month period.

k. A summary of the broker's business operations that involve interaction with CBP.

l. A statement as to whether the broker participates in any of the following CBP programs:

- (1) Periodic Monthly Statement;
- (2) Automated Clearing House;
- (3) Reconciliation;
- (4) Electronic Invoice Processing/ Remote Location Filing;
- (5) Pre-Arrival Processing system; and
- (6) Drawback.

m. A description, by type and activity code, of the customs bonds currently on file with CBP.

n. A statement as to whether the broker has a waiver in place pursuant to 19 CFR 111.19(d)(2) and, if so, a list of locations subject to the waiver. A description of how oversight of permitted district offices is handled and by whom.

o. A statement as to whether the broker has documented policies and procedural manuals relating to CBP business.

2. CBP Review of BSA Pilot Application and Acceptance Into Program

After closure of the application period, CBP will review the BSA Pilot Applications received. CBP plans to select a limited number of broker applicants to participate in the BSA Pilot who are representative of key sectors of the brokerage community or whose structure and processes present potential challenges. Each broker chosen to participate will be provided with a BSA Participation Agreement and BSA Pilot Questionnaire for completion. A CBP multi-disciplinary team consisting of regulatory auditors, national account managers, and other field personnel necessary to conduct a review will then visit the applicant for a consultation to discuss and review the broker's internal controls on how they conduct their customs business. The purpose of the consultation will be to determine if the applicant has sufficient and adequate controls to be able to assess their own compliance with the statutory and regulatory requirements of 19 U.S.C. 1641 and 19 CFR part 111. The broker will be accepted into the BSA Pilot if CBP determines the applicant's internal controls are maintained and updated and the applicant is prepared to perform periodic testing of its internal control system based on risk; make appropriate adjustments to the internal controls system with an eye toward improvement; inform CBP, through certain voluntary disclo-

asures permitted under the BSA Pilot, of deficiencies identified in periodic testing; and maintain an audit trail linking financial records to entries filed with CBP. At that time, CBP will countersign the BSA Participation Agreement. If a broker does not maintain these obligations, CBP reserves the right, in its discretion, to disqualify a broker from participation in the BSA Pilot.

Detailed information concerning the BSA Pilot and the questionnaire will be available on the CBP Internet website at: http://www.cbp.gov/xp/cgov/trade/trade_programs/bsa.

Evaluation of BSA Pilot

CBP intends to review the BSA Pilot within one year after its effective date to measure its effects and achievements, and recommend whether the BSA program will become a permanent program.

Dated: April 22, 2009

JAYSON P. AHERN,
Acting Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, April 27, 2009 (74 FR 19103)]

Docket No. USCBP-2006-0037

EXPANSION OF GLOBAL ENTRY PILOT PROGRAM

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: U.S. Customs and Border Protection (CBP) is currently conducting an international trusted traveler pilot program, referred to as Global Entry, at seven U.S. airports. This document announces that pursuant to an arrangement between the United States and the Netherlands, CBP is expanding eligibility for participation in the Global Entry pilot to include citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, and who otherwise satisfy the requirements for participation in Global Entry. Currently, eligibility is limited to U.S. citizens, U.S. nationals, and U.S. lawful permanent residents (LPRs). Pursuant to this same arrangement, U.S. citizens who participate in the Global Entry pilot will have the option to also apply for participation in Privium.

EFFECTIVE DATES: Applications for the Global Entry pilot are currently being accepted from U.S. citizens, U.S. nationals, and U.S. lawful permanent residents and will be accepted for the duration of

the pilot. The expansion of eligibility to qualified citizens of the Netherlands will occur on April 23, 2009. Applications will be accepted from qualified citizens of the Netherlands beginning April 23, 2009. Comments concerning this notice and all aspects of the announced pilot may also be submitted throughout the duration of the Global Entry pilot.

