

Dated: December 30, 2008.

Jennifer Spaeth,

*Director, Office of Federal Advisory
Committee Policy.*

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DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

[Docket No. USCBP-2008-0112]

Enhanced Bonding Requirement for Certain Shrimp Importers

AGENCY: U.S. Customs and Border
Protection, Department of Homeland
Security.

ACTION: Notice of proposed
modification; request for comments.

SUMMARY: This notice proposes to end the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to an enhanced bonding requirement (EBR). A recent World Trade Organization (WTO) Appellate Body Report has found that CBP's application of this requirement to shrimp from Thailand and India is inconsistent with U.S. WTO obligations. In response to this report, CBP proposes to end the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to the EBR. CBP proposes that shrimp importers affected by this requirement may request termination of any existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new bond application pursuant to 19 CFR 113.12(b). CBP seeks comment on this proposal.

DATES: Comments must be received on or before February 11, 2009.

ADDRESSES: Commenters may submit comments, identified by *docket number*, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2008-0112.

- *Mail:* Trade and Commercial Regulations Branch, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this document. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For

detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: David Genovese, ADCVD/Revenue Policy & Programs Division, Trade Policy and Programs, Office of International Trade, David.Genovese@dhs.gov, (202) 863-6092.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance will reference a specific portion of the proposal, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

A key CBP mission is to collect all import duties determined to be due to the United States. Under CBP statutes and regulations, release of merchandise prior to the determination of all duties that may be owed is ordinarily permitted, provided the importer posts a bond or other security to insure payment of duties and compliance with other applicable laws and regulations. The final assessment of duties occurs at liquidation of the entry.

In the case of goods subject to antidumping (AD) or countervailing (CV) duties, CBP follows instructions from the Department of Commerce (DOC) (which administers the AD/CV duty laws in conjunction with the U.S.

International Trade Commission) regarding the applicable AD/CV duty rate, and collects any additional duties owed upon liquidation. However, CBP has found that many importers subject to AD/CV duties fail to pay the additional duties determined to be due at liquidation. As a result, since defaults for AD/CV duty supplemental bills have increased drastically, CBP conducted an internal policy review of revenue protection strategies at CBP.

Issuance of CBP's Enhanced Bonding Requirement (EBR)

In response to importers' increasing failure to pay additional duties determined to be due at liquidation, CBP reconsidered the general bond formula which provides that the minimum continuous bond may be in an amount equal to the greater of \$50,000 or ten percent of the amount of the previous year's duties, taxes and fees. In order to address the growing collection problem, CBP announced an enhanced customs bonding requirement (EBR) for those continuous bonds that secure the importer's promise to pay all duties finally determined to be due on certain merchandise subject to an AD/CV duty order. See "Monetary Guidelines for Setting Bond Amounts for Importations Subject to Enhanced Bonding Requirements", 71 FR 62276 (October 24, 2006).

Application of CBP EBR

Application of the EBR has been limited to merchandise subject to the first antidumping orders involving agriculture and aquaculture merchandise imposed after the issuance of the July 2004 Amendment to the Bond Guidelines.¹ CBP required that continuous bond amounts for importers of shrimp subject to AD or CV duty orders be increased to the rate established in the final AD or CV duty

¹ Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil, 70 FR 5143 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand, 70 FR 5145 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from People's Republic of China, 70 FR 5149 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 FR 5152 (Feb. 1, 2005); and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador, 70 FR 5156 (Feb. 1, 2005).

order, multiplied by the value of the importer's entries of the subject merchandise in the previous 12-month period.

World Trade Organization Disputes Regarding EBR

On April 24, 2006, Thailand requested consultations with respect to certain issues relating to the imposition of antidumping measures on shrimp from Thailand, including the application of the EBR to importers of shrimp from Thailand. Thailand requested the establishment of a panel on September 15, 2006, and the World Trade Organization (WTO) Dispute Settlement Body (DSB) established a panel on October 26, 2006.

On June 6, 2006, India requested consultations with respect to certain issues relating to Customs Bond Directive 99-3510-004, as amended by the *Amendment to Bond Directive 99-3510-004 for Certain Merchandise Subject to Antidumping Countervailing Duty Cases* (July 9, 2004) and clarifications and amendments thereof. India alleged that the United States has imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of subject shrimp imported by the importer in the preceding year, and that this action breached several provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement), and the Agreement on Subsidies and Countervailing Measures. India requested the establishment of a panel on October 13, 2006, and the DSB established a panel on November 21, 2006.

The panels circulated the reports in both cases on February 29, 2008. Among other things, the panels found that the additional bond requirement as applied to importers of shrimp from Thailand and India was a "specific action against dumping" inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute "reasonable" security.² On April 17, 2008, Thailand and India appealed the findings of the panels with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29, 2008.

²Panel Report, *United States—Measures Relating to Shrimp from Thailand*, WT/DS343/R, adopted August 1, 2008.

The Appellate Body report was issued on July 16, 2008.³ The Appellate Body found that the panels properly concluded that the additional bond requirement as applied to importers of shrimp from Thailand and India did not constitute reasonable security. It rejected Thailand and India's other claims regarding the panels' interpretation of the Ad Note. The Panel and Appellate Body reports were adopted by the DSB on August 1, 2008. On August 29, 2008, the United States indicated that it intended to comply with the recommendations and rulings of the DSB.

Proposed Modification

CBP proposes to comply with the recommendations and rulings of the DSB by ending the designation of shrimp covered by antidumping or countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts. Furthermore, shrimp importers may request termination of existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new continuous bond application pursuant to 19 CFR 113.12(b). The requirements for submitting a new bond application pursuant to 19 CFR 113.12 are available on the CBP Web site at http://www.cbp.gov/xp/cgov/trade/priority_trade/revenue/bonds/pilot_program/news_develop/ under the "Policy and Procedures" section.

After public comments are received, reviewed, and considered, CBP will publish in the Customs Bulletin and in the **Federal Register** a final notice regarding the designation of shrimp covered by antidumping or countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts. Any change to the designation of this merchandise and the bond amounts required of importers of this merchandise will be effective for entries made on or after the date of publication of the final notice.

Dated: January 7, 2009.

W. Ralph Basham,

Commissioner, Customs and Border Protection.

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³WTO Appellate Body Report, "*United States—Measures Relating to Shrimp from Thailand*" and "*United States—Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WT/DS343/AB/R and WT/DS345/AB/R, adopted August 1, 2008.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2009, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614-4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2008-54, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2009, and ending on March 31, 2009. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three