INTERNATIONAL TRADE SURETY ASSOCIATION
1000 NW 57th COURT SUITE 600 MIAMI, FL 33126 TEL: 305-913-8658 FAX: 305-267-5155

June 18, 2012

VIA E-MAIL & U.S. MAIL

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THE AREA PORT OF CHAMPLAIN, NY
NOTICE NO.: 12FO-53 DATED JUNE 13, 2012

On behalf of the members of the International Trade Surety Association, we wish to thank you for meeting with us in Chicago to discuss the above-referenced June 13, 2012 notice. Our members continue support the efforts of CBP to enforce and collect anti-dumping duty orders. We support changes in law and procedures which will provide sureties with the timely and relevant information which will support a surety program that complements CBP's enforcement efforts and allows sureties to secure government revenues in a fiscally responsible manner. With these principles in mind, we offer the following comments regarding the STB AD program

GENERAL COMMENTS

Consultation with Sureties. This procedure was created and implemented without consulting with any members of the trade, and in particular, without notice or consultation with the surety industry. Sureties are a critical component of many new operational and compliance initiatives of CBP, yet the industry is often overlooked in the consultative processes of CBP in developing new procedures. We believe that consultation with the sureties on this program during its early development by CBP would have significantly improved its effectiveness and implementation, as well as caused an important evaluation of the policies and impact of this approach to AD/CVD collections and enforcement.

Questionable Efficacy of the STB Program. At the outset, we question the efficacy of the STB program. We agree that CBP is seeking to meet an important and difficult challenge: to deter or eliminate evasion of AD and CVD by transshipments and fraudulent declarations of country of origin. Sureties have a financial interest and willingness to work cooperatively with CBP to meet this challenge. However, we do not believe the STB program advances this cause.

Importers or shippers using fraudulent origin declarations to evade AD and CV duties are engaged in intentional violations of federal law and should be the target of enforcement investigations intended to identify and penalize the wrong-doers. Investigations of such

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intentional fraud are most typically and effectively conducted confidentially by federal agencies without notice to the alleged wrongdoer.

The approach here contrasts sharply: it puts the importer or shipper on notice that its transactions have been targeted by CBP when CBP asks for an additional bond. Requests for additional bonds are extraordinary actions which have been long-authorized by CBP regulations but have rarely been used. The predictable result is that true wrong-doers will not execute bonds, but will abandon or export shipments, shift operations to a new or different importer, et.al., whereas legitimate importers will incur the additional cost of the STB for their lawful transactions. CBP does not deter or eliminate the transshipment evasion technique and does not collect antidumping duties, but legitimate importers incur additional and perhaps extraordinary costs.

SPECIFIC COMMENTS ON THE ADDITIONAL SECURITY (STB) PROGRAM

Assuming that CBP will move forward with the STB program, we offer the following comments regarding the procedures as outlined in the June 13, 2012 notice.

The Form used for the Notice. The form for giving notice of the STB requirement should be clearly defined and adopted for all ports. We believe that an entry rejection form is the best form for this purpose, rather than other forms discussed at our meeting (CF-28s, CF-29s, etc.)

The Content of the Notice Should be Specific and not General. The form should give a specific reason and not a "general reason" why the STB is being required. Ideally, the notice would state that the STB is required to secure possible AD or CVD obligations, the method by which the STB amount was calculated and, where available, the ADD/CVD case number, commodity description and HTSUS subheading and applicable AD/CVD rate.

CBP port directors have broad authority to require STB's to protect the revenue (19 CFR 113). As CBP is well aware, AD and CVD assessments are exceptionally high risk areas for sureties, and therefore, virtually all sureties have special underwriting rules which they follow in accepting obligations for those entries, and brokers and agents asked to write bonds covering AD and CVD obligations typically have special pre-bond-issuance reporting requirements to their sureties. These underwriting and reporting requirements benefit both the sureties and CBP: sureties can properly evaluate and underwrite these high risk transactions; CBP's enforcement and collection efforts are enhanced and complemented by the informed actions of the sureties.

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The "general" notice requirement would appear to be satisfied by any reference to a need to protect the revenue, and certainly does not require that the notice indicate that the STB is to secure AD and CVD assessments, that any particular AD or CVD order is involved, or that the bond will be returned and all obligations cancelled should it be determined that no AD or CVD duties are involved. At the CSEC meeting, it was suggested that the notice might state "to verify country of origin". We believe that this suggestion is not in and of itself sufficiently specific to put the importer, filer and surety on notice of the issue to be addressed and the exposure to be secured. It also comes uncomfortably close to a contrivance to induce sureties to underwrite a transaction while keeping its true risk hidden.

Notice to Surety on CTB and Role of CTB. The notice should be given directly and immediately by CBP to the surety responsible for any CTB securing the same entry. At the CSEC meeting, CBP officials stated that the CTB would be obligated for any AD or CV duty obligations beyond those secured by the STB. As a surety for the transaction, and one responsible for AD and CV duties on a Type 1 entry, the CTB surety should be informed of the change in its exposure and obligation.