ADDRESSES: You may submit comments, identified by “USCBP–2006–0037,” by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Border Security Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Mint Annex, 799 9th Street, NW, Washington, DC 20229.

Instructions: All submissions received must include the agency name, document title, and docket number (USCBP–2006–0037) for this notice. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW, 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

Applications for the Global Entry pilot are available through the Global On-Line Enrollment System (GOES) at www.globalentry.gov. Applications must be completed and submitted electronically.

FOR FURTHER INFORMATION CONTACT: Fiorella Michelucci, Office of Field Operations, (202) 344–2564.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a notice published in the **Federal Register** (73 FR 19861) on April 11, 2008, CBP announced an international trusted traveler pilot program, then referred to as International Registered Traveler (IRT) program, which was scheduled to commence operations at three initial U.S. airports on June 10, 2008. In a subsequent notice published in the **Federal Register** (73 FR 30416) on May 27, 2008, CBP changed the name of the pilot program from IRT to Global Entry and moved up the starting date to June 6, 2008.

The Global Entry pilot program allows for the expedited clearance of pre-approved, low-risk travelers into the United States. The initial **Federal Register** notice published on April 11, 2008 contained a detailed description of the program, the eligibility criteria and the application and selection process, and the initial airport locations: John F. Kennedy International Airport, Jamaica, New York, Terminal 4 (JFK); the George Bush Intercontinental Airport, Houston, Texas (IAH); and the Washington Dulles International Airport, Sterling, Virginia (IAD). CBP chose these initial airports due to the large numbers of travelers that arrive at those locations from outside the United States.

On August 13, 2008, in a notice published in the **Federal Register** (73 FR 47204), CBP announced that the pilot had expanded to include all terminals at JFK and four additional airports: Los Angeles International Airport, Los Angeles, California (LAX); Hartsfield-Jackson Atlanta International Airport, Atlanta, Georgia (ATL); Chicago O'Hare International Airport, Chicago, Illinois (ORD); and Miami International Airport, Miami, Florida (MIA).

Operations

The Global Entry pilot project allows pilot participants expedited entry into the United States at any of the designated airport locations by using automated kiosks located in the Federal Inspection Services (FIS) area of each airport. Global Entry uses fingerprint biometrics technology to verify a participant's identity and confirm his or her status as a participant.

After arriving at the FIS area, participants proceed directly to the Global Entry kiosk. A sticker affixed to the participant's passport at the time of acceptance in Global Entry will provide visual identification that the individual can be referred to the kiosk. Global Entry participants need not wait in the regular passport control primary inspection lines.

After arriving at the kiosk, participants activate the system by inserting into the document reader either a machine-readable passport or a machine-readable U.S. permanent resident card. On-screen instructions guide participants to provide fingerprints electronically. These fingerprints are compared with the fingerprint biometrics on file to validate identity and confirm that the individual is a member of the program. Participants are also prompted to look at the camera for a digital photograph and to respond to several customs declaration questions by use of a touch-screen.

When the procedures at the kiosk have been successfully completed, participants are issued a transaction receipt. This receipt must be provided along with the passport or permanent resident card to the CBP Officer at the exit control area who will examine and inspect these documents. CBP Officers stationed in booths next to the kiosk lanes also oversee activities at the kiosk.

Declarations

When using the Global Entry kiosks, Global Entry participants are required to declare all articles being brought into the U.S. pursuant to 19 CFR 148.11.

If a Global Entry participant declares any of the following, the kiosk redirects that user to the head of the line at the nearest, open passport control, primary inspection station:

- a) Commercial merchandise or commercial samples, or items that exceed the applicable personal exemption amount;
- b) More than \$10,000 in currency or other monetary instruments (checks, money orders, etc.), or foreign equivalent in any form; or
- c) Restricted/prohibited goods, such as agricultural products, firearms, mace, pepper spray, endangered animals, birds, narcotics, fireworks, Cuban goods, and plants.

