



Customs Bonds and Errors & Omissions Insurance

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ATCC 2026 - Houston, TX

Outline



Bond statistics & types
of bonds

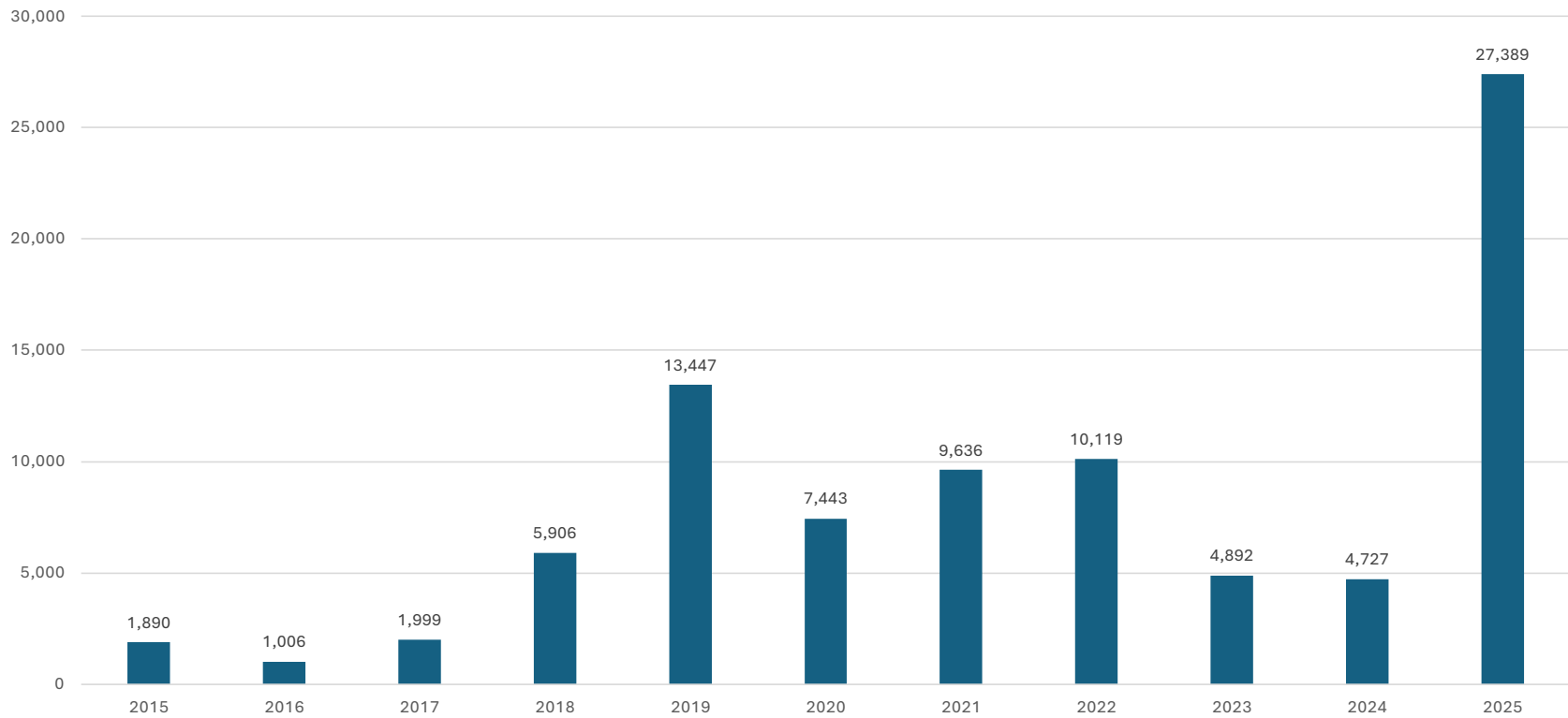


E&O



Bond underwriting issues:
stacking liability &
CBP's insufficiency actions

CBP Insufficiency Statistics (calendar year)



Source: CBP

Continuous Bonds in Force

<u>Activity Name</u>	<u>Code</u>	<u>Count</u>
Importer/Broker	1	258,746
Drawback	1A	1,476
Custodian of Bonded Merchandise	2	7,337
International Carrier	3	8,618
Instruments of International Traffic	3A	1,086
Foreign Trade Zone (FTZ)	4	1,533
Airport Security Bond	11	1,780
Other Activity	Various	245
		280,821



The "Gold Standard"

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

CUSTOMS BOND
19 CFR Part 113

CBP USE ONLY BOND NUMBER (Assigned by CBP)

Broker Filer Code: _____ Surety Reference Number: _____

OMB APPROVAL NO. 1551-0020
EXPIRATION DATE 09/30/2025

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 named 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.

