LBMA
London Bullion Market Association

PRECIOUS METALS AND RHENIUM CONSORTIUM
formed under the auspices of the
European Precious Metals Federation

IMPORTED GOOD DELIVERY GOLD BARS IN RELATION TO REACH

Note: This document has been produced by the London Bullion Market Association ("the LBMA") and the Brussels-based Precious Metals and Rhenium Consortium ("the Consortium") and has been reviewed by the undersigned legal experts on the REACH regulation who agree with the conclusions. The LBMA is the trade association representing the wholesale bullion market focussed on loco-London trading but with a global client base. The Consortium was formed by the great majority of precious metal manufacturers and refiners in the EEA in order to comply with the REACH Regulation.

The purpose of the document is to describe the argument of the LBMA and the Consortium that imported Good Delivery (GD) gold bars are articles.

1. INTRODUCTION AND BACKGROUND

The REACH Regulation applies to, *inter alia*, the placing on the market, including import (and use) of chemical substances on their own, in preparations or in articles. According to Article 3 of the REACH Regulation:

A **substance** is *"a chemical element and its compounds in the natural state or obtained by any manufacturing process, including any additive necessary to preserve its stability and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition"*.

A **preparation** is *"a mixture or solution composed of two or more substances"*.

An **article** is *"an object which during production is given a special shape, surface or design which determines its function to a greater degree than its chemical composition"*.

Substances imported on their own or in preparations are subject to registration. This does not apply to substances in the form of articles, except for those substances contained therein that are *"intended to be released under normal or reasonable conditions of use"*.

The European Chemicals Agency Guidance Document on Requirements for Substances in Articles (2008 and 2009 draft version 2.0) clarifies that in order to determine whether an object fulfils the "article" definition, one should (i) determine the function of the object and (ii) compare the importance of the physical and chemical characteristics for achieving the object's function. According to the Guidance Document:

- *"The term function in the article definition should be interpreted as meaning the basic principle determining the use of the object rather than the degree of technical sophistication determining the quality of the result of using the article."*
- *"Shape means the three-dimensional form of an object, like length, width, height and degree of undercut. Surface means the outmost layer of an object. Design means the arrangement of the "elements of design" in such a way as to best accomplish a particular purpose."*

The argument in this document is that GD gold bars imported into the EEA are investment articles *with no intended release* **and the gold of which they are made should thus be excluded from the calculation of a potential registrant's tonnage band for gold.** The amounts of gold that are imported

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into the EEA in the form of a substance or in preparations must, however, be covered by a REACH registration.

2. FORMS OF GOLD COMMONLY PLACED ON THE EEA MARKET

Gold, in common with other precious metals is produced in refineries, using a variety of techniques. Depending on the method of refining, the fineness (expressed in parts of pure gold per thousand) of the final product may vary from around 995 to 999.9 or more.

Amongst the forms of gold that can be placed on the EEA market (Table 1), **only the Variable-weight gold bars (e.g. large gold bars or GD gold bars) fulfil the definition of article under REACH**. The gold in form of grains and exact-weight gold bars (e.g.: kilobars) are commonly used as raw material for further fabrication. Both grains and kilobars as well as gold in alloys must be covered by a REACH registration.

Table 1. Forms of Gold commonly placed on the EEA Market

GOLD GRAIN: Melting the refined metal then granulating it by pouring into an agitated bath of cold water to produce grain.	**EXACT-WEIGHT GOLD BARS:** Grain can be used in the manufacture of exact-weight gold bars such as kilobars.
CARAT GOLD ALLOYS: Grain can be used to manufacture carat gold alloys of varying fineness (e.g. 18 karat gold is 750 fine) which may be produced in the form of semi-manufactures such as wire and sheet.	**VARIABLE-WEIGHT GOLD BARS:** Molten gold is poured into moulds to form gold bars of variable (as opposed to exact) weights, known variously as market gold bars, large gold bars or **GD gold bars**.

3. GOOD DELIVERY GOLD BARS AS INVESTMENT ARTICLES

There are various ways for investors or savers to invest in gold or gold based derivatives:

- **Gold mining company shares, exchange-traded funds, futures, forwards, structured products, and options.** These products are sold by securities dealers and banks.
- **Coins.** This is a popular method though essentially only in the retail market. Because of the significant manufacturing premium, coins are virtually ignored by institutional investors and central banks, though for historical reasons, the latter may still have substantial quantities of old coins in their vaults.
- **Bars.** For many institutional investors and especially central banks, the preferred option is to purchase the physical asset. Whether accounts are held on an allocated basis (investor owning specific bars) or an unallocated basis (investor having an ownership claim on a specific quantity), the vaults in the EEA market will hold the vast majority of their gold in the form of GD bars.

4. SPECIFICATIONS OF GOOD DELIVERY GOLD BARS

To be accepted as a GD bar on the London market, whose rules are adopted in all major gold trading centres, the gold bar shape, size, weight and markings on the top surface must be within the specifications and recommendations contained in the LBMA Good Delivery Rules (Table 2) (hereinafter the "Rules").

Table 2. LBMA Specifications and Recommendations for Good Delivery Gold Bars

RECOMMENDED DIMENSIONS: Length (Top): 250 mm; width (Top): 70 mm; and height: 35 mm	**GROSS WEIGHT:** between 350 troy ounces (approximately 10.9 kg) and 430 troy ounces (13.4 kg)
MARKS: Serial number, stamp of refiner, fineness (to four significant figures), year of manufacture (expressed in four digits)	**FINENESS:** the minimum acceptable fineness is 995.0 parts per thousand fine gold

Many of the requirements for GD gold bars relate to the need to fulfil their basic purpose, namely to be stacked safely in the vault, to be acceptable as a financial asset or store of value (i.e. an investment article), and as such to be auditable. The design of these gold bars is aligned with the needs of the investors and of the vaults.

