



Impact of Trade Remedy Tariffs on Customs Import Bonds

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Today's Topics

Bond Amount
Calculation /
Statistics

CBP Bond
Insufficiency
Process

Aggregate
("Stacking")
Liability

Informed
Compliance &
Bonds

Underwriting



CBP Import Bond Amount Calculation

Bond Amount Calculation - Reviewer

- 10% of the total duties, taxes & fees (DTF) paid in the last 12 months – or anticipate to pay in the next 12 months
- When the DTF is \$0 - \$1,000,000
 - Bond Amount is rounded up to the nearest \$10,000
- When the DTF is greater than \$1,000,000
 - Bond Amount is rounded up to the nearest \$100,000
- All DTF paid/payable, including ADD/CVD and 201, 232 and 301 tariffs
- CBP uses the most recent “version” of the entry data



\$50,000
Minimum
Bond Amount

Bond Amount Calculation - Analytical

- a** 10% of total duties + taxes + fees paid in previous 12 months
- +**
- b** 10% of unpaid/not protested bills less than 210 days OR protested
- +**
- c** \$ for \$ of delinquent & not paid bills greater than 210 days OR denied protest
- +**
- d** \$ for \$ unpaid debit vouchers PLUS



Continuous Import Bond Count – December 31, 2024

BOND AMOUNT RANGE	LIABILITY AMOUNT	BOND COUNT	% OF TOTAL
LE - 50,000	\$11,288,850,000	225,777	88.51%
50,001 TO 99,999	\$485,250,000	6,598	2.59%
100,000 TO 199,999	\$629,300,000	6,293	2.47%
200,000 TO 299,999	\$1,321,800,000	6,609	2.59%
300,000 TO 399,999	\$879,900,000	2,933	1.15%
400,000 TO 499,999	\$561,600,000	1,404	0.55%
500,000 TO 599,999	\$609,000,000	1,218	0.48%
600,000 TO 699,999	\$380,400,000	634	0.25%
700,000 TO 799,999	\$300,300,000	429	0.17%
800,000 TO 899,999	\$331,200,000	414	0.16%
900,000 TO 999,999	\$189,000,000	210	0.08%
1,000,000 TO 9,999,999	\$5,658,300,000	2,371	0.93%
10,000,000 TO 19,999,999	\$1,379,700,000	107	0.04%
20,000,000 TO 29,999,999	\$957,600,000	42	0.02%
GE 30,000,000	\$2,226,700,000	41	0.02%
TOTAL	\$27,198,900,000	255,080	100.00%