SINGLE TRANSACTION BOND Identification of transaction secured by this bond (e.g., entry number, Transaction Date) Port Code

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 -Single Transaction Only-	
<input type="checkbox"/> 1a	Drawback Payments Refunds\$113.65		<input type="checkbox"/> 9	Neutrality\$113.71 -Single Transaction Only-	
<input type="checkbox"/> 2	Custodian of Bonded Merchandise §113.63 (includes bonded carriers, freight forwarders, cartmen and lightermen, all classes of warehouse, container station operators) -Continuous Bond Only-		<input type="checkbox"/> 10	Court Costs for Condemned Goods\$113.72 -Single Transaction Only-	
<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 -Continuous Bond Only-\$113.66		<input type="checkbox"/> 12	International Trade Commission (ITC) Exclusion Bond Part 113 App B	
<input type="checkbox"/> 4	Foreign Trade Zone -Continuous Bond Only-\$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\$113.68 Labeling Acts Importation -Single Transaction Only-		<input type="checkbox"/> 17	Marine Terminal Operator -Continuous Bond Only-	
<input type="checkbox"/> 7	Bill of Lading\$113.69 -Single Transaction Only-				

PRINCIPAL Name and Physical Address (including legal description and state of incorporation)

By checking the box you agree that you have a seal in accordance with 19 CFR 113.25
CBP Identification Number: _____

Signature _____

Check Box

AFFIX SEAL or Check Box

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 9305, 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 _____

Mailing Address (Street Address, Zip code, City) Requested by the Surety: _____

SURETY Name and Physical Address (including legal description and state of incorporation)

Surety Number _____ Agent ID Number _____

Signature _____

Check Box

- 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

Bond Activity Codes: Who needs What

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E&O Insurance

- Type of professional liability insurance available to firms offering advice or providing services. Look for a product specially designed for your business services.
- Designed to pay for legal defense and the settlement awarded against you.
- Responds to meritless or frivolous lawsuits as well.
- Some policies offer “first dollar defense,” so those legal fees would be paid dollar one before the policy deductible, limiting your out-of-pocket cost and protecting you from the unexpected.

E&O – Risk Mitigation

- E&O insurance helps brokers/forwarders manage financial fallout from oversights that can occur in the course of their work.
- Carrying an E&O policy with adequate coverage limits is essential.
- An appropriate policy can cover legal defense costs and any resulting settlements or judgments, ensuring that the business is not left financially vulnerable in the event of a claim.
- Without adequate E&O insurance, businesses risk significant financial hardship from claims brought by customers who may seek compensation for unexpected liabilities.



E&O – Adequate insurance

- Covers services you provide - look for a policy that caters to your industry.
- Policy limits / deductible.
- Claims made vs. occurrence coverage.
- If changing underwriters or policies, consider a retroactive date coverage.
- Exclusions or limitations: geographic, contractual assumptions, pollution, IOR, fines and duties, etc.
- Understand what E&O does not cover. Other insurance is usually intended to cover those risks and liabilities.

E&O- What can go wrong? A very long list of events

- Failing to follow instructions
- Improper quote charges
- Improper document preparation upon entry
- Failure to collect documents
- Misdirect cargo
- Incorrect classification of goods
- Unauthorized release of goods
- Failure to properly clear goods
- Failure to timely or properly file an ISF
- Negligent carrier of selection

These are but a few in a long list that can negatively affect the business transactions that take place on behalf of a client.



E&O- What can go wrong? A very long list of events

- Depending on your (perceived) role in the logistics transaction, if a client suffers a financial loss because of an error or omission, you can end up facing a professional liability claim and litigation that can be quite costly to your bottom line.
- Even if the allegations are meritless, the legal costs to defend the claim and potential settlement amounts can negatively impact your business without the right insurance coverage in place.



DOCUMENTATION

- Documentation that you issue is essential. You know who you are and what type of service you're providing. Drafting digital and print documents that accurately reflect those activities is vital to your business.
- Review your documentation, all paperwork generated in your business transactions, including terms and conditions of service, power of attorney, credit applications, air waybills, bills of lading, delivery orders, warehouse receipts, invoices, and any other written document, including your website pages. Scrub all your written correspondence for accuracy.
- In all cases, be specific about the services you perform.



