

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

#### Information Collection Requirement

OMB Control Number 1652-0039; TSA Claims Management Program allows the agency to collect information from claimants in order to thoroughly examine and resolve tort claims against the agency. TSA receives approximately 1,900 tort claims per month arising from airport screening activities and other circumstances, including motor vehicle accidents and employee loss. The Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), 2401(b), 2671-2680) is the authority under which the TSA Claims Management Branch adjudicates tort claims.

The data is collected whenever an individual believes s/he has experienced property loss or damage, a personal injury, or other damages due to the negligence or wrongful act or omission of a TSA employee, and decides to file a Federal tort claim against TSA. Submission of a claim is entirely voluntary and initiated by individuals. The claimants (or respondents) to this collection are typically the traveling public. Currently, claimants file a claim by submitting to TSA a Standard Form 95 (SF-95), which has been approved under OMB control number 1105-0008. Because TSA requires further clarifying information, claimants are asked to complete a Supplemental Information page added to the SF-95. If TSA determines payment is warranted, TSA will send the claimant a form requesting banking information (routing and accounting numbers) in order to direct payment to the claimant. This form has been approved under OMB control number 1652-0039.

Claim instructions and forms are available through the TSA Web site at <http://www.tsa.gov>. Claimants must download these forms and mail or fax them to TSA. On the Supplemental Information page, claimants are asked to provide additional claim information including: (1) E-Mail address, (2) location of incident within the airport, (3) airport, (4) complete travel itinerary, (5) whether baggage was delayed by airline, (6) why they believe TSA was negligent, (7) whether they used a third-

party baggage service, (8) whether they were traveling under military orders, and (9) whether they submitted claims with the airlines or insurance.

If TSA determines payment is warranted, TSA sends the claimant a form requesting: (1) Claimant signature, (2) banking information, and (3) Social Security number (required by the U.S. Treasury for all Government payments to the public pursuant to 31 U.S.C. 3325).

Under the current system of claims submitted by mail or fax, TSA estimates there will be approximately 22,800 respondents on an annual basis, for a total annual hour burden of 11,400 hours.

TSA will use all data collected from claimants to examine and analyze tort claims against the agency to determine alleged TSA liability and to reimburse claimants when claims are approved. In some cases, TSA may use the information to identify victims of theft or to aid any criminal investigations into property theft.

Issued in Arlington, Virginia, on March 26, 2009.

**Ginger LeMay,**

*Paperwork Reduction Act Officer, Office of Information Technology.*

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**BILLING CODE 9110-05-P**

## 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:** General notice.

**SUMMARY:** This notice ends 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 held that the application of this requirement to shrimp from Thailand and India was inconsistent with U.S. WTO obligations. In response to this report, Customs and Border Protection (CBP) is ending the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to the EBR. The 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).

**DATES:** *Effective Date:* The notice is effective on April 1, 2009.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

A key U.S. Customs and Border Protection (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.

The United States maintains a retrospective antidumping and countervailing duty system. The retrospective system means that in the case of goods subject to antidumping or countervailing (AD/CV) duties, the actual rates of AD/CV duties owed are calculated after the entry is made, in an assessment review conducted by the Department of Commerce (DOC). There is a delay between entry and final duty collection, and the United States requires that a security be provided. When an importer requests an assessment review of an AD/CV duty order, the amount of the duty that is ultimately assessed, based on the final AD/CV duty rate, sometimes does not correspond to the amount of security posted.

CBP follows instructions from the DOC. The DOC determines the actual AD/CV duty rates owed on merchandise subject to an AD/CV duty order. CBP assesses the duties owed on specific entries upon liquidation, pursuant to DOC instructions as to the final rates. 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, because defaults on AD/CV duty supplemental bills have increased significantly, CBP conducted an internal policy review of revenue protection strategies.

### *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 issued four documents. "Amendment to Bond Directive 99-3510-004 for Certain Merchandise Subject to Antidumping/Countervailing Cases," July 9, 2004; "Current Bond Formulas," January 25, 2005; "Clarification to July 9, 2004 Amended Monetary Guidelines for Setting Bond Amounts for Special Categories of Merchandise Subject to Antidumping and/or Countervailing Duty Cases," August 10, 2005; and *Monetary Guidelines for Setting Bond Amounts for Importations Subject to Enhanced Bonding Requirements*, 71 FR 62276 (October 24, 2006) (all four documents are referred to collectively as the Amended Customs Bond Directive).