← Historically 95% at \$50,000

Source: CBP

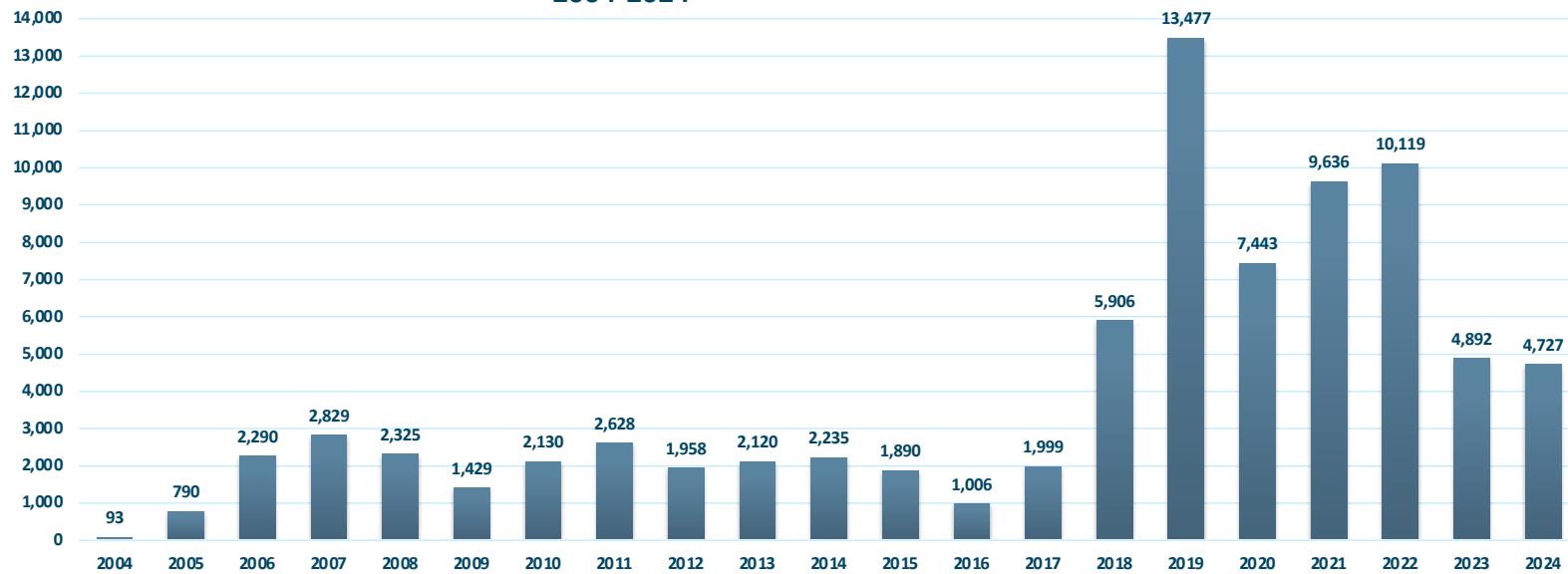


Import Bond Sufficiency



Historic Bond Insufficiencies

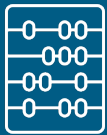
**Bond Liability Amount Increases
(CB Insufficiency Letters Issued)
2004-2024**



Total increased bond amount (all years) - \$6.6 billion

Source: CBP

MANAGING BOND SUFFICIENCY



**CBP CURRENT BOND
FORMULAS**

www.cbp.gov



**10% TOTAL
DUTIES, TAXES &
FEES**

Last/Next
12 Months



**INFORMED
COMPLIANCE**



**SURETY SATURATION
ALERT**



DON'T WAIT!



Projecting Bond Amounts – Source of Data

Customs Brokers

ABI Data

*Automated Broker
Interface*

CBP

ACE Portal Report

*Entry reports and new
Section 201, 232, 301
reports*

Sureties

ASI Data

*Automated Surety
Interface*

Tips on Calculating Bond Amounts

- 

Rule of Thumb
Project next 12 months of duties,
taxes & fees
- 

Do Your Own Math
Account for special tariffs, timing
of tariff changes, etc.
- 

Round Up!
Always round up to the next \$10,000
or \$100,000 increment!





Aggregate (Stacking) Liability & Risks of Insufficiency



Bond Exposure

- The bond conditions are set forth in 19CFR§113
 - Section 113.3 the liability of the principal and surety remains open until all entries have liquidated and claims/bills have been closed
- Liability doubles at bond renewal and any new bond increases exposure
 - Inherent risk with liquidation cycle
 - Exposure is based on all open entries (plus re-liquidation time frame)
- The principal and surety have exposure on every bond that has open entries

› **§ 113.3 Liability of surety on a terminated bond.**

The surety, as well as the principal, remains liable on a terminated bond for obligations incurred prior to termination.

Avoiding Aggregate Liability (“Stacking”)

- Make accurate continuous bond sufficiency projections
 - Avoids mid-term increase demands
 - Review **at least** 45-60 days prior to renewal
- If CBP sends insufficiency notice, ensure you are projecting next 12 months to avoid another mandated increase



Risk of Failing to Increase

No entries allowed

Bond grossly
insufficient?
Immediate shut-off

Demurrage

Storage



STBs required

Stacking / Aggregate
Liability

Underwriting
scrutiny



Informed Compliance & Surety Underwriting



ROANOKE
SERVING THE USA & CANADA™

The "Gold Standard"



DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

OMB APPROVAL NO. 1581-0020
EXPIRATION DATE 06/30/2025

CUSTOMS BOND

19 CFR Part 113

CBP USE ONLY	BOND NUMBER (Assigned by CBP)

Broker Filer Code: _____ Surety Reference Number: _____

In order to secure payment of any duty, tax or charge and compliance with law or regulation as a result of activity covered by any condition referenced below, we, the below name principal(s) and surety(ies), bind ourselves to the United States in the amount or amounts, as set forth below.