Terms and Conditions: Keep them up to date

- T&Cs are documentation where disclaimers, limitations of liability, and your notice of indemnification are usually specified.
- In addition, in your T&Cs, you have the opportunity to include pertinent hold harmless clauses so all parties are informed that losses resulting from specific causes cannot be construed as your fault.
- Updates to standard terms and conditions reflect a legal response to real-world cases, and they can protect you from loss. If using industry standard T&Cs, use the most current version.



Terms and Conditions Keep them easy to find

Where you reference your T&Cs plays a vital role in protecting you and helping your defense in case of a claim.

- They should be easy to find on your website's home screen and should be on all your invoices: include a link to them in your electronic invoices and print them on the reverse side of physical invoices (include URL, too).
- Include or at least reference and provide a link to your terms and conditions in your quotes and your powers of attorney.
- Any agreement, offering, or formal request is an opportunity to provide your terms and conditions.
- The signature line of your company emails should link directly to your terms and conditions of service.



Documentation: Risk Review Program

- Work with a knowledgeable customs and transportation attorney when reviewing your documents.
- No two businesses necessarily operate the same.
- Analyze and review your business activities, review your terms and conditions of service and carriage, warehouse receipts, and access to pertinent reference materials and documents.
- The end goal is to form a single coherent documentation strategy, align your messaging, and get the best possible language in place for you.



Standardize Your Business Processes

- Standardized business processes are critical as a means of limiting mistakes.
- Have airtight procedures, access to experts, and staff training; they also demonstrate that you are doing your due diligence as a service provider.
- The processes you need to manage risk will vary based on the types of service you provide, but the critical action to take is to establish, codify, and teach your standard practices.
- Periodically review them.



Standardize Business Processes: Carrier Selection

- Implement managerial oversight of this process
- Vet motor carriers and property brokers – are they properly licensed, insured, and compliant? Continually vet them.
- Confirm motor truck cargo insurance limits are sufficient to cover the value of the goods being transported.
- Is the carrier experienced in moving these types of goods? It is especially important for cargo that is overweight, over-height, or high value.



Standardize Business Processes: Classification

- Establish management oversight of procedures related to classification.
- Establish a process highly inclusive with the client/importer.
- Confirm agreement with the importer of product classification.
- Have a standard process (with review) when handling complex classifications, especially with goods subject to AD/CVD or IEEPA/232 tariffs.



Standardize Business Processes: Identifying and reporting claims

- Identify potential or actual claims and report them. Work with your Risk Manager and/or insurance broker.
- Understand consequences of untimely reporting claims or taking unauthorized actions that could jeopardize coverage.
 - Don't "try to handle it" before reporting it to Underwriters.
 - Don't make a payment
 - Don't assume an obligation or an expense
 - Don't admit liability
 - What can be intended as trying to be helpful could be interpreted as liability.



Claim Example

Damages from a delay shipping cargo:

- Cargo was being shipped to and from the Dominican Republic. The equipment was delayed on its DR export because DR customs could not match up export documents with import documents at no fault of the forwarder.
- Over the years, forwarder and customer operated under T&Cs printed on invoices. Although T&Cs existed, several versions were used over time and the specific one in use was not clear, so its enforcement was difficult. The forwarder was not responsible for the delay but could have made other arrangements to export the cargo timely. Damages of \$448,524 were sought, and the matter settled at mediation.
- Settlement: \$75,000 + \$108,000 of legal fees incurred. Insured paid \$5,000 deductible.

Aggregate (Stacking) Liability & Risks of Bond Insufficiency

Risk of Failing to Timely Increase or Maintain a Sufficient Bond

No entries allowed

No ISF filing allowed

Demurrage

Storage

Bond grossly
insufficient?
Immediate shut-off



STBs required

Stacking /
Aggregate Liability

Underwriting
scrutiny

Bond Liability Stacking

The bond amount represents liability to the surety (and importer).

What causes liability to stack?

- Having multiple bonds each year
- Having multiple bond periods with “open exposure”

Multiple Bond Periods

The CBP Continuous bond is really a self-renewing term bond

- Liability multiplies 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)

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.	