CBP applied the Amended Customs Bond Directive 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.<sup>1</sup> Known as the enhanced bonding requirement (EBR), CBP required that continuous bond amounts for importers of shrimp subject to AD/CV duty orders be increased to the rate established in the final AD/CV duty order, multiplied by the value of the importer's entries of the subject merchandise in the previous 12-month period.

<sup>1</sup> 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 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).

### *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 dispute settlement 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 the Amended Customs Bond Directive and the EBR. India alleged that the United States had 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 (SCM Agreement). 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 disputes on February 29, 2008. Among other things, the panels found that the EBR 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.<sup>2</sup> Thailand and India disagreed with several of the panels' findings with respect to the additional bond requirement and appealed those findings on April 17, 2008.<sup>3</sup> The United States cross-appealed one aspect of those findings on April 29, 2008.<sup>4</sup>

The Appellate Body report was issued on July 16, 2008.<sup>5</sup> The Appellate Body

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

<sup>3</sup> Annexes I and II to WTO 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. (WTO AB Report.)

<sup>4</sup> Annexes III and IV to WTO AB Report.

<sup>5</sup> WTO AB Report.

agreed with the panels in finding that the Amended Customs Bond Directive was not "as such" inconsistent with the AD Agreement or the SCM Agreement. *Id.* at paras. 270, 275. The Appellate Body found that the panels properly concluded that the EBR as applied to importers of shrimp from Thailand and India did not constitute reasonable security. 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 findings of the DSB.

### *Notice of Proposed Modification*

On January 12, 2009, CBP published a notice in the **Federal Register** (74 FR 1224) that proposed to end 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, to comply with the recommendations of the DSB. The notice also proposed that 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 notice of proposed modification solicited comments from the public, and the comment period closed on February 11, 2009.

### **Discussion of Comments**

Twelve parties responded to the solicitation of comments in the notice of proposed modification. A description of the comments contained in the submission and CBP's analysis is set forth below.

*Comment:* One commenter argues that CBP should devise a bonding mechanism for imports of shrimp and other agriculture and aquaculture products subject to antidumping or countervailing duties that will provide additional assurance that all such duties will be collected, that it should explain how any new bonding mechanism addresses "the large and increasing" amount of uncollected or uncollectible duties, and that it must "implement any new bonding mechanism prospectively only, as required by law." The commenter notes that revenue loss continues to be an issue with agriculture and aquaculture products subject to AD/CV duty orders including shrimp and therefore CBP's concerns that led to the EBR were appropriate.

The commenter further contends that CBP's proposal to no longer require the EBR with respect to shrimp importers rewards and further encourages the refusal by certain importers to abide by

their legal requirements. The commenter states that as CBP is well aware from its past efforts to enforce the trade laws and collect duties owed, for many agriculture/aquaculture products (and, separately, non-agriculture/aquaculture products of Chinese origin), the companies that become the importer of record for such goods frequently have little intent, much less ability, to pay duties above the deposit rate.

The commenter requests that CBP immediately withdraw its proposal to terminate the designation of shrimp covered by AD/CV orders as a special category or covered case subject to the requirement of additional bond amounts. Instead, the commenter recommends that CBP issue a proposal and/or seek comments on amending the EBR in order to both comply with the WTO's Appellate Body report and address the under-collection of AD/CV duties.

Another commenter states that CBP should use the proposal as an opportunity to include an individual importer risk assessment into its bond analysis. The commenter asserts that the "one size fits all" EBR policy based on a sector or category wide risk assessment usurps the core factors of objective risk analysis and imposes a severe strain on the balance sheets of otherwise healthy companies. The commenter contends that a bond based on an assessment for individual importers is not only good Federal policy, but also a necessary analysis for defense of CBP's actions before reviewing panels of the WTO. The commenter further contends that a transparent system supported by substantial evidence is essential to an effective EBR. The commenter maintains that the tools are present for CBP to give proper emphasis to companies with proven track records and solid balance sheets.