SECTION I – Select Single Transaction OR Continuous Bond (not both) and fill in the applicable blank spaces.

<input type="checkbox"/> SINGLE TRANSACTION BOND	Identification of transaction secured by this bond (e.g., entry number, seizure number, etc.)	Transaction Date	Port Code
<input type="checkbox"/> CONTINUOUS BOND	Effective Date	This bond remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amounts listed below for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the CBP Regulations.	

SECTION II – This bond includes the following agreements. Check one box only. (Except 3a may be checked independently or with 3.)

Activity Code	Activity Name and CBP Regulations in which conditions codified	Limit of Liability	Activity Code	Activity Name and CBP Regulations in which conditions codified	Limit of Liability
<input type="checkbox"/> 1	Importer or broker	\$113.62	<input type="checkbox"/> 8	Detention of Copyrighted Material	\$113.70
<input type="checkbox"/> 1a	Drawback Payments Refunds	\$113.65	<input type="checkbox"/> 9	Neutrality	\$113.71
<input type="checkbox"/> 2	Custodian of Bonded Merchandise	\$113.63	<input type="checkbox"/> 10	Court Costs for Condemned Goods	\$113.72
<input type="checkbox"/> 3	International Carrier	\$113.64	<input type="checkbox"/> 11	Airport Security Bond	Part 113 App A
<input type="checkbox"/> 3a	Instruments of International Traffic	\$113.66	<input type="checkbox"/> 12	International Trade Commission (ITC) Exclusion Bond	Part 113 App B
<input type="checkbox"/> 4	Foreign Trade Zone	\$113.73	<input type="checkbox"/> 15	Intellectual Property Rights (IPR)	
<input type="checkbox"/> 5	Public Gauger	\$113.67	<input type="checkbox"/> 16	Importer Security Filing (ISF)	Part 113 App D
<input type="checkbox"/> 6	Wool & Fur Products Labeling Acts Importation	\$113.68	<input type="checkbox"/> 17	Marine Terminal Operator	Continuous Bond Only
<input type="checkbox"/> 7	Bill of Lading	\$113.69			

PRINCIPAL By checking the box you agree that you have a seal in accordance with 19 CFR 113.25. **AFFIX SEAL or Check Box**

Name and Physical Address (including legal description and state of incorporation)	Signature	Check Box
		<input type="checkbox"/>

Principal and surety agree that any charge against the bond under any of the listed names is as though it was made by the principal(s). Principal and surety agree that they are bound to the same extent as if they executed a separate bond covering each set of conditions incorporated by reference to the CBP regulations into this bond. If the surety fails to appoint an agent under Title 31, United States Code, Section 9306, surety consents to service on the Clerk of any United States District Court or the U.S. Court of International Trade, where suit is brought on this bond. That clerk is to send notice of the service to the surety at:

SURETY Name and Physical Address (including legal description and state of incorporation)	Surety Number	Agent ID Number
	Signature	Check Box
		<input type="checkbox"/>

- Customs Import Bonds allow for immediate release of imported goods
- Separates and postpones final decision-making on revenue, non-revenue and admissibility issues
- Governed by CBP through 19CFR§113
- Essential to the success of commercial operations

Informed Compliance & CBP Bonds

- **Basic Importation Bond Conditions***
 - Agreement to pay duties, taxes and charges.
 - Agreement to make or complete entry.
 - Agreement to produce documents or evidence.
 - Agreement to redeliver merchandise.
 - Agreement to rectify any non-compliance with provisions of admission.
 - Agreement to hold merchandise for examination.
 - Agreement to reimburse or exonerate the United States.
 - Agreement to use and handle duty-free merchandise in accordance with the law.
 - Agreement to comply with CBP Regulations applicable to CBP security areas at airports.
 - Agreement to comply with electronic entry and/or advance cargo information filing requirements.
 - Agreement to ensure and establish the issuance of softwood lumber export permit and collection of export fees.