Global Entry participants may also be subject to further examination and inspection as determined by CBP Officers at any time during the arrival process.

For a more detailed description of the Global Entry pilot program, please refer to the April 11, 2008 **Federal Register** notice, 73 FR 19861.

EXPANDED ELIGIBILITY

Eligibility criteria for participation in the Global Entry pilot are set forth in detail in the April 11, 2008 **Federal Register** notice. To date, only U.S. citizens, U.S. nationals, and U.S. LPRs are eligible to participate in the pilot. However, as explained in the April 11, 2008 **Federal Register** notice, CBP is working with other countries to recognize comparable programs operated by these countries and, as these arrangements are finalized, CBP will expand its eligibility criteria. The notice stated that such expansions of the pilot would be announced by publication in the **Federal Register**.

Expansion of Global Entry to certain citizens of the Netherlands

The United States has entered into an arrangement with the Netherlands concerning Global Entry. Pursuant to this arrangement, CBP is expanding eligibility for the Global Entry pilot. Specifically, citizens of the Netherlands who participate in Privium, an expedited travel program in the Netherlands, will now be able to apply for participation in the Global Entry pilot. In order to participate, these citizens of the Netherlands will be required to complete the on-line application, pay the non-refundable \$100 per person applicant processing fee, and satisfy all the requirements of the Global Entry pilot. Based on the terms of the arrangement reached with the Gov-

ernment of the Netherlands, these citizens will be permitted to participate in the Global Entry pilot only upon successful completion of a thorough risk assessment by both U.S. Customs and Border Protection and the Government of the Netherlands.

No person who is inadmissible to the United States under U.S. immigration law is eligible to participate in the Global Entry pilot. Applications from such individuals will automatically be rejected. Applications for the Global Entry pilot may also be rejected if the applicant has ever been convicted of a criminal offense, or the individual has ever been found in violation of the customs or immigration laws of the United States, or of any criminal law. Additionally, no applicant will be accepted for participation in the Global Entry pilot if CBP determines that the individual presents a potential risk for terrorism, criminality or smuggling, or if CBP cannot sufficiently determine that the applicant meets all the program eligibility criteria. CBP will be accepting applications from eligible citizens of the Netherlands beginning April 23, 2009. Additional information on eligibility will be announced at www.globalentry.gov.

The Netherlands is also a participant in the Visa Waiver Program (VWP). The VWP enables citizens and nationals from participating countries to travel to and enter the United States for business or pleasure purposes for up to 90 days without obtaining a visa.¹ VWP travelers are now required to obtain a travel authorization via ESTA (Electronic System for Travel Authorization) prior to traveling to the United States under the VWP. ESTA is accessible online at <https://esta.cbp.dhs.gov>. The ESTA requirements will continue to be applicable to Global Entry applicants who are VWP travelers. Global Entry applicants from the Netherlands who wish to travel to the United States under the VWP who have not already received a travel authorization via ESTA will be able to do so as part of the Global Entry application and enrollment process. During the Global Entry enrollment and interview phase the applicant will be asked whether he or she is in possession of an ESTA authorization number. If not in possession of an ESTA authorization number, the applicant will be asked questions from which it can be determined whether the applicant is VWP-eligible, and a determination regarding ESTA authorization will be made.

All other aspects of the program as described in the April 11, 2008 notice are still in effect.

¹Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRPTA), 118 Stat. 3638, as amended by section 565 of the Consolidated Appropriations Act, 2008, 121 Stat. 1844, codified at 8 U.S.C. 1365b, directs the Secretary to establish an international registered traveler program in coordination with US-VISIT, other prescreening initiatives, and the Visa Waiver Program. See 8 U.S.C. 1365b(k)(3).