*CBP's Response:* Although CBP is no longer designating shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to the EBR, CBP is not abandoning its duty to protect revenue or its requirement of sufficient security. In its report, the WTO Appellate Body concluded that the United States could impose "reasonable security" on entries made after the imposition of an antidumping duty order and before the final assessment of antidumping duties, but that the EBR, as applied to importers of shrimp from Thailand and India was not "reasonable security". Consistent with that finding, CBP is ending the designation of shrimp as a covered case or special category subject to the EBR.

As for the other commenter's suggestions for possible methods for future bonding requirements, CBP continues to explore options to protect revenue and address issues of uncollected AD/CV duties, consistent with U.S. international obligations.

*Comment:* Several commenters support the withdrawal of the designation of shrimp under the EBR, but argue that it should apply retroactively to all entries of subject merchandise covered by bonds calculated using the EBR, and not just to entries made on or after the effective date of the final notice.

Supporters of retroactive application of the proposal contend that because the WTO Appellate Body upheld the panel's findings that the EBR is inconsistent with WTO agreements, compliance with the WTO's rulings would preclude CBP from continuing to treat pre-existing EBR-calculated bonds as valid and enforceable security after the date of implementation or from taking any future action to make a claim against the bonds. Consequently, commenters in support of the retroactive application of the proposal argue that in order to comply with the WTO reports, CBP must not only stop applying the EBR to imports of subject shrimp going forward, but must also "cancel" (as one commenter describes it) or "retroactively eliminate" (as another commenter argues), bonds to which the EBR has been applied and replace them with bonds based on the standard bond formula of 10% of the previous year's duties, taxes, and fees, or \$50,000, whichever is greater. Supporters assert that retroactively applying the proposal is necessary to address surety collateral requirements which have burdened importers' credit lines, causing significant economic harm.

One supporter of the retroactive application of the proposal cites to *National Fisheries Institute, Inc. v. United States Bureau of Customs and Border Protection* (465 F. Supp. 2d 1300, 1335-36 (Ct. Int'l Trade 2006)) (*National Fisheries*) to argue that CBP has authority to do this, and claim that this authority has been recognized by the courts.

One commenter argues that canceling the bonds to which the EBR was applied would not be retroactive because the United States would be agreeing to make no future claims against the EBR-calculated bonds.

One commenter urges CBP to automatically terminate all existing continuous bonds and institute new bonds at the minimum required obligation rather than require individual

importers to submit individual termination requests in order to expedite U.S. compliance with rulings of the DSB.

Another commenter argues that allowing importers to terminate existing continuous bonds would risk CBP's ability to fully collect duties owed.

*CBP's Response:* CBP is ending the designation of frozen warmwater shrimp subject to AD/CV duties as a special category or covered case for purposes of the EBR, and is providing importers with an opportunity to request that existing bonds be terminated pursuant to 19 CFR 113.27(a) and submit a new continuous bond application pursuant to 19 CFR 113.12(b). These actions bring the United States into compliance with the recommendations and rulings of the DSB regarding the EBR. The effective date is the publication date of this notice.

CBP disagrees with the commenters' statement that CBP must apply the proposal retroactively. When a bond is terminated, no further obligations arising from post-termination customs transactions may be charged against the bond. See 19 CFR 113.27(c); see also HQ 211485 (May 12, 1980). The principal (in this case, the importer) and the surety remain liable for the obligations incurred before the date the bond was terminated. See 19 CFR 113.3. Termination of the bond does not alter the obligations charged against the bond before it was terminated, but does prevent any obligations arising from post-termination customs transactions from being charged against the bond. See 19 CFR 113.27(c); see also HQ 211485 (May 12, 1980).

