TO: Importers, Carriers, Brokers, Warehouse Operators, Manufacturers and Others Concerned

FROM: Follick & Bessich

RE: Continuous Bond Requirements on agricultural/aquacultural merchandise subject to antidumping/countervailing duties

DATE: July 19, 2004

Pursuant to 19 CFR 113.13(c) the port directors and drawback officers shall periodically review each bond filed in their respective port (or drawback office in the case of a bond relating to repayment of erroneous drawback payment) to determine whether the bond is adequate to protect the revenue and insure compliance with the law and regulations.

Do to increasing concern surrounding the collection of antidumping and countervailing duties, Customs has established new guidelines for determining continuous bond requirements for importers of agriculture/aquaculture merchandise subject to said duties. Under current guidelines, the minimum continuous bond amounts are established at 10% of the duties, taxes and fees paid by the importer during the previous year. (In new antidumping and countervailing cases, the higher duty liability is not accounted for in the previous year's duty amounts). Accordingly, it is extremely difficult to protect the revenue and ensure compliance with Customs laws & regulations when importers are unable to meet their financial obligations with respect to the increased duty liability, and the bond is insufficient to cover said amount.

> Hypothetical: Suppose merchandise "x"is normally subject to a Customs duty of 6% and in a recent antidumping case on"x", the merchandise incurred a final liquidation rate of 376%. What impact does the increased duty liability have?
>
> Answer: The increased duty liability has resulted in the importer being unable to meet its financial obligations for antidumping duty at liquidation. Moreover, since the continuous bond amount was determined prior to the liquidation date, said amount is insufficient to cover the increased duty liability. Accordingly, Customs cannot collect the antidumping and countervailing duties from said imports.

In response to the above problems, port directors will be required to review continuous bonds for importers who import agriculture/aquaculture merchandise subject to antidumping/countervailing duty cases and obtain larger bonds where necessary. Said increase in bond liability will become effective when the Department of Commerce ("DOC") issues its Order on the case. Using the importers previous 12 months import value of merchandise subject to the case, the continuous bonds will be increased using the rate that the DOC issues at Order. The following formula will assist the Port Director in fixing the limit of liability amount:

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DOC rate at Order (x) value of imports of merchandise subject to the case by the importer during the previous year.

> *For example*: If an importer has imported agriculture/aquaculture merchandise subject to the antidumping case with a value of $1 million during the previous 12 months, and the DOC rate is 40%, the importer's continuous bond amount will be increased by $400,000.

If, at any time (after the DOC issues a preliminary affirmative determination in an agriculture/aquaculture case), Customs determines that a particular importer is a great risk (for example, said importer makes sudden changes in declared values, claimed country of origin or declared classification), the Port Director shall increase the importer's continuous bond using the following formula:

DOC deposit rate in effect on date of entry x value of imports of merchandise subject to the case by importer during the previous year.

The continuous bond for new importers, with no prior history of imports of agriculture/aquaculture merchandise subject to an antidumping or countervailing duty case will also be increased. The bond amount will be increased according to the following formula:

DOC deposit rate in effect on date of entry x estimated annual import value of the goods subject to the case.

Please be advised, Customs will continue to monitor antidumping and countervailing duty cases for all commodities. If Customs determines any comparable risk with other commodities, a similar review of bond coverage will be performed. These new guidelines will be into the existing bond directives (currently being re-written by the National Finance Center). Any questions pertaining to these new guidelines should be directed to Bruce Coulliette (bonds) at 202.927.2148 or Christine Furgason (AD/CVD) at 202.927.2293.