*Published in CBP's "Informed Compliance Publication – Entry (March 2004)"

Why Sureties Underwrite

- **Contractual Obligation**
 - Importer and surety have joint & several liability
 - All 'agreements' are the responsibility of the importer and surety
- **Financial Guarantee**
 - If importer defaults, surety is obligated to pay
- **Historical Losses**
 - Highest loss categories are failure to pay estimated duty (including Debit Vouchers), classification change, AD/CVD.
- **Market Capacity**
 - Surety Appetite for risk
 - Liquidation time frame and statute of limitations cause aggregate/stacking liability



Other Conditions Influencing Underwriters



CBP Enforcement Actions

- Trade Remedy Tariffs
- Forced Labor



Liquidated Damages and Supplemental Duty Bills

- It can take years to receive claims



Economic Issues

- Inflation

Financial Review

- Audited Financials are best
 - Cash – essential to pay DTF
 - Net Working Capital – measures liquidity & ability to fund operations
 - Net Worth – the value of an entity
 - Profitability – no losses over multiple periods; indication of company's health
 - Bank loans, outstanding lines of credit and interest rate
- If financial statements do not support the risk
 - 3rd party financials
 - General indemnity agreement
 - Collateral
 - Not always a one-time requirement!

Other Underwriting Factors

- Bond Amount / Aggregate Liability
- Credit Rating (S&P, D&B)
- Commodity/Entry Type
- Duty Rate
- Liquidation History
- Claims History
- Red Flags
 - CBP Extensions
 - Late payments





Common Sense Approach

- Sureties are in the business to write bonds, not decline!
- Importer History is key
 - Bond Amount / Importer Informed Compliance
 - Duty rate
 - Claims activity
 - Number of years writing bond
- Broker History is a factor
 - Loss ratio of the broker account
- Subjective Review
 - Low risk vs financial condition



Questions



How to Avoid E&O Claims and Protect Your Bottom Line

Sergio Laos - ARM, CMIP, TRIP, Vice President, Sales
February 7, 2025



ERRORS AND OMISSIONS - WHAT IT COVERS

Coverage responds once an allegation is made against the insured claiming they did something wrong or that you failed to do something you should have. Claims can be as much about the perception of the claimant as much as it has to do with the reality of the assured's legal liability.

In other words, the assured does not have to do something wrong to have a claim filed against them.

Coverage applies only to the "operations" which have been checked on the policy declarations page, i.e., Customs Broker, Property Broker, International Freight Forwarder, etc,



ERRORS AND OMISSIONS - WHAT IT DOESN'T COVER

- Property Damage including loss of use unless caused by your negligent act or covered E&O. (Property coverage for owned/leased or subcontractor's equipment and cargo legal liability for cargo of others in transit).
- Property in the care, custody & control of the insured – (Cargo legal liability and warehouse legal liability or bailee coverage).
- Physical loss or damage when acting as a contracting carrier - legal liability as an NVOCC, Indirect Air Carrier, Motor Carrier and Domestic Forwarder (Cargo Liability Coverage).



ERRORS AND OMISSIONS - WHAT IT DOESN'T COVER

- Activities as a Certified Cargo Screening Facility and/or as a Certified Cargo Screener and/or any other activity pertaining to the Certified Cargo Screening Program as administered by the Transportation Security Administration or any other governmental or non-governmental authority (TRIA coverage)
- Liability arising solely from you acting as Importer of Record, unless this Policy is endorsed otherwise (Purchase optional coverage or don't act as an importer of record!)



ERRORS AND OMISSIONS - WHAT IT DOESN'T COVER

- Claims involving disputes over charges, inability or intentional failure to pay or collect money (Credit Insurance)
- Claims involving the use or maintenance of watercraft, aircraft, automobiles or mobile equipment. (Automobile Liability, Contingent Auto Liability and Charterer's liability insurance may apply)



ERRORS & OMISSIONS - WHAT IT PAYS

Coverage pays for legal expenses and other related investigative and court costs. Policy will pay a legal judgement against the insured (including subsequent interest) or a settlement if approved by Underwriters. Underwriters will defend even a groundless, false or fraudulent claim. All claims are subject to the terms of the policy.



ERRORS AND OMISSIONS - WHO IS COVERED?

