



**INSTRUMENTS OF INTERNATIONAL
TRAFFIC (IITs) WITH RESIDUE—
THE NEXT CHAPTER**

API

**INTERNATIONAL TRADE AND
CUSTOMS CONFERENCE**

NEW ORLEANS MARCH 27, 2012



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IITs WITH RESIDUE – Quick Background Review

Instruments of International Traffic (IIT) -- Definition

- 19 U.S.C. 1322(a) – instruments of international traffic are exempted from the customs law (entry) to the extent provided by CBP regulations.
- 19 CFR §10.41a – IITs are substantial, reusable containers such as “Lift vans, cargo vans, shipping tanks, skids, pallets, ...in use or to be used in the shipment of merchandise in international traffic...”
- HQ Ruling 108658 (Nov. 21, 1986) – “...to qualify as an IIT...an article must be used as a container or holder, must be of substantial construction,...suitable for and capable of repeated use, and must be used in significant numbers in international traffic.”
 - “Repeated Use” defined - a single use is not sufficient . . . means more than twice. 3 to 4 uses are sufficient to qualify them (as IITs)...
- Pursuant to HQ ruling 113129 (issued to Dow Corning)(July 12, 1994), CBP did not require entry of the residue that might be present in returning containers where the empty containers were returned to the US pursuant to the provisions for Instruments of International Traffic (IIT’s).
- August 20, 2008 – 14 years later-- CBP proposes to modify HQ 113129 to require residual chemicals in IITs to be “...classified, manifested and entered.” (Customs Bulletin, Vol. 42, No. 35) Comments invited but no one really aware -- 14 comments received.



IITs WITH RESIDUE – Quick Background Review

- July 17, 2009 -- HQ H026715 (June 19, 2009) issued to Dow Corning modifying HQ 113129 to now require residual chemicals, petroleum and other products, which may remain in otherwise empty containers returning to the US to be manifested and entered (Customs Bulletin, Vol. 43, No. 28) (subsequently amended effective date moved to September 16); **Modification occurred without real industry input**
- August 26, 2009 – First of many meetings between CBP (incl. OIT, OFO, Cargo Control, Carriers Branch) and industry (Truck, Rail, AAEI, ACC, API)--
 - **Enforcement of CBP’s new requirements suspended while efforts were underway to work with the trade on how to address the many concerns raised by CBP’s new position**
- September, 2009 First draft FAQs
- May 5, 2010 Second draft FAQs
- May 6, 2010 during status call with trade groups CBP advises of intent to implement its new position: truck, air, and vessel imports = July 1, 2010; rail imports = October 1, 2010-
... but then put on hold
- November 16, 2010 Third draft FAQs
- February 8, 2011 Fourth draft FAQs
- October 18, 2011 Fifth draft FAQs



IITs WITH RESIDUE – Summary of Current State

February 2012 – 6th and current set of FAQs recently posted by CBP:

http://www.cbp.gov/linkhandler/cgov/trade/trade_outreach/advance_info/itt_faqs.ctt/itt_faqs.doc.

SUMMARY

- IITs containing residue may not be treated as empty
 - The residue must be manifested and entered in compliance with customs laws
 - If qualified, residue can be entered as American Goods Returned
- NO ENFORCEMENT DATE YET– Compliance With New Requirements Expected When Ace M1 Vessel And Rail Manifest Is Available Later In 2012 (Summer?)**
- Will Allow For Electronic Filing Of Manifests For Release Without Entry (See 19 CFR 143.23(j)), FOR ALL MODES.
 - Additional outreach expected.
 - Office of Field Operations (“OFO”) will issue field guidance regarding this matter to each of the ports. Additional FAQs may be posted.
 - Important to prepare for these dates to become reality.



