

# EXHIBIT A

Glory Smart now requests advice on the correct entry procedures for mutilated coins destined for redemption and smelting.

**ISSUES:**

1. Is it proper for the importer to file a CBP 3461 or a CBP 7501, or should a foreign importer complete the FINCEN reporting form 105?
2. Must the currency be bonded or be stored in bonded warehouse?
3. If the FINCEN form 105 is used, do other reporting requirements, such as advance reporting requirements and the 10+2 rule, apply?
- \*2 4. Does presentation of this FINCEN form authorize other cargo operators within and around the port (such as container freight stations and customs bonded warehouse) to handle, release and store the mutilated coins?
5. Are there other customs rules or requirements that may apply?

**LAW AND ANALYSIS:**

All merchandise imported into the United States is subject to the statutory entry requirements unless specifically exempted. See 19 U.S.C. § 1484; 19 C.F.R. § 141.4. See also General Note 3(e) to the Harmonized Tariff Schedule of the United States (HTSUS), which outlines general exemptions. Additional U.S. Note 2 to Chapter 71, HTSUS, also provides an exemption for: Coin provided for in heading 7118 which is currently in circulation in any country and is imported for monetary purposes shall be admitted without formal customs consumption entry or the payment of duty. This does not affect any requirements under other provisions of law to the effect that transfers of coin into or through the United States, in an amount exceeding \$10,000 on any one occasion shall be reported as described therein.

Thus, if the subject coins are to be exempt from entry procedures, they must be classified in heading 7118, HTSUS. They must also be “currently in circulation” and “imported for monetary purposes.”

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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). Coins are provided for, *eo nomine*, in heading 7118, HTSUS. As described by EN 71.18, the scope of the heading includes coins issued by governments to be used as legal tender. The EN to heading 7118, HTSUS, states, in pertinent part, the following:

This heading applies to coins of any metal (including precious metals) of officially prescribed weight and design, issued under government control for use as legal tender. Consignments of individual coins or of sets of coins which are legal tender in the country of issue are classified in this heading even if they are put up for general sale in presentation cases. The heading includes coin which is no longer legal tender ....

The heading does not cover: ...

- (c) Broken, cut or battered coins of a kind usable only as scrap or waste metal.

The phrase "legal tender" is not defined in either the tariff headings or the ENs. Thus, CBP is permitted to consult dictionaries and other lexicographic materials. *See, e.g., Lonza v. United States*, 46 F.3d 1098 (Fed. Cir. 1995). The Oxford English Dictionary defines "legal tender" as "coin or other money, which a creditor is bound by law to accept, when tendered in payment of a debt." According to Webster's College Dictionary, "legal tender" is "money that may be legally offered in payment of an obligation and that a creditor must accept." According to a numismatic dictionary, non-circulating legal tender is "a coin struck by the national issuing authority mainly to be sold to collectors. The coins also have a face value and can be spent in the country of issue." *See* <http://www.predecimal.com/dictionary.htm>.

\*3 Furthermore, CBP has defined "legal tender" to be coin or other money which a creditor is bound by law to accept, when tendered in payment of a debt. Legal tender includes non-circulating legal tender, which is a coin struck by the national issuing authority mainly to be sold to collectors but having a face value and which can be spent in the country of issue. *See* HQ H074995, dated July 29, 2010, and HQ H066457, dated July 29, 2010.

In addition, the U.S. Mint will redeem bent and partial coins of recognizable U.S. currency batched in one pound or more increments. *See* 31 C.F.R. § 100.11(b). The Mint defines bent coins as: "U.S. coins which are bent or deformed so as to preclude normal machine counting but which are readily and clearly identifiable as to genuineness and denomination." *See* 31 C.F.R. 100.11(a).

In the present case, the subject coins are no longer in circulation in any country. Even though they are still clearly identifiable as United States coins of different denominations, they are broken coins whose deformity means that they cannot be counted by a normal counting machine. These coins are being imported for the sole purpose of being melted down by the U.S. Mint. Thus, we consider it significant that the EN to heading 7118, HTSUS, also states, in pertinent part, the following:  
The heading does not cover: ...

(c) Broken, cut or battered coins of a kind usable only as scrap or waste metal.

Because the subject coins will be imported to be melted down by the U.S. Mint, the subject coins are mutilated coins that are not classified in heading 7118, HTSUS. Thus, they are not exempted from the statutory entry requirements by Additional U.S. Rule 2 to Chapter 71, HTSUS. In addition, the subject coins are not exempted from CBP's entry requirements by any other exemptions in the tariff code or CBP's regulations. For example, 19 C.F.R. § 141.4 lists a number of exceptions, but the subject merchandise does not fit any of them. Section 141.4 of 19 C.F.R. also acknowledges that there are exceptions under General Note 3(e) of the HTSUS. However, the subject merchandise cannot be exempted under this provision because coins are not among the exemplars listed. *See* General Note 3(e), HTSUS. As a result, CBP's normal entry procedures apply to the subject merchandise.

Given the general nature of Glory Smart's questions regarding CBP's entry procedures, we note that CBP's website remains a good resource for such information. *See* [www.cbp.gov](http://www.cbp.gov). In particular, CBP's publication "Importing Into the United States" provides basic information regarding entering goods into the United States. *See* <http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/iius.ctt/iius.pdf>.

With regard to the filing of the "FinCen Form 105," FinCen is a bureau of the U.S. Department of the Treasury. FinCen exercises regulatory functions under legislation, collectively referred to as the "Bank Secrecy Act" (BSA). The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330. The FinCen form 105, Currency and Other Monetary Instruments Report (CMIR), is required by 31 U.S.C. 5316 and Treasury Department regulations (31 C.F.R. Chapter X). BSA regulations stipulate that a CMIR must be used to report the physical transportation of "currency or other monetary instruments"



in an aggregate amount exceeding \$10,000 at one time, including transportation into the United States. The filing of this form has no effect on CBP requirements when importing and entering merchandise and is required to be filed in addition to any forms or information required by CBP. The FinCen Form 105 must be filed in conjunction with the required entry documents. Section 142.3 of 19 C.F.R. states that this entry documentation is required to secure the release of the merchandise. See 19 C.F.R. § 142.3.

\*4 Lastly, 19 C.F.R. § 144.1 describes the merchandise that is eligible for warehousing. The only exceptions this section provides for are perishable goods and explosives. The regulations also require that dangerous and highly flammable merchandise not be entered for warehouse without the written consent of the insurance company that insures the warehouse. The subject merchandise consists of coins that are neither perishable nor explosive. As a result, it is eligible for warehousing. Section 144.1 19 of C.F.R. does not require warehousing, however, and thus the ultimate decision as to whether to warehouse the subject merchandise is at the discretion of the importer.

**HOLDING:**

Glory Smart must file both the FinCen Form 105 and all of the relevant entry documents. It must also comply with all of the relevant CBP reporting requirements. Once the entry documents are filed, CBP Personnel at the port have the authority to release the merchandise. Furthermore, while Glory Smart may warehouse the merchandise, it is not required to do so.  
Sincerely,

Myles B. Harmon  
Director  
Commercial and Trade Facilitation Division

HQ H139056 (Customs), 2012 WL 2954323

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