CBP has determined that it will permit importers to terminate EBR-calculated bonds. The only legal authority commenters cite for the proposition that CBP could "cancel" or otherwise retroactively apply the policy is the decision of the U.S. Court of International Trade in *National Fisheries*. However, the court made no such finding in that case, nor did it order cancellation or "retroactive elimination" of bonds. *National Fisheries* at 1335-1336. Moreover, bonds are contracts between principals and sureties, and are thus contracts between private parties. CBP is reluctant to interfere in that relationship. See *Customs Bond Structure, Revision*, 49 FR 41152, 41155 (October 19, 1984). In addition, the existence of two bonds covering the same period could pose legal confusion. If different sureties issued the bonds, each would raise the other as a defense in a collection action, posing serious risk to the agency's ability to collect duties lawfully owed

through court action. Furthermore, canceling an existing bond and replacing it with another bond with a different limit of liability (either lower or higher) and with retroactive effect is contrary to sound administrative practice. There are approximately 140,000 bonds currently on file with CBP. The possibility that each and every one of these bonds may be reconsidered and liability reassessed anytime after execution would cause administrative chaos. Finally, to avoid confusion, termination will not occur automatically and importers must request termination pursuant to 19 CFR 113.27(a).

CBP requires bonds to protect revenue and assure compliance with any provision of law, regulation, or instruction the agency is authorized to enforce. See 19 U.S.C. 1623. CBP is also required to collect debts aggressively. See 31 U.S.C. 3711 and 31 CFR 901.1. In order to fulfill its mandate and also facilitate trade, CBP does not retroactively raise or lower bond security amounts that cover past customs transactions. When CBP determines that an existing bond does not provide sufficient security, the principal is only required to terminate the existing bond and obtain a new bond with additional security for future importations. The obligation of the earlier bond for the earlier time period remains in place. See 19 CFR 113.3.

It is incorrect to state that if the United States were to agree to make no future claims against the EBR-calculated bonds, then the cancellation of the bonds would not be retroactive. Cancelling the bonds would be retroactive because the bonds secure customs transactions, which are, in this case, entries already made into the United States. As discussed in the Background section of this notice, even though the actual amount of AD/CV duties owed may be determined at a later date, the obligation is incurred and security is posted at the time of entry. Finally, the U.S. Court of International Trade in *National Fisheries* did not order CBP to cancel the bonds at issue in that case, and therefore does not support the commenters' argument that CBP should cancel the EBR-calculated bonds. *National Fisheries* at 1335–1336.

Therefore, on or after the publication of this notice, an importer with a current bond that was calculated using the EBR may request termination pursuant to 19 CFR 113.27(a), such that no further obligations would be charged against that bond. For existing bonds, CBP will enforce the bonds up to the date of termination, which will be no earlier than the effective date of this notice.

*Comment:* Some commenters recommend that even though the proposal indicates that it applies to shrimp imports from all of the countries subject to an AD order, to avoid confusion, CBP should specifically state this in the final notice and list the individual countries.

Another commenter asserts that the proposal should only apply to India and Thailand because the WTO dispute was initiated by these countries and therefore, the recommendation only applies to those countries and not Brazil, China, and Vietnam. The commenter states that continuing to apply the EBR to Brazil, China, and Vietnam would help to offset any revenue loss on those cases. The commenter also states that discontinuing application to those countries would be contrary to CBP's commitment to Congress to address the issue of non-collection of AD duties and is irrational, unwarranted, and a clear perversion of CBP's mission to collect all import duties determined to be due to the United States.

*CBP's Response:* Based on a careful evaluation of the WTO reports and available evidence, CBP has decided to end the designation of shrimp subject to AD/CV duty orders as a special category or covered case subject to the requirement of additional bond amounts for all countries. For a list of orders currently covering shrimp, see footnote 1 of this document.

#### Conclusion

After analysis of the comments and further review of the matter, CBP has decided to end 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. 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/](http://www.cbp.gov/xp/cgov/trade/priority_trade/revenue/bonds/pilot_program/news_develop/) under the "Policy and Procedures" section.

Dated: March 27, 2009.

**Jayson P. Ahern,**

*Acting Commissioner, Customs and Border Protection.*

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**BILLING CODE 9110-06-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R9-IA-2009-N0068; 96300-1671-0000-P5]

#### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

**DATES:** Written data, comments or requests must be received by May 1, 2009.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358-2104.

#### SUPPLEMENTARY INFORMATION:

##### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

*Applicant: Jonathan Davis, Malibu, CA, PRT-208563*

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.