IITs WITH RESIDUE –The New Standards

CARRIER RESPONSIBILITY:

- Transmit advance cargo information
- Provide Precise cargo description
- Residual cargo/tank car last contained Product XXXX
- Six Digit HTS of the residue
- Provide estimated quantity of residue (manifest residue as “1” for bulk)
- Importer may estimate amount provided to carrier for transmission to CBP
- Comply with OGA requirements where applicable (EPA)(DOT)(FDA)
- Provide updates for the estimated quantity amounts if more precise amounts are determined
- SPECIAL RULES WHEN RESIDUE IS RETURNING TO THE US IN QUANTITIES BELOW THE “MANIFEST THRESHOLD LIMITS” (adopted industry standards):
 - Residue not to exceed 3% by volume of the truck container capacity;
 - Residue not to exceed 7% by volume for railcar container capacity.
 - Vast majority of IITs returning to the U.S. having exported material are under thresholds for truck (3%) and rail (7%)



IITs WITH RESIDUE – The New Standards

CARRIER RESPONSIBILITY:

SPECIAL RULES WHEN RESIDUE IS RETURNING TO THE US IN QUANTITIES BELOW THE “MANIFEST THRESHOLD LIMITS” (truck (3%) and rail (7%))

- ✓ Manifest to contain data elements of 19 CFR §123.91 and § 123.92
- ✓ Designation of the container as an IIT
- ✓ Identify shipment as “Returning Residue”
- ✓ Input manifested quantity as “1” to represent bulk cargo
- ✓ In the Remarks/Cargo Description section of Manifest;
 - ✓ Certify the amount of material remaining in the IIT is “Less than 3% “ or “Less than 7%”
- ✓ Continue to update the manifest to the extent carrier becomes aware of corrected data elements including quantity in excess of Manifest Threshold Limits
- ✓ Ensure Type 3a IIT bond in place in the name of the entity requesting release
- ✓ Comply with OGAs as applicable



IITs WITH RESIDUE – The New Standards

ENTRY REQUIREMENTS

- Type of entry required is based on value not manifested quantity
 - Even if residue remaining in IIT is below the Manifest Threshold Limit, entry may still be required
 - Value: \leq \$200 Section 321 Release Without Entry
 - Value: $<$ \$2,000 Informal Entry (but port director may require formal)
 - Value: \geq \$2,000 Formal Entry
- Ensure Type 3a IIT bond in place in the name of the entity requesting release
- Compliance with OGAs
- Data required for filing of a Sec. 321 release without entry:
 - Country of Origin of the residue; **
 - Shipper name, address and country; **
 - Ultimate consignee name and address; **
 - Specific description of the merchandise;
 - Quantity (assume HTS reporting quantity); **
 - Value (may be zero but must be \leq \$200 to qualify as sec. 321); and
 - Shipping Weight



IITs WITH RESIDUE – The Challenges

ISSUES FOR IMPORTERS:

- Identification of containers containing residual products
 - No ACE-like system for exports
 - Multiple businesses, transactions throughout movements
- Proper classification of the residual material
- Valuation declaration
- Quantity declaration
- Special trade program qualification/ensure appropriate documentation for AGR
- Satisfy Toxic Substance Control Act (TSCA) requirements v. current environment?
- Is filing a Sec. 321 release considered “Customs business” as defined in 19 CFR 111?

SAME ISSUES REMAIN OPEN FOR 2+ YEARS:

- Who is importer of record
- Who is the shipper
- Who is the consignee
- “CBP DOES NOT DETERMINE PRIVATE PARTY BUSINESS PROCESSES. IT IS NOT FOR CBP TO DETERMINE WHO THE [SHIPPER, OR CONSIGNEE OR IMPORTER OF RECORD] IS.”



IITs WITH RESIDUE – How to Approach?

- ❖ **RESOLUTION LIKELY TO BE THROUGH CONTRACT WITH CARRIERS AND TRADE ?**
 - ❖ provisions with carrier: to id shipper; importer of record; consignee, broker to make entry
- ❖ **Identify Stakeholders**
 - ❖ Which businesses move materials by rail car?
 - ❖ Who is/are relevant commercial/operations contacts in those businesses?
- ❖ **Periodic internal meetings/calls with stakeholders**
- ❖ **Acquire solid understanding of processes in place today**
- ❖ **Valuation**
 - ❖ No commercial transaction associated with these moves
 - ❖ Contents may have been contaminated/compromised at offloading by CA/MX customer
 - ❖ Consider cost of destruction or disposal of the residual material
- ❖ **Engage with your carriers**
 - ❖ Do they have ACE accounts?
 - ❖ Do they/will they have software changes made in time to account for new residual reporting requirements?
- ❖ **Engage with your customers**
 - ❖ Are they diligent in ensuring IITs are emptied to industry standards of 3% for trucks and 7% for railcars?