U.S. Citizen Participation in Privium

Pursuant to the reciprocal arrangement with the Government of the Netherlands, U.S. citizens who participate in the Global Entry pilot will have the option to also apply for participation in Privium. Privium is an automated border passage system in the Netherlands that provides expedited entry and exit at Amsterdam Airport Schiphol. It uses iris scans to provide quick and secure biometric confirmation of a traveler's identity. Enrollment includes an eligibility assessment by the Dutch border police. Upon a positive determination of eligibility, pictures of each iris are taken and stored on a personalized smart card. Upon entry and exit, Privium members place their Privium smart card into a reader and a passport validity check is performed with the Dutch authorities and valid membership is verified. The individual's iris information is then compared against the iris information stored on the card. This border passage process takes approximately twelve seconds.

Additional fees and information sharing beyond CBP's Global Entry requirements are needed for U.S. citizens who wish to participate in Privium through Global Entry. If approved, U.S. citizens would be able to take advantage of expedited travel into, and out of, the Netherlands at Amsterdam Airport Schiphol. More information about how to apply for Privium membership is available at www.globalentry.gov.

DATED: April 16, 2009

SUSAN T. MITCHELL,
*Acting Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, April 23, 2009 (74 FR 18586)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, April 29, 2009

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*

**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
CLASSIFICATION OF CERTAIN HOLLOW BILLETS OF
ALUMINUM AND CERTAIN FORGED TITANIUM BILLETS**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of certain aluminum hollow billets and of certain forged titanium billets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain hollow billets of aluminum and of certain forged titanium billets. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocations was published in the *Customs Bulletin*, Vol. 43, No. 7, on February 5, 2009. One importer contacted CBP in response to the notice regarding the proposed revocations’ impact on a ruling issued to the importer by CBP but did not submit comments on the proposed revocations.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 325-0034.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is revoking two ruling letters relating to the tariff classification of certain hollow billets of aluminum and of certain forged titanium billets. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) N018044, dated October 17, 2007, and Headquarters Ruling Letter ("HQ") 966570, dated November 7, 2003, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the notice period.

An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

We note that in response to the notice concerning the proposed revocation of the ruling letters, CBP received a letter submitted on behalf of VSMPO-Tirus, U.S. (formerly Verkhnesaldinsky Metallurgical Production Association), querying whether NY I89977, issued to the company on January 24, 2003, would be affected by the proposed action. NY I89977 concerned the classification of titanium billet which had been forged and machined to allow for sonic testing. We are of the view that the classification of the titanium billet described in NY I89977 is not affected by the instant revocations because, in that case, the forged titanium billet was worked into a finished condition.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N018044, HQ 966570, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Ruling Letters HQ H021135 (Attachment A) and HQ H027436 (Attachment B). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the Customs Bulletin.

DATED: April 16, 2009

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H021135
April 16, 2009
CLA-2 OT:RR:CTF:TCM H021135 HkP
CATEGORY: Classification
TARIFF NO.: 7601.10.30

MR. JAY JOO, MANAGING DIRECTOR
HMA INC.
1411 West 190th Street, Suite 470
Gardena, CA 90248

RE: Revocation of NY N018044; hollow billets; Additional U.S. Note 1 to Section XV

DEAR MR. JOO:

This is in response to your letter to the National Commodity Specialist Division of U.S. Customs and Border Protection (“CBP”) dated December 17, 2007, requesting reconsideration of New York Ruling Letter (“NY”) N018044, issued to your company on October 17, 2007. At issue in that ruling was the tariff classification of a non-alloyed cast aluminum “hollow billets” under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP classified the merchandise under heading 7608, HTSUS, as aluminum tubes or pipes because we were of the view that the product was not “unwrought”, as that term is defined in Additional U.S. Note 1 to Section XV, HTSUS, and therefore was precluded from classification in heading 7601, HTSUS. You believe that the correct classification is under heading 7601, HTSUS, which provides for unwrought aluminum. Your letter was forwarded to this office for a response.