- The Named Insured(s) shown on the declaration page.
- Any person acting within their scope of employment or duties on behalf of the named insured as a partner, officer, director, stockholder or employee.
- Anyone who was previously considered an insured prior to the termination of that relationship as long as the act resulting in a claim occurred in their professional capacity while they were still considered an “insured.”
- Heirs, executors, administrators, assigns and legal representatives of the insured in the event of death, incapacity or bankruptcy.



ERRORS AND OMISSIONS - WHERE IT COVERS

Covers acts, errors or omissions committed anywhere in the world. However, coverage for claim expenses is limited to suits or legal proceedings, including arbitrations, which are brought in the United States, its territories or possessions, Australia, Austria, Belgium, Canada, Denmark, France, Germany, Greece, Hong Kong, Ireland, Italy, Luxembourg, Netherlands, New Zealand, Portugal, Singapore, South Korea, Spain, Switzerland, Taiwan, or United Kingdom.



Errors & Omissions – Expanded Worldwide Coverage

- Subject to Sanction limitation and exclusion clause
- Suits or legal proceedings (including arbitrations) brought, anywhere in the world. Excluding, Afghanistan, Armenia, Azerbaijan, Benin, Belarus, Burkina Faso, Chechnya, Congo–Kinshasa (DR Congo), Cuba, Gaza Strip including West Bank, Georgia, Iran, Iraq, Kazakhstan, Kyrgyzstan, Liberia, Libya, Nigeria, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan.
- For suits, legal proceedings and arbitrations brought in China coverage is excluded for civil actions brought in civil courts and coverage applies only to those Claims brought against the insured in special Maritime Courts.



ERRORS AND OMISSIONS - TERMS & CONDITIONS

- The assured must have terms & conditions submitted and approved by Underwriters.
- Typically, these terms & conditions are separate from any other documentation such as bills of lading, warehouse receipts or delivery receipts.
- The most common “standard and approved” terms and conditions are those written for members of the National Customs Brokers and Forwarders Association of America (NCBFAA) however those companies not represented by this association may have separate agreements or contracts which include their Ts&Cs.
- Underwriters and legal counsel will seek to defend the insured based on their terms & conditions therefore the insured cannot pick and choose how claims are paid based on the value of their customer.



ERRORS AND OMISSIONS - CLAIMS MADE FORM

Eligibility of coverage is triggered by an act/occurrence and the claim itself – both must fall during the policy term. As long as a claims made policy continues to be renewed a claim won't fall outside the 'policy term.' If a claims made policy is not renewed the assured can purchase an extended reporting period (it buys more time to file a claim should a claim be presented after the policy expires.)



ERRORS AND OMISSIONS - OCCURRENCE FORM

An act/occurrence must fall within the policy term but the claim itself may be presented after the policy's expiration date. If an occurrence policy expires the assured will still be able to file a claim as long as the event which caused the claim happened during the coverage period.



ERRORS AND OMISSIONS - RETROACTIVE DATE COVERAGE

If you move from a “claims made policy” to a different “claims made policy” or to an “occurrence policy form” having a “retro” date added to the new policy is imperative. Ideally the “retro” date would be the inception date of the prior policy; i.e., you had a policy with ABC insurers since 2016 and you switched to XYZ insurers in 2020. Your new policy with XYZ insurers ideally should have a “retro” date of 2016. Without a retro date you would not have “prior acts” coverage.



Errors & Omissions - Other Coverage Exceptions

- Willful misconduct, infidelity, conversion or dishonest or illegal acts acting either alone or in collusion with others (Crime Insurance).
- The assumption of liability in a contract or agreement; does not apply to liability for damages that would have existed in the absence of the contract or agreement under general law or your standard terms and conditions of service on file with Underwriters. (Contractual liability or approved contracts endorsement).
- Bodily injury – employee exposure covered under worker’s compensation and third party bodily injury covered under General Liability injury (General Liability or Worker’s Compensation coverage Bodily injury (General Liability or Work)



Errors & Omissions - Other Coverage Exceptions

- Claims by one named insured against another named insured.
- Fines, penalties, liquidated Damages of any type against the insured; except if that Claim seeks both compensatory Damages and fines, penalties and similar charges. Underwriters will provide defense but will not pay any fines, penalties or similar charges except as may be provided if Fines & Duties coverage is endorsed to the policy.



