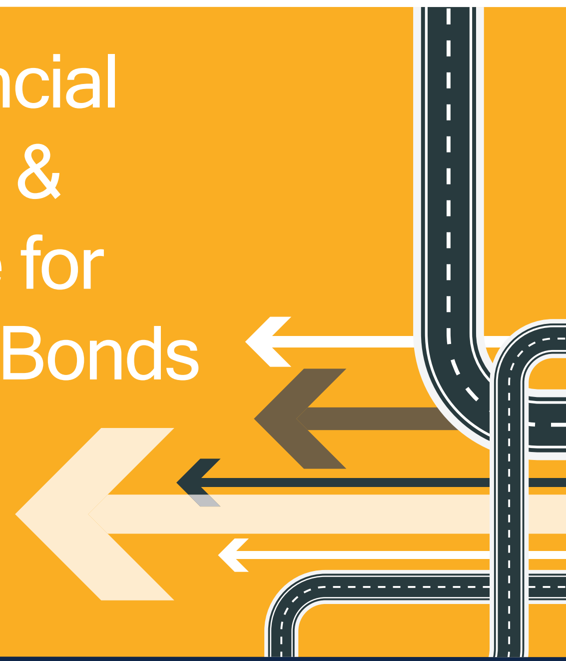
An Importer's Roadmap

Navigating Financial Requirements & Compliance for Customs Bonds



Importing merchandise into the United States comes with many obligations that can seem intimidating. Fortunately, you are in good hands using a licensed customs broker, in coordination with Roanoke Trade, who can guide you through the many regulations set forth by U.S. Customs & Border Protection (CBP). As part of your obligations to CBP, you must provide CBP with a bond. We generally recommend that an importer filing multiple entries in 12-month time frame obtain a continuous bond as part of its obligations to CBP. Understanding the continuous bond will help with financial planning along with corporate and shareholder risk assessment, particularly if you import goods subject to high duty rates.

What is a Customs Bond?

GUARANTEE PAYMENT & ASSURE COMPLIANCE

According to CBP regulations, a customs bond is *"…a contract which is given to ensure the performance of an obligation imposed by a law or regulation."* A Customs bond is a type of surety bond – a three-party contract. The parties involved in the bond contract are the principal (importer), the surety company and the obligee (CBP).

The primary purpose of a customs bond is to guarantee the payment of import duties, taxes and fees, as well as to assure compliance with all laws and regulations governing the entry of merchandise from foreign shipping points into the United States.

A customs bond is not insurance. With insurance, some losses are expected, and a portion of the premium is set aside to pay losses. With surety bonds, the surety assumes no losses will occur as the surety has subrogation rights against the bond principal.

With a customs bond, each applicant is reviewed individually based on their financial condition and ability to pay as well as the risk related to their importations. The surety has subrogation rights against the bond principal. Think of a bond like a bank loan, no surety would knowingly issue a bond for a principal likely to default.

Financial Statements & Indemnity Agreements

For the surety to have the assurance that an importer can pay for any potential claims issued against the bond, from time to time, the surety may request a financial statement for consideration. If you are asked to submit a financial statement for underwriting review, please follow these guidelines:

- **All financial statements must be in English.**
- **An audited or CPA-prepared financial statement is always preferred, though not mandatory.**
- **The financial statement must be current (prepared within the last 6-12 months).**
- **The financial statement must reflect at least one complete year of financial information.**
- **If an audited statement cannot be provided, the financial statement must be attested to by an officer of the company or a responsible party in interest.**
- **A complete financial statement consists of a balance sheet, income statement, state of cash flow, statement of changes in equity and any accompanying notes.**

Financial statements, while an important part of the underwriting process, are not the entire representation of the importer. Our underwriters review all importers on an individual basis. Credit reports, importing history, commodities imported and the customs broker(s) handling the importer's entries also play an important role in the review. Roanoke Trade and its sureties keep all financial statements strictly confidential and they are used only in the bond underwriting process. We do not provide this information to any third parties including the customs broker.

