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# *Risky Business*

**The Industry is Fraught with Risk. Will VALE's Big Bet on BIG Pay Off in Brazil?**





By Dr. Jim Giermanski

## Finally! At Last – Customs Admits Risk!

*For many years the Congress, GAO, and I many times, have criticized Customs and Border Protection (CBP) or not addressing or even acknowledging the security risks and loss of revenue from an antiquated, and ineffective in-bond systems that serves as a vulnerability to the security of the United States. However, in February, 2012, CBP has publically admitted the risk and the need to fix it.*

### The Situation

An in-bond movement is the transportation of imported merchandise, secured by a bond, from one U.S. port to another prior to the appraisal of the merchandise and prior to the payment of duties. Currently, in-bond merchandise may be transported through the United States without appraisal or the payment of duties, provided the carrier or other appropriate party obtains a bond and files the appropriate transportation entry. When the in-bond merchandise reaches its destination, it must be entered into U.S. commerce for consumption, entered for warehousing, or exported. The bond requires the bonded carrier to comply with all laws and regulations governing the receipt, safekeeping, and disposition of bonded merchandise. The transportation entry accounts for the movement of the merchandise during the in-bond process. According to a 2007 Report from the U.S. Government Accountability Office (GAO), in-bond shipments represent 30 to 60 percent of all imports that move through U.S. ports.

This in-bond system provides flexibility to importers and facilitates the flow of trade and commerce by allowing importers and other interested parties to choose when and where to enter imported merchandise into the commerce of the United States or when and where to warehouse or export the merchandise. This enables the importer to delay payment of applicable duties for imported merchandise. The in-bond system also allows merchandise to be transported and exported without the payment of duties and without having to meet all of the entry requirements necessary to enter the goods into the commerce of the United States.

However, its stated advantages serve as the core risk factors of this system. Therefore, in February, CBP published a notice of proposed rulemaking to effect changes to the current system. Eleven fundamental categories of proposed changes in this 112-page document produce numerous other administrative changes to Federal regulations. But within the 11 categories, essentially 5 proposed new rules for in-bond operations drive all the other

changes:

- 1. Require carriers or their agents to electronically file the in-bond application;**
- 2. Require additional information like, at least a 6-digit HTSUS number and/or information about the safety of the merchandise;**
- 3. Require a maximum of 30 days to transport in-bond merchandise between U.S. ports;**
- 4. Require carriers to electronically request CBP permission to divert in-bonds from their intended destination ports; and**
- 5. Require carriers to report the arrival of in-bond merchandise and its location in the U.S. destination port.**

**Electronic Data Filing:** The need to file in-bond information electronically or in “real time” is not only consistent with worldwide “single window” applications used by other Customs authorities, it helps to prevent the use of false and fraudulent documents and helps to control transshipments, re-routings, false declarations concerning country or place of origin, and falsification of official documents. Electronic filings also can be more easily stored, maintained, and managed. The natural question is why it has taken so long for CBP to propose electronic data filing for in-bonds. Electronic filings should be done at origin, perhaps even by an authorized trusted third party who can verify the merchandise at the time of sealing the container or trailer.

**Need for Additional Information:** Incredible as it sounds, CBP admits that it doesn’t really know what the merchandise is and its level of safety when it transits the United States. The impact is twofold. CBP admits that the imprecise and vague descriptions by importers and shipping agents impede CBP’s targeting trade and revenue violations, and admits that there are potential “health, safety and conservation” issues if the merchandise is not identified at the level of a least a 6-digit Harmonized Tariff Schedule of the United States (HTSUS) number. Not knowing precisely prevents CBP from notifying carriers whether additional inspections are needed. CBP further admits that it needs to know not only the description of the merchandise and its related safety issues but also the container identification number and seal number.

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***Uniform Time Limits for In-bond Transits:*** Because under the current system, air, vessel, and land conveyance all have different maximum transit time, these divergent transit times make it “confusing and burdensome,” and therefore, “difficult to enforce.” Additionally, CBP admits that these “...in-bond shipments are often unaccounted for and transactions are open for too long a period of time, hindering CBP’s enforcement and targeting efforts.” Except for pipeline, CBP believes that a standard 30 days to be sufficient for all modes of transport.

***Permission to Divert In-Bonds:*** CBP acknowledges that in-bonds may be diverted without their knowledge. The current diversion procedures make it virtually impossible for CBP to identify the ultimate destination of a diverted shipment and to determine whether the merchandise reaches that destination. This presents a security risk, a risk of circumvention of other agencies’ admissibility requirements and a risk that proper duties are not collected. CPB further admits that the control of in-bonds ...is critical to security and it necessary to ensure the proper collection of duties and to protect the health and safety of consumers. In essence, CBP confirms what many U.S. Customs brokers have claimed: CBP does not know where the in-bond has been or how often it has been accessed since current mechanical seals are easily bypassed.

***Reporting the Arrival and Locations of In-bonds:*** The current regulations require the carrier to report the arrival of in-bonds no more than 2 days after arrival at the destination U.S. port of export. Two days means that these in-bond shipments can be opened and contents manipulated. Complaints by Custom Brokers in Laredo, Texas seems to confirm this type of in-bond treatment that makes it impossible for CBP to know whether merchandise has been removed, added, or manipulated. The new rules required the carrier to report arrival within 24 hours.

These five primary proposed changes to the in-bond rules, drive many ancillary administrative changes. What is important is the recognition that the current in-bond system is broken and constitutes a serious security risk to the United States and the reason for lost revenue from not collecting the appropriate duties and taxes on those products that find their way into U.S. commerce. The current system can also be blamed for the increase of counterfeit products, drugs, and other contraband. Although these CBP proposed changes are positive and overdue, the remaining question is whether CBP training can prepare their personnel to manage and enforce a new system. But probably most significant is the admission by CBP that it is time for change! Finally, At Last!

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