

CUSTOMS/SURETY EXECUTIVE COMMITTEE

November 30, 2006

VIA OVERNIGHT COURIER

W. Ralph Basham
Commissioner
Bureau of Customs & Border Protection
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Reinstitution of Separate Antidumping/Countervailing Duty Bond

Dear Commissioner Basham:

On behalf of the surety trade associations of the Customs/Surety Executive Committee ("C/SEC"), we urge that the Bureau of Customs & Border Protection ("CBP") reinstitute the separate bond for antidumping/countervailing duties as a critical step toward eliminating or minimizing the continuing problem of antidumping/countervailing duty avoidance. Under current practice, there is nothing on the bond to indicate that the underlying transaction involves antidumping or countervailing duties. The surety, therefore, cannot underwrite the increased risk posed by such transactions, and the Government is deprived of the surety's help in properly securing, or occasionally limiting, imports or importers likely to be in violation of the law. The point of the bond is not just to pay duties in the event of a default. The surety and the Government have a common interest in preventing violations by assuring there is adequate security and opportunities to limit imports or importers seeking to evade antidumping or countervailing duties. Without a separate bond for antidumping/countervailing duties, or a separate Activity Code on the CF 301 bond, it is much more difficult and often impossible for sureties to fulfill its role.

Antidumping and Countervailing duty avoidance has become an increasingly critical issue for Customs and the surety industry. CBP has assessed duties far in excess of bond coverage and found no importers available to pay; sureties have experienced losses for defaulting and/or fraudulent principals far in excess of their reasonable underwriting expectations. The severity of the problem was recognized by the Congress in P.L. 109-230, which was signed by the President on August 17, 2006. This legislation suspended "new shipper" anti-dumping bond provisions for three years, and directed the Administration to submit detailed reports on antidumping duty assessments and exposures during the suspension period. CBP also recognized the severity of the problem when it proposed a new formula for setting bond amounts for

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"importations involving elevated collection risks", stating (71 Fed Reg. No 205, of October 24, 2006, at page 62276): "However, importers have increasingly failed to pay additional AD/CVD duties determined to be due at liquidation. Recent defaults for AD/CVD supplemental bills are substantially higher than defaults that were the previous norm and are unprecedented."

The purpose of this letter is to suggest that the abilities of CBP to enforce the antidumping and countervailing duty laws and to develop the information required by the new law -- as well as the capacity of the surety industry to secure compliance with US law through sound business practices -- are at risk under today's procedures. These risks would be eliminated or greatly minimized by reinstatement of a separate antidumping/countervailing duty bond. We do not believe that the reformulation of bonds as proposed in the October Federal Register notice will achieve this purpose. We also believe that it would also have the undesirable effect of making bonds far too costly and perhaps unavailable to importers who are newly formed, small to medium size, or otherwise unable to meet the CBP standards for exemption from the proposed formula. The individual associations signatory to this letter will specifically and individually address the Federal Register Notice through the formal rule-making process.

Summary of Request

The purpose of re-creating a separate antidumping/countervailing duty bond -- accomplished by creating a new bond Activity Code on the existing CF 301, or re-creating a bond dedicated to AD/CVD transactions -- is to isolate and highlight the Antidumping and Countervailing Duty risk to both the United States and the surety community.

This proposal is not new. A separate bond, known as the "CF 7591", was required for antidumping duties by Customs but was eliminated to promote administrative efficiency when Customs consolidated all bonds into a single form (CF 301) in 1985. The need and possibility for reviving the separate AD/CVD bond has been under discussion in connection with the ACE e-bond program but any implementation is too far into the future to be helpful in resolving current problems.

A specific bond Activity Code or separate bond for antidumping/countervailing duty transactions would allow both Customs and the surety community to identify with particularity those parties and transactions that pose a high risk to both Customs and the surety. Implementation of the new bond Activity Code or separate bond would allow Customs and sureties to monitor risk prior to the entry transaction and while the merchandise is still under Customs control.

In recent years Customs has acknowledged the unique risk associated with utilizing ordinary Activity Code 1 bonds for all antidumping transactions. This is because, in part, the normal bond-setting formula does not always protect Customs and the surety against the enhanced antidumping duty avoidance risks associated with certain imported merchandise. Well-

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publicized problems with agriculture/aquaculture products, including shrimp, are examples of these increased risks.

Recent WTO challenges to the enhanced bond setting formulas for product-specific merchandise suggest that the re-creation of a separate antidumping/countervailing duty bond with an enhanced *but uniform* bond-setting formula, rather than a merchandise-specific bond-setting formula, would be a more effective way to protect Customs and the surety industry from riskier AD/CVD transactions while also avoiding discrimination claims by importers of targeted merchandise. As under current law, nothing would prevent a port director from demanding additional security against an antidumping bond if deemed necessary in a particular transaction.