In reaching our decision we have taken into consideration the information contained in the short video of the manufacturing process of your product that you submitted with your request. For the reasons set forth in this ruling, we hereby revoke NY N018044.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on February 5, 2009, in the Customs Bulletin, Volume 43, No. 7. One importer contacted CBP in response to the notice regarding the proposed revocation’s impact on a ruling issued to the importer by CBP but did not submit comments on the proposed revocations.

FACTS:

In NY N018044, the product at issue was described as a non-alloyed cast aluminum pipe with an outside diameter ranging from 7 to 11 inches and an inside diameter ranging from 3 to 5 inches. The video submitted demonstrates that molten aluminum is cast in a cylindrical mold with a solid core. The resultant castings are, therefore, hollow. After trimming the ends, the castings are cut into shorter lengths.

According to your submission, the casting process for the merchandise, which you describe as “hollow billets,” is the same as billets and ingots. The only difference is the size of the mold and the fact that the molds are “tube-

shaped". After the product is pulled from the mold and cut to length it is not further processed. After importation, the product will be re-melted to make wheels. You state that the reason hollow billets are made instead of full billets or ingots is because hollow billets save money and time during the re-melting process. You describe your merchandise as "raw material".

ISSUE:

Whether the aluminum "hollow billets" can be classified as unwrought aluminum under heading 7601, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7601 Unwrought aluminum

7608 Aluminum tubes and pipes

Note 1(e) to Chapter 76 provides, in pertinent part:

Tubes and pipes

Hollow products, coiled or not, which have a uniform cross section with only one enclosed void along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons, and which have a uniform wall thickness. Products with a rectangular (including square), equilateral triangular or regular convex polygonal cross section, which may have corners rounded along their whole length, are also to be considered as tubes and pipes, provided the inner and outer cross sections are concentric and have the same form and orientation. 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.

CBP previously rejected your suggested classification under heading 7601, HTSUS, as unwrought aluminum because "the term unwrought, as defined in Additional U.S. Note 1, Section XV, HTSUS, excludes drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling."¹

¹ The Metals Handbook, 8th ed., vol. 1, American Society for Metals (1961) provides the following definitions:

Machining. Removing material, in the form of chips, from work, usually through the use of a machine.

Trimming. (1) In drawing, shearing the irregular edge of the drawn part. (2) In forging or die casting, removing any parting-line flash and gates from the part by shearing. (3) In casting, the removal of gates, risers and fins.

Scalping. Removing surface layers from ingots, billets or slabs. See *die scalping*. "Die

However, on further reflection, CBP now believes that cast billet may meet the terms of the definition of “unwrought” set forth in Additional U.S. Note 1, Section XV. In full, Additional U.S. Note 1, Section XV, states:

For the purposes of this section, the term “unwrought” refers to metal, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, 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 processed otherwise than by simple trimming, scalping or descaling.

Other sources support this definition of “unwrought”. International Standard ISO 3134/2, Light metals and their alloys – Terms and definitions – Part 2: Unwrought products explains that the term “unwrought product” is a “[g]eneral term for products obtained by smelting or refining or casting processes, for example, ingots for rolling, ingots for extruding, ingots for forging and ingots for remelting.” *Id.* at 2.1. The Oxford English Dictionary defines the term “unwrought”, in relevant part, as follows: “2. Not formed or fashioned by being worked on; *esp.* of materials (as fabrics, stone, or metals): Still in a crude, raw, rude, or natural state; not worked into a finished condition.” Based on the above, we find that heading 7601, HTSUS, provides for, without limitation, aluminum that has not been worked into a finished condition.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (Aug. 23, 1989).

EN 76.01 provides, in relevant part:

This heading covers unwrought aluminum in the liquid state, in blocks, ingots, billets, slabs, notched bars, wore bars, or similar forms obtained by casting electrolytic aluminum or by remelting metal waste or scrap. These goods are generally intended for rolling, forging, drawing, extruding, hammering or for remelting and for casting into shaped articles.

....

