

“BOND STACKING” AND PRINCIPALS

You may have heard of the term “bond stacking” and wondered exactly how does it work? Once a continuous bond is filed and made effective, it will automatically renew every year on its anniversary date until it is terminated. Each year the bond renews, a new period of liability is created up to the bond limit for which the principal and surety are “joint and severally” bound to the United States government for activity covered by the bond.



U.S. Customs bonds provide security to the U.S. Government for payment of duties, taxes and fees as well as compliance with the law and Customs regulations. As such, bonds are subject to different Customs procedures that extend the liability beyond the entry or transaction date. Customs bond claims typically arise much later than when the covered activity took place. Under 28 USC 2415, the statute of limitations CBP has to take action against Customs bonds is six years from the date the right of action accrues, i.e., the date of breach of the bond condition. Due to this, liability under a bond can remain “open” for several years, especially for AD/CVD entries which get suspended indefinitely. Once a continuous bond renews, a new period of liability is open. This creates “stacking” liability that accumulates each year.

The most common Customs bond is the Activity Code 1 continuous import bond. Import bonds are required for importations into the commerce of the United States and guarantee payment of duties, taxes, and fees as well as compliance with import regulations. Each shipment released under an import bond is declared to CBP under the formal process of an entry. Value of shipment, duties, taxes and fees are all declared on an estimated basis at time of entry. Each of these entries then go through a process of final “acceptance” or acknowledgment by CBP, which is called liquidation. Once an entry is liquidated, CBP has 90 days to re-liquidate the entry under 19 USC 1504.

At the time of liquidation or re-liquidation, CBP takes one of the following actions:

- CBP agrees with estimated values, duties, taxