Commercial Customs Operations Advisory Committee (COAC) Intelligent Enforcement Subcommittee

Bond Working Group Background Document

July 15, 2020

COAC

COMMERCIAL CUSTOMS OPERATIONS ADVISORY COMMITTEE

The Bond Working Group has over 25 members consisting of sureties, customs brokers, importers, attorneys as well as government participation from U.S. Customs & Border Protection (CBP) including the Office of Trade, Office of Trade Relations, Office of Finance, Chief Counsel's Office, and Department of Commerce (DOC), Customs Liaison Unit.

Due to the COVID-19 pandemic and its impact on the economy to businesses of all sizes, it is more important than ever to ensure bonding requirements are fair and uniform to avoid any unnecessary burden on the trade while protecting CBP at the same time. Accordingly, it's important that CBP update Customs Directive 3510-004 Monetary Guidelines for Setting Bond Amounts which provides the procedures the trade can follow to establish bond amounts.

Since the COAC meeting on April 15, 2020, the Bond Working Group reviewed prior recommendations to determine a path forward. We prepared the following recommendations and background paper to present at the COAC meeting on July 15, 2020.

New Recommendation

Customs Bond Directive: In support of prior recommendation 10095, COAC recommends that CBP update Customs Directive 3510-004 prior to the next COAC meeting scheduled in October 2020. This directive was issued in 1991 and has not been updated to reflect the current environment in ACE for single transaction bonds and other bond types.

In addition, the directive does not provide uniform guidance to determine the amount of Foreign Trade Zone (FTZ) Bonds per recommendation 10307 or Pipeline Operators per recommendation 10338. COAC recommends the Customs Directive be updated to include the following changes:

a) Pipeline Operators should be defined so it is clear which bonds are required to transact business.
b) FTZ Operators should have a defined continuous bond formula that all ports can follow uniformly, subject to a $50,000 minimum per current regulation. The Bond Working Group provided several suggestions for bond formulas CBP can consider given the very low risk of duty exposure and loss experience including:
    1. $50,000 minimum + $10,000 per additional FTZ location.
    2. 10% of the duty liability for the goods stored in the warehouse based on the daily snapshot of FTZ inventory.
    3. 3% of the value that is dutiable based on the daily snapshot of FTZ inventory.

Prior COAC Recommendations

#10095 Activity Code 1 Single Transaction Bonds (STBs) dated 7/27/16: COAC recommends that CBP seek to clarify and streamline the current bond formula if subject to Partner Government Agency (PGA) requirements so the trade can fully automate compliance within ACE at the HTS and line level, and CBP can more easily conduct sufficiency reviews. Such guidance should include clarifying which PGAs with hold authority are subject to bonding requirements for three times the value, and that this higher bond formula does not include PGAs that are disclaimed in ACE.

#10338 Pipeline Operator Bonds dated 2/27/19: COAC recommends that CBP review the bond requirements for Pipeline Operators with the Bond Working Group to provide uniformity in the Customs Bonds required and liability created for Pipeline Operators.

#10307 FTZ Bonding dated 10/3/18: COAC recommends that CBP review how the FTZ bond amount (Activity Code 4) is determined with the COAC Bond Working Group to ensure it contemplates the custodial obligation of an FTZ based on duty of average inventory rather than value within the FTZ. This review should ensure the FTZ bond amounts are sufficient to protect the revenue of the U.S. and calculated in a uniform manner to avoid unnecessary hardship on the trade. COAC further recommends that CBP modernize the FTZ regulations to align with the eBond environment implemented in January 2015.

FTZ Formulas

When considering the exposure CBP has for FTZ Operator Bonds, it is important to note there is very little duty exposure. For example, FTZs can submit a request to CBP to destruct the goods if a total loss were to occur because the warehouse had a fire, hurricane, or similar disaster. In addition, only a portion of the goods stored in an FTZ are dutiable based on admission into the zone, whether domestic or foreign, or privileged vs. non-privileged status.

For these reasons, we discussed that FTZs are more suitable for a License and Permit type bond. These are required before a business can operate and protect CBP by guaranteeing the FTZ will follow all laws and regulations. Thus, the main exposure is liquidated damage claims which can range from $1,000 per violation per day up to the value of the goods. Should CBP consider such a formula, we recommend using the $50,000 minimum bond amount + $10,000 per location.

The Bond Working Group was also able to evaluate several examples of FTZ operations based on different zone commodities, volumes, and dutiable amounts. Any FTZ Operator can provide this "snapshot" of warehouse inventory and duty that can be used to establish a continuous bond formula and allow CBP to monitor the bond amount annually.

Using actual zone figures below, we applied the two calculations referenced in the FTZ bond amount recommendation with a $50,000 minimum bond amount. The first formula is "Total Duty" x 10% and the second formula is "Dutiable Value" x 3% of the value. In all instances, the continuous bond would be the same under either formula. Only in the second example did we find that 10% of the Total Duty would require a $50,000 bond whereas 3% of the Dutiable Value would yield a $100,000 bond.

TOTAL_VALUE	DUTIABLE_VALUE	TOTAL_DUTY	10% of Duty	3% of value	Bond Amt
$48,166,135.42	$1,559,979.82	$158,628.98	$15,862.00	$46,799.39	$50,000
TOTAL_VALUE	DUTIABLE_VALUE	TOTAL_DUTY			
$3,731,528.49	$2,691,252.16	$251,663.71	$25,166.37	$80,737.56	$50,000
TOTAL_VALUE	DUTIABLE_VALUE	TOTAL_DUTY			$100,000
$4,068,102.34	$1,329,483.55	$136,182.37	$13,618.24	$39,884.51	$50,000
TOTAL_VALUE	DUTIABLE_VALUE	TOTAL_DUTY			
$3,777,371.67	$502,480.00	$12,461.21	$1,246.12	$15,074.40	$50,000
TOTAL_VALUE	DUTIABLE_VALUE	TOTAL_DUTY			
$30,070,485.32	$3,662,843.25	$915,710.81	$91,571.08	$109,885.30	$100,000
TOTAL_VALUE	DUTIABLE_VALUE	TOTAL_DUTY			
$21,771,506.41	$6,644,541.89	$1,509,102.92	$150,910.29	$199,336.26	$200,000
TOTAL_VALUE	DUTIABLE_VALUE	TOTAL_DUTY			
$19,168,037.65	$6,572,793.56	$1,101,408.44	$110,140.84	$197,183.81	$200,000

Pipeline Operator Bonds

We have provided CBP with detailed information on the different bond types Pipeline Operators may require when they transact business in the U.S. depending their role in the process. The below chart highlights the different bond types, and we look forward to updating the Customs Bond Directive to include Pipeline Operators and clarification on their bonding needs.