This heading also covers certain cast or sintered bars, etc. (see the Explanatory Note to heading 74.03 which applies, *mutatis mutandis*, to this heading).

scalping.” Removing surface layers from a bar, rod, wire or tube by drawing through a sharp-edged die to eliminate minor surface defects.

Descaling. Removing the thick layer of oxides formed on some metals at elevated temperatures.

The Encarta Dictionary defines the term “process” as “to treat or prepare something in a series of steps or actions, e.g. using chemicals or industrial machinery.”

EN 74.03 provides, in relevant part:

This heading further covers cast and sintered slabs, bars, rods and ingots, etc., provided they have not been worked after production otherwise than by simple trimming or de-scaling (to remove the set or top surface consisting largely of cuprous oxide) or by shaving, chipping, grinding, etc., to eliminate setting or other casting defects which have been machined on one surface for inspection purposes (quality control).

EN 76.08 provides, in relevant part:

Chapter Note 1(e) defines tubes and pipes. The tubes and pipes of this heading may be manufactured by the following processes:

....
(d) by casting

....

The tubes and pipes of this heading are used for many purposes, e.g. as pipelines for oil or water, as conduits for electrical wiring, in the manufacture of furniture, heat exchanges, structures.

Based on the above, we find that heading 7601, HTSUS, provides for cast, remelted or other aluminum that has not been worked into a finished condition and which may be for use in a manufacturing process.

In light of the manufacturing process depicted in the submitted video, we find that the product at issue has been manufactured by casting and has not been machined or further processed but simply trimmed and cut to length. As such, we find that the hollow billet is “unwrought” as required by the text of heading 7601, HTSUS. In addition, based on the submitted information, the product is intended for remelting or for casting into shaped articles as explained by EN 76.01.

HOLDING:

By application of GIR 1, the hollow billet of aluminum is classified under heading 7601, HTSUS. It is specifically provided for in subheading 7601.10.60, HTSUS, which provides for: “Unwrought aluminum: Aluminum, not alloyed: Other.” The 2008 column one, general rate of duty is Free.

EFFECT ON OTHER RULINGS:

NY N018044, dated October 17, 2007, is hereby revoked.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H027436

April 16, 2009

CLA-2 OT:RR:CTF:TCM H027436 HkP**CATEGORY:** Classification**TARIFF NO.:** 8108.20

MR. PAUL ABERLY
THE ABERLY GROUP
7934 North 54th Place
Paradise Valley, AZ 85253

RE: Revocation of HQ 966570; forged titanium billets; Additional U.S. Note 1 to Section XV

DEAR MR. ABERLY:

This is in reference to Headquarters Ruling Letter (“HQ”) 966570, issued to you on November 7, 2003, in which the tariff classification of forged titanium billets was determined under the Harmonized Tariff Schedule of the United States (“HTSUS”). Through HQ 966570, U.S. Customs and Border Protection (“CBP”) revoked New York Ruling Letter (“NY”) A84786, dated July 12, 1996, and classified the titanium billets under subheading 8108.90.60, HTSUS, as “other” titanium and articles thereof. We have reconsidered HQ 966570 and determined that the tariff classification of the articles described therein is not correct. For the reasons set forth below, we hereby revoke HQ 966570.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation was published on February 5, 2009, in the *Customs Bulletin*, Volume 43, No. 7. One importer contacted CBP in response to the notice regarding the proposed revocation’s impact on a ruling issued to the importer by CBP but did not submit comments on the proposed revocations.

FACTS:

The merchandise at issue was described in NY A84786 and HQ 966570 as being imported in billet form and thereafter to be melted down for use in the manufacture of recreational equipment. The chemical analysis of the product was stated to be 90 percent titanium, 6 percent aluminum, and 4 percent vanadium, by weight. The product was not further described.