CBP should also expressly advise the trade of it position on whether the CTB continues to secure the entry, and if so, of the order in which it will charge the two bonds in the event of a future assessment. The trade should also be informed whether the STB secures all obligations on the transaction or only some subset of obligations (e.g., AD and CV duty obligations not declared at the time of entry). Importers, brokers and the surety (or sureties) on the two bonds should all be advised on the government's position. The absence of this type of information fosters confusion in the trade regarding bond exposure, posting and return of collateral, etc., and will inevitably lead to disputes and delays in settlement of claims.

Amount of the STB. The formula for the STB should be set at the entered value times the duty rate applicable under the AD or CVD case believed to be applicable, or alternatively, at the value of the suspect goods. CBP should use a formula consistent with existing STB-setting formulas, and one which allows the surety, importer or filer to validate the bond amount as properly calculated and related to an AD or CV duty obligation (e.g., CBP Directive 099-3510-004). In our early experience with this program, ports have been inconsistent in calculating the bond amounts, and have applied formulas unrelated to AD and CVD cases (such as the formula for restricted goods, ie. three times the value of the goods). CBP should also consider establishing maximum and minimum bond amounts, particularly in light of its opinion that the AD and CV duty obligation continues to be covered by the CTB.

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Return of STB. We have fundamental concerns that this portion of the procedure should be eliminated as it is unworkable and counterproductive. We are unaware of any precedent or existing procedure for the "return" of STB's which have actually been obligated and were operational as in the case here (i.e., once the additional STB is filed, the surety is fully obligated for as long as CBP deliberates).

The procedure is unworkable because "investigations" often have no formal conclusion, and therefore, the bond may have no "return" date. More typically, the statute of limitations is the only signal that a bond is no longer exposed. The procedure is counterproductive because Importers and filers are likely to be confused by a commitment to "return" the bond into thinking that the bond was void and never in effect. This invites claims for return of premiums which were in fact fully earned when the STB was filed.

However, should CBP continue to adopt a procedure for "return "of the STB that procedure should be more specifically defined in the following respects:

- First, the returned bond should be marked on its face as voided and not chargeable; and/or a cover letter should be provided to the surety with the returned bond clearly identifying the bond and clarifying its termination and/or cancellation for all or any past and present purposes.
- Second, clarification is needed of the instruction that the requirement be "`discontinued when the review is completed and compliance is determined". Specifically, we believe that the ports should be advised specifically that this action can occur in advance of liquidation of the entry and that the "compliance" to be determined is compliance on the AD or CVD evasion concern.
- Third, we are also concerned by the ambiguity of the meaning and use of the terms "review" and "investigation". A condition precedent to require the STB is that there is a "continuing review or investigation risk", whereas the return of the bond refers only to completion of a "review" and does not refer to an "investigation". Is the absence of a reference to investigation intended to signal different treatment? Are "reviews" and "investigations" different (i.e., "reviews" might be an import specialist review whereas an "investigation" might be a formal investigation such as defined by the prior disclosure regulations).

- Fourth, will there be a time limitation on concluding the review and investigation so that it will be clear to all that the surety's exposure has ended. Experience suggests that "investigations" are not concluded with any formal notice of conclusion, and might extend beyond the date of entry liquidation.

Notice to Ports. How will all of the ports "be made aware when one port requests an STB" and will they also be informed of the acceptable formula and of sufficient information to avoid requiring additional security beyond the scope of the suspicions at the first port? For all importers importing through multiple ports, which port will make the additional STB decision, and will CBP designate a "primary" port of require the importer to make such a designation? We are not aware of any communication system at CBP (emails?) that would communicate this information to all ports for predictably consistent action.

Cash Payment Option. The notice indicates that there is an option to deposit cash rather than post an STB, but no details are provided regarding that alternative. We recommend that the trade be notified that (1) the deposit is in an amount that is calculated at the applicable ADD/CVD rate which is suspected to be applicable to the declared value of the imported product, (2) that the funds will be specifically identified and deposited by CBP in the ACE/ACS system and (3) procedures for obtaining refunds.

May 1, 2012 Memorandum Disclosure. We have been told that the Notice issued to the public was to summarize the disclosable elements of the original May 1 internal notice from the Office of International Trade, and that the May 1 notice is not disclosable because it contains law enforcement investigative information. We request that CBP reconsider its position and release the notice in response to this ITSA request, even if in redacted form. Our experience suggests that such documents are in fact disclosable, and that sharing them with the interested members of the trade fosters better understanding, communication and creation of workable, purposeful procedures.

Broader Notice on Additional STB Procedures. CBP has broad authority to request additional security in the form of STB's wherever it believes it is needed to protect the revenue and assure compliance with other laws, and not just where potential AD and CVD assessments are involved. Port Directors have exercised this authority where they believe that a claim for duty-free treatment under a preferential program or free trade agreement is not valid, where the declared value of goods is questioned, or the potential need for redelivery of the goods is great.

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This authority has not been exercised often in the past, and the procedures under which it is invoked are not uniform.

We believe that CBP should develop in consultation with the interested members of the trade a broader public notice which defines the situations in which CBP will require additional security and the manner in which it will be handled. The comments offered above with regard to the AD/CVD program are a good start for identifying the areas to be addressed in such a notice, as well as our vision for a workable procedure.

Respectfully submitted,

INTERNATIONAL TRADE SURETY ASSOCIATION

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President

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