

Commercial Customs Operations Advisory Committee (COAC) Government Issue Paper: (Intelligent Enforcement Subcommittee/Bond Working Group – Risk Based Bonding)

December 2019



U.S. Customs and
Border Protection

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Action Required: Informational

Background:

- Risk-based bonding analysis was initiated by CBP in response to three items that call on CBP to develop and apply risk assessments to improve collections:
 - Trade Facilitation and Trade Enforcement Act (TFTEA), Section 115 (February 2016);
 - GAO Report (August 2016) - *AD/CVD: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk*; and
 - Executive Order 13785 (March 2017) - *Establishing Enhanced Collection and Enforcement of AD/CVD and Violations of Trade and Customs Laws*.
- Section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA) requires CBP to develop importer risk assessment guidelines to adjust bond amounts.
 - Validated Customs-Trade Partnership Against Terrorism (C-TPAT) Tier 2 and Tier 3 participants are excluded from this requirement.
- Development of a statistically valid risk-based bonding framework began in July 2016 in response to two Government Accountability Office (GAO) recommendations.
- The Court of International Trade (CIT) has been clear in past rulings that adjustments to bond amounts must be based on an actual assessment of the importer's likelihood/ability to pay and not just raised because there is the mere possibility that Antidumping/Countervailing Duty (AD/CVD) deposit rates could change.

Issue:

- The Risk Based Bonding initiative will be implemented in two phases.
- Phase one is the implementation of the short-term Risk-Based Bonding effort, focused on requiring a Single Transaction Bond for type 03 and 07 AD/CVD entries that pose a revenue collection risk to CBP.
 - CBP is currently tracking a Q2 2020 target to initiate phase one.
 - The short-term initiative will inform the long-term methodology.
 - All type 03 and 07 entries, imported by a 'new AD/CVD importer' (except for C-TPAT Tier 2 or 3 importers), will be required to present an additional AD/CVD Single Transaction Bond to CBP to obtain release of cargo.
 - A 'new AD/CVD importer' is an importer who is importing merchandise subject to AD/CVD that has not yet had a type 03 or 07 AD/CVD entry summary liquidate at the time the cargo release entry is filed with CBP.
 - $\text{New single transaction bond amount} = (\text{Total import value or line value, if provided}) \times (\text{Total of any risk factor multipliers})$
- Phase two, the long-term solution for Risk-Based Bonding, enhances the existing Continuous Bond analytical formula to accommodate all entry types, and Priority Trade Issues (PTIs).
 - CBP will continuously refine and update risk-based models releasing sequential versions as additional datasets are loaded, with each version of the model to be statistically valid.
 - Long-term enhancements will leverage cognitive analytics to further segment risk.
 - Phase two full implementation scheduled to occur in FY2021.

- Prior to implementation, CBP will develop and publish guidance for Trade stakeholders and CBP personnel to include, but not limited to, a Federal Register Notice.
- Sureties and the broader trade community will continue to play an important role throughout this process and CBP is grateful for their continued collaboration.

Current Status:

- The initial development of Phase one AD/CVD Risk-Based STB functionality deployed September 19, 2019, but is currently turned off (i.e. not available to trade stakeholders).
- CBP continues to refine risk factors and associated multipliers.
- CBP continues to implement ACE enhancement to support line level validations.

Next Steps:

- CBP will finalize ACE enhancements to support the risk-based bonding framework.
- CBP will finalize the risk factors and associated multipliers.
- CBP will issue a Federal Register Notice announcing the new risk-based bonding framework requirements, risk factors and multipliers.
- Deployment of the AD/CVD Risk-Based STB framework, including line level validations, in early March 2020.

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Date: November 14, 2019