ERRORS AND OMISSIONS - WHEN SHOULD A CLAIM BE FILED?

A claim should be filed as soon as the assured has knowledge of it. Even if there isn't a formal claim, the assured should follow these best practices in reporting potential claims

- If the assured is aware of a mistake that he believes may trigger a claim.
- If the assured believes he has done nothing wrong, yet the customer is threatening a claim because of a potential financial loss.
- If a claim previously not considered an "E&O" has changed and now looks like an "E&O".
- If preventive or mitigation measures could be taken to avoid or reduce a potential E&O claim.



ERRORS AND OMISSIONS - CLAIM DON'TS

- Don't retain their own legal counsel.
- Do not agree to a settlement without Underwriter's agreement.
- Do not admit to liability.
- Do not agree to pay a claim.
- Don't "try to handle" a E&O claim before reporting it to Underwriters.
- Assured should be careful not to involve himself too much in a customer's problem if the problem is not the responsibility of the assured. What can be intended as trying to be helpful can be interpreted as liability.



ERRORS AND OMISSIONS – EXAMPLES OF CLAIMS

- Misdirected Freight
- Demurrage
- Failure to follow instructions
- Failure to provide proper instructions or information
- Loss caused by delay/late delivery
- “Negligent” selection” of carrier
- “Negligent” selection of provider
- Improper Classification of Goods
- Loss or damage of cargo and temperature control issues



ERRORS AND OMISSIONS – EXAMPLES OF CLAIMS

- Wrong advice
- Improper release of cargo
- Seizure of Cargo due to documentation error
- Failure to obtain duty drawback/FDA Release
- Failure to obtain proper insurance
- Failure to file protests timely
- Incorrect documentation/information



ERRORS AND OMISSIONS – EXAMPLES OF CLAIMS

What is a Reservation of Rights letter?

It is a letter to the insured from Insurers advising them that they may not have coverage and they “reserve their right to walk away from the claim” if it is determined it is not a covered claim. It is not a declination of coverage or of the claim. It is more like a “maybe or maybe not, we are not sure yet” – we need more information.



ERRORS AND OMISSIONS – OPTIONAL COVERAGES

Fines & Duties Option

Coverage responds to the insured's legal liability for Fines and other penalties, and Duty and sales/excise tax and similar fiscal charges imposed on you by an authority as a result of a breach of regulations related to the import/export and carriage of covered property.

Coverage excludes:

Fines, penalties, duties, taxes and similar fiscal charges relating to the breach of regulations relating to tariffs, competition or the regulation of companies; and Claims arising out of making customs bond/guarantee available to others.



ERRORS AND OMISSIONS – OPTIONAL COVERAGES

LIMITED POLLUTION COVERAGE

Defends you for claims alleging negligence caused by the insured's improper labeling or misidentification of Covered Property that constitutes a Pollution or Toxic Injury Hazard. Does not pay for damages.

IMPORTER OF RECORD

Covers the insured's liability with when acting as Importer of Record. Includes fines and/or penalties assessed by CBP against the insured when they are listed as Importer of Record and unable to collect such fines and/or penalties from the actual importer.



ERRORS AND OMISSIONS – OPTIONAL COVERAGES

LIABILITY ASSUMED UNDER CONTRACT

Covers liability assumed in a written contract or agreement that is greater than you would have in the absence of the contract or agreement at general law, or under the assured's standard terms and conditions of service on file with Underwriters. This coverage is subject to a separate Sub-limit of Liability equal to 25% of the Limit of Liability for each and every loss shown in the Declarations Page.



Good to Know!

Customs Brokers tend to have the longest potential claim “tail” due to the time allowed for liquidation and reliquidation of Customs entries.



ROANOKE FORM – COMPETITIVE ADVANTAGES

- Mono-line Errors & Omissions Coverage Option
- No exclusions for Demurrage claims involving assured's customers
- No exclusion for Dishonest acts of Carriers/Third Parties
- Importer of Record Coverage Option
- First Dollar Defense
- No excluded commodities
- No exclusions for allegations involving Patent, Copyright & Trademark issues
- Does not exclude wrongful release of cargo without original bill of lading
- Fines & Duties Coverage Option
- Contractual Liability Coverage Option



QUESTIONS ???