Finally, the creation of either a new bond Activity Code or a completely new AD/CVD bond may be best accomplished in consultation with the Department of Commerce. As the agency directly responsible for the administration of the antidumping and countervailing duty laws, Commerce could provide important guidance in formulating the new bond.

Background

For more than 100 years, the United States Customs bond has provided the United States with the security necessary to both minimize the government's risk of revenue loss and to maximize the trade community's compliance with the customs laws including those which are enforced by CBP for other federal agencies. Those "other agencies" include the International Trade Administration of the Department of Commerce ("ITA"), the United States Food and Drug Administration, the Department of Transportation's National Highway Traffic and Safety Administration and the Environmental Protection Agency.

The United States Customs bond is an important tool for the facilitation of trade and the flow of legitimate commerce across the borders of the United States. Customs and the agencies whose laws and regulations are enforced by Customs as well as the legitimate importer all have come to rely on this institution. Unfortunately, from time to time, those who would violate the customs laws have used the bond as a cover or shield to mask their illegitimate activities and circumvent their revenue and import compliance obligations.

Since sureties share a strong common interest with Customs in assuring that importers are in full compliance with the law, it is not surprising that when misuse of the bond has been discovered, the surety industry has been proactive in bringing its discoveries to the attention of Customs and the other interested Federal agencies. For example, it was the surety industry that brought the wholesale circumvention of NHTSA and EPA requirements on imported vehicles to the attention of Customs, NHTSA and EPA. Unscrupulous automobile importers used the bond to clear their non-compliant vehicles and used the bonded period for compliance to sell the non-compliant vehicles, pocket the proceeds and disappear. When neither the importer nor the non-compliant merchandise could be found, Customs and the interested agencies would merely

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proceed against the bond and ignore the illegitimate importer and non-compliant vehicle or other product. Members of the surety community underwriting U.S. customs bonds brought these abuses to the attention of the Federal Agencies and worked with the agencies to craft remedial regulations to close these gaps in federal statutes and regulations. For example, when the level of non-compliant motor vehicles reached epidemic proportions and it became clear that bonds were being used to circumvent the compliance requirement, NHTSA with the support of the surety industry, worked with Customs to remove motor vehicle compliance obligations from the general-purpose customs bond. NHTSA and Customs, with the support of the surety industry, created a new bond to isolate and highlight the transactions covering the importation of motor vehicles; and severely limited, by remedial regulation, the parties who could engage in the activity of importing motor vehicles.

Clearly, the public interest is never served when the administration of law is allowed to shift its focus, as a matter of policy, from the smuggler and the contraband to merely collecting on the bond. In those cases in which sureties and Customs and other Federal agencies have worked together to close the loopholes through which the bonds were abused, compliance has soared and the purpose of the underlying statutes has been achieved.

Now, once again, the customs bond is being used, and remains capable of being used, for the wholesale circumvention of law. This time, bonds have been used to circumvent the deposit of United States antidumping duties. In the situation addressed by the Congressional action to suspend bonding privilege for so-called "New Shippers", Congress responded to the recent cases in which importers submitted a counterfeit invoice to Customs falsely identifying the shipper/exporter as a "New Shipper" entitled to the bonding privilege during a "New Shipper Review." By the time the Department of Commerce instructed Customs that the importation could not be verified as a true "New Shipper" shipment, and should be assessed the maximum antidumping duty rate, the importer had disappeared. This is only one of the several fraudulent schemes being perpetrated against the United States resulting in a circumvention of the United States Trade Laws.

The ability to use bonds to circumvent antidumping duty orders will continue so long as bonds are used to secure entries without reference to the fact that they cover importations subject to antidumping and/or countervailing duty orders. The continuous and single transaction bonds used to secure all importations are vulnerable to abuse by importers who never intend to pay any antidumping duty. They can obtain the release from Customs custody of multiple shipments of product over a short period of time, a few days or weeks, make quick sales and disappear months or years before the first demand for payment of the antidumping duties is made by Customs at the direction of the Department of Commerce, International Trade Administration.

The fact that importations subject to antidumping duties may be secured by continuous bonds which are general in nature and not set with reference to antidumping orders, perpetuates this ongoing obstacle to proper enforcement of the antidumping laws, creates opportunities for

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avoiding or evading compliance with the law, and impedes (and perhaps eliminates) the ability to systematically measure or underwrite the various levels of exposure and compliance resulting from antidumping/countervailing duties. Clearly, reinstatement of specific bond coverage for antidumping and countervailing importations would be a significant step toward addressing these problems.

Conclusion

The surety industry strongly urges reestablishment of the separate antidumping/countervailing duty bond in order to refocus the administration of our trade laws upon the foreign exporters and U.S. importers of the products that are priced to compete unfairly with our domestic products and injure domestic industries. C/SEC stands ready to meet with you to discuss this important proposal in further detail and answer any questions or concerns that you may have.

Respectfully submitted,

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