In HQ 966570, CBP stated, in relevant part, the following:

According to Section XV, Additional U.S. Note 1, HTSUS, the term “unwrought” includes billets, among other similar manufactured primary forms of metal, but does not cover rolled or forged products, among others. Technical sources on titanium production we have consulted indicate that titanium ore is first chlorinated, then reacted with either magnesium or sodium to yield metallic titanium sponge. The sponge is crushed and pressed, then melted in a vacuum arc furnace. The melted sponge solidifies under the vacuum conditions of the furnace to form a solid titanium ingot which is then forged into either slabs or

billets. Additionally, the term **billet** is defined as a semifinished section that is hot rolled from a metal ingot. . . , (2) a solid semifinished round or square product that has been hot worked by forging, rolling, or extrusion. *Metals Handbook*, Desk Edition, 2nd (1998), published by the American Society for Metals. As it appears that the titanium billets at issue here are produced by hot rolling or forging, they are not unwrought products for tariff purposes, and cannot be classified as unwrought titanium, in subheading 8108.20.00, HTSUS.

These statements no longer reflect our view on the classification of the forged titanium billets described in HQ 966570.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs, 2 through 6, may then be applied in order. GRI 6 provides that the classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings on the understanding that only subheadings at the same level are comparable.

The HTSUS provisions under consideration are as follows:

8108 Titanium and articles thereof, including waste and scrap:

8108.20 Unwrought titanium; powders

* * *

8108.20.0091 Other

8108.90 Other:

* * *

8108.90.60 Other

Additional U.S. Note 1 to Section XV, HTSUS, in which chapter 81 is located, provides:

For the purposes of this section, the term “unwrought” refers to metal, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, 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 processed otherwise than by simple trimming, scalping or descaling.

In construing the provisions of this Note, the Court of International Trade has found that:

The definition of unwrought contained in Additional U.S. Note 2 [now Note 1] connotes a stage in a manufacturing process which eventually results in a different ultimate product. The Court concludes that the phrase “manufactured primary forms” refers to forms that have under-

gone some processing but must undergo further processing before they appear in an eventual final product. This definition provides a unifying characteristic for the otherwise disparate enumerated forms.

Anval Nyby Powder AB v United States, 20 Ct. Int'l Trade 608, 616; 927 F. Supp. 463, 471 (citations omitted) (1996). Based on this interpretation by the court, it is evident that the language of Additional U.S. Note 2 to Section XV, HTSUS, also reflects the common and commercial meaning of the term "unwrought." Furthermore, it is clear from the statements of the court that the term "unwrought" is in no way tied to a particular manufacturing process (such as hot rolling or forging). Rather, it refers to a product at an intermediate stage of a manufacturing process.

Other sources support this interpretation of "unwrought". International Standard ISO 3134/2, Light metals and their alloys – Terms and definitions – Part 2: Unwrought products explains that the term "unwrought product" is a "[g]eneral term for products obtained by smelting or refining or casting processes, for example, ingots for rolling, ingots for extruding, ingots for forging and ingots for remelting." Id. at 2.1. The Oxford English Dictionary defines the term "unwrought" in relevant part, as follows: "2. Not formed or fashioned by being worked on; *esp.* of materials (as fabrics, stone, or metals): Still in a crude, raw, rude, or natural state; not worked into a finished condition."

Based on the above meanings of "unwrought", we find that subheading 8108.20, HTSUS, provides for, without limitation, titanium that has not been worked into a finished condition. Accordingly, we find that the titanium billets are classified under subheading 8108.20, HTSUS, as "unwrought titanium" because they have not been worked into a finished condition.

HOLDING:

By application of GRI 1 through the provisions of GRI 6, the titanium billets are correctly classified under heading 8108, HTSUS. They are specifically provided for in subheading 8108.20, HTSUS, which provides for: "Titanium and articles thereof, including waste and scrap: Unwrought titanium; powders." The 2008 column one, general rate of duty is 15%.

EFFECT ON OTHER RULINGS:

HQ 966570, dated November 7, 2003, is hereby revoked.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.