Multiple Bond Periods

The bond conditions are set forth in 19 CFR Part 113

- Section 113.3 the liability of the principal and surety remains open until all entries have liquidated and claims/bills have been closed.
- The principal and surety have exposure on every bond that has open (unliquidated) entries.
- “Occurrence” based coverage – liability attaches to bond at time of entry (or importation).

§ 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.

Open Exposure

Unliquidated entries

- 11-month delay for entries to liquidate
- Longer for extended or suspended liquidations

Even liquidated entries can be a potential risk

- 90-day reliquidation by CBP
- 5 year “claw back” period under 19 USC 1592(d) –
 - Fraud means 5 years from discovery
 - Negligence/gross negligence means 5 years from date of entry

Non-entry activity (ISF, etc.)... 6 years

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



Example

What can happen?

Steel importer

Bond Term	Bond Amount	Open Entries
09/18/2015—09/17/2016	\$200,000	5
09/18/2016—09/17/2017	\$200,000	1
09/18/2017—05/05/2018	\$200,000	134
05/06/2018—07/11/2018	\$1,300,000	49
07/12/2018—07/11/2019	\$11,000,000	29
Total	\$12,900,000	218

550% increase

746% increase

CBP Insufficiency Notice

Demand for \$2.2 million bond issued on 06/12/2018

Cumulative Liability

Open exposure on 5 terms = \$12.9 million potential liability

Eliminating LD Risk

Had this importer forecasted its bond amount, they could have eliminated \$1.3 million LD risk

Impact of Trade Remedy Tariffs on Customs Import Bonds

Stacking Liability Example



Import Bond Sufficiency

Bond Amount Calculation - Reviewer

- 10% of the total duties, taxes & fees (DTF) paid on merchandise *imported* during 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, 301, and IEEPA tariffs.
- CBP uses the most recent “version” of the entry data

\$50,000
Minimum
Bond Amount

CBP Monthly Review

- Total DTF paid or payable is compared to each bond amount.
- If found to be insufficient, a letter is issued indicating the bond amount required based on rolling 12 months.
- CBP suggests forecasting the future 12 months of DTF payable.
- Importer must terminate within 15 days and replace the bond effective 30 days after the date of the letter.



8899 E 56th Street
Indianapolis, IN 46249
**U.S. Customs and
Border Protection**

03/07/2025

Dear Sir or Madam:

According to our records, you have the following valid continuous bond (Activity Code 1 – Importer or Broker) on file with the Revenue Division, Customs and Border Protection:

Bond Number:
Importer Number:
Surety: **American Alternative Insurance** No: **36**
Amount: **\$50,000.00**

Pursuant to Title 19 of the Code of Federal Regulations (CFR) Part 113, this bond has been determined to be insufficient to protect the revenue and ensure compliance with Customs and Border Protection laws and regulations. Within 15 calendar days from the date of this letter, you must schedule to terminate this bond on or by **03/22/2025** with a termination date no later than **04/06/2025** or it will be rendered insufficient. Based on the previous 12 months of data captured **03/01/2024 to 2/28/2025** a new continuous bond with a limit of liability not less than amount **\$60,000.00** is required. **To avoid a bond stacking liability issue, it is in the importers best interest to forecast their import activities for the next 12 months to determine if a bond increase beyond the minimum amount stated above, will be more appropriate.**

In order to gain a better understanding of the reason(s) for this increase, please refer to the information about current bonding formulas posted on our website at <https://www.cbp.gov/trade/priority-issues/revenue/bonds/bond-centralization-program>. This bond increase is based on the formula described as "Reviewers (1)".

Customs and Border Protection requires that each entry must be covered by a valid, continuous bond or a single transaction bond (19 CFR Part 113). Notify your Customs or insurance broker and provide a copy of this letter to them. Please transmit your bond termination request via EDI. If you are unable to transmit via EDI, submit to bondquestions@cbp.dhs.gov. If you have questions, please contact Katherine Snyder via email at KATHERINE.M.SNYDER@CBP.DHS.GOV. Or you can contact our help desk via email bondquestions@cbp.dhs.gov or (317) 614-4880.

Sincerely,

LeVette M. Trabue
Section Chief, Surety Bonds & Accounts
Revenue Protection Branch
Revenue Division, Office of Finance

Vigilance ★ *Service* ★ *Integrity*

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!



Recent Articles on Bond Stacking

2-part series with AAEI recently

- <https://aaei.org/higher-tariffs-may-trigger-bond-stacking-liability-for-importers/>
- <https://aaei.org/tariffs-and-bond-stacking-strategy/>



Questions?