Underwriters will accept a financial statement from a related company if a General Indemnity Agreement (GIA) is signed by both the importer and the related company. The completion of the GIA depends upon the type of financial statement provided. For example, if a corporation submits its financial statements for review, the underwriters would require a corporate officer with legal binding authority to sign the indemnity agreement. If a limited liability company submits a financial statement, personal indemnity may be required depending upon the entity's type of LLC.

Our underwriters will provide detailed instructions as to how to complete the GIA to make the process as simple as possible. We encourage all importers to review the language of the indemnity closely to understand its terms and conditions.

Collateral

In the event the underwriters determine the risk of writing the bond is not supported by the financial condition of the importer, collateral is generally requested. Collateral is taken to protect the surety company of its interests when a bond cannot be approved due to the financial risk of the principal, bond type or commodity. Roanoke accepts collateral in the form of a standby letter of credit issued by a pre-approved U.S. bank.

When collateral is requested, the underwriters will provide the required letter of credit language that must be used by the bank. Should the you decide to proceed with obtaining a letter of credit, it's best to first provide the name and address of the bank you wish to use.

The underwriters will want to confirm the bank is financially stable to provide the letter of credit for an undetermined length of time.

An originally signed GIA is also required to accompany the letter of credit. The GIA language should be read carefully to understand the surety's terms and conditions. Collateral is typically not released until either:

- **The bond is terminated, and all entries have been liquidated for a minimum of 6 months.**
- **A financial statement can be provided that supports the surety's risk.**

WE URGE YOU TO WORK WITH YOUR CUSTOMS BROKER

Bond Sufficiency Review

CBP sets the rules for determining bond amounts. Generally, the continuous import bond amount calculation is based on 10% of the total duties, taxes and fees (including antidumping/countervailing duties) paid OR payable in the last 12 months. Refer to CBP Directive 009 3510-005 and the Current Bond Formulas notice for specific information.

We urge you to work with your customs broker to determine projections of your total duties, taxes and fees anticipated for the next 12 months. Although CBP looks to the last 12 months to calculate bond sufficiency, CBP runs sufficiency reviews every month. Projections of the next 12 months will need to be taken into consideration to avoid an insufficiency. An import bond can become quickly saturated or exhausted in less than 12 months preventing you from using the bond.

CBP's Revenue Division Bond Team is tasked with ensuring the government is protected and so they monitor bond and issue demands for larger bonds when a bond is saturated.

Only 15 days are given to comply with CBP's demand before they inactivate the bond. In some cases, CBP has identified bonds as "grossly insufficient" and immediately rendered the bond as insufficient and no entries could be filed against it. If underwriters determine they need further information to approve the bond, it is not guaranteed that the bond approval can be obtained in 15 days.

When a continuous bond is inactivated by CBP, your other option is to obtain single transaction bonds – a bond for every entry made into the U.S., which can cause its own underwriting risk to the surety company and added costs for you as these bonds are calculated on 100% of the goods plus any duties, taxes and fees (additional rules apply for goods subject to FDA and other partnering governmental agencies). Therefore, having your customs bond managed by those who know it best, your licensed Customs Broker, is the best strategy.

Proactive Approach

We strongly encourage you to collaborate with your customs broker when determining the amount of bond needed to avoid interruption to the importer's business. Customs brokers are licensed by CBP and can guide you through the bond calculation process, as well as the underwriting process to ensure you stay informed and compliant.

About Roanoke Trade

Roanoke Trade, a division of Roanoke Insurance Group and part of Munich Re Specialty Group Ltd., operates as a specialty insurance broker focused on surety and insurance solutions for transportation intermediaries, 3PLs, customs brokers and companies with supply chains, and is a leading provider of customs bonds, marine cargo insurance and ATA Carnets for the industry.

Contact us for additional insight or assistance with managing Customs Bonds.

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