GD gold bar surfaces have to be flat and free from protrusions to ensure stackability, in other words the ability to be stacked safely on top of each other. GD bars in a vault are subject to audit; for this they must be stacked in such a way that the marks on the bars are clearly visible to the auditor, who is then in a position to verify the origin, fineness and age of the bar. GD gold bars may also have to be moved between vaults (e.g. when ownership changes) which involves manual handling; the sloping sides and ends facilitate lifting and the allowed weight range is also convenient in this regard.

The Rules also specify freedom from physical defects such as holes because over time such holes can accumulate dirt or dust in the vault which could result in the measured weight increasing (or in other words dust counting as gold). The insistence on the part of many owners (and therefore also of the vaults who hold their metal) that gold bars should be of good physical appearance and follow the highest standard in every way is a reflection of the **long-term investment nature**[1] of these bars.

5. IMPORTED GOOD DELIVERY GOLD BARS AND REACH

The attributes of GD gold bars are consistent with the definition of an article in REACH. Without these physical attributes, the objects would lose their utility as investment articles, including their suitability for storage and handling or transport. Support for this view based on the definition of "article" under REACH, as clarified in the REACH Guidance, and further confirmed by the answers to the indicative questions is provided in Annex 1.

An object is an article if it can be unambiguously concluded that the shape, surface or design is more relevant for the function than its chemical composition. Therefore the article definition requires an assessment of the primary contributor to function, i.e. whether it is the chemical composition or the shape, surface, and design of the manufactured object that is most important to function. It requires the shape attribute to override the inherent chemical composition in terms of function.

The term **function** implies an ability to carry out the specific activity for which it was made; the function of GD Gold Bars is to serve as an investment article. It is indeed important that the object is comprised of gold but the inherent chemical properties of gold are not what makes gold bars an investment article. Rather, the investment value of gold is attributable to complex historical and emotional factors. Gold as the constituent material does not play any role in terms of function of the object, its importance being restricted to the conventional value that gold represents for the recipient.

[1] Although investment bars could be melted and used as raw materials, fabricators of precious metal products resort to grains and smaller gold bars such as kilobars. Imported investment bars are distributed to European fabricators only in limited circumstances and in very small annual quantities per importer to respond to sudden increase in demand or transient shortage of other gold products traditionally used as feed stock. REACH obligations arising from using investment articles as feed stock are fully addressed in the gold registration dossier prepared by the Precious Metals and Rhenium Consortium.

What would lead the recipient of the gold bar to regard it as not being functional for investment? The shape, surface, dimensions, and form are crucial for investment; and at a more detailed level the marking is crucial for investment. In fact any deviation from the specified format and marking (for example, a missing bar number or a nodule on one of the surfaces or a hole) will result in the gold bar being judged unacceptable and being rejected by the vault manager. In other words, the gold bar would fail to function as an investment article.

The investment function of a gold bar does not depend on its fineness. A 999.5 fineness gold bar has a greater value than a 995.0 gold bar of the same gross weight. But both are equally valid in terms of their function as investment articles. We can therefore reasonably conclude that **the shape, surface, dimensions, form and marking attributes of a GD gold bar are of more importance to its investment function than the specific composition.**

6. CONCLUSION

Imported Good Delivery gold bars fulfil the definition of "Article" under REACH.
The gold they are made of is not subject to registration, and should be excluded from the calculation of a potential registrant's tonnage band for gold imported into the EEA.

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Annex 1 – Illustration of the Article Status of Good Delivery Gold Bars under REACH

- In Table 12 of Appendix 3 Part 1 of the 2008 ECHA Guidance and Table 10 of Appendix 2 Part 1 of the 2009 ECHA Guidance documents a set of questions is proposed to facilitate the substance versus article interpretation.
- Although there is no doubt on the article status of GD gold bars under REACH, answers to the indicative questions for GD gold bars are presented here below in relation to coins (Table 3) to confirm and illustrate this view.

Table 3. Questions of the ECHA Guidance on Substances in Articles (2008 and 2009 Draft Version 2.0) applied to Good Delivery Gold Bars in relation to Coins

QUESTION (AS PER GUIDANCE DOCUMENTS)	ANSWER FOR GOOD DELIVERY GOLD BARS	ANSWER FOR COINS
Does the material have a function other than being further processed?	Yes. GD Gold Bars have an investment and storage value and therefore have a function unrelated to further processing.	Yes. Coins have also an investment value and therefore also have a function unrelated to further processing.
Does the seller put the material on the market and/or is the customer mainly interested in acquiring a material because of its shape/surface/design (and less because of its chemical composition)?	The customer (eg, an investor) is interested in acquiring GD gold bars and coins because of the historic and emotional importance attributed to gold which is unrelated to its chemical properties. The shape and markings of the GD gold bars and coins contribute predominantly to the investment function as, in this specific case, ease of storage, handling, token nature and portability are very important attributes that allow such objects to be held as investment articles.	
After which processing step is the function determined to a larger degree by the shape/surface/design?	After: - pouring molten gold (as per the required fineness) into moulds to provide them a bar shape with the required dimensions, and - adding the required marks.	After: - manufacture of the coin blank, and - marking (minting) of the coin.
When further processed, does the object undergo only "light processing", i.e. no forming processes?	Not further processed before placed on the market.	
Does the chemical composition of the material as such remain similar in the next processing steps?	Not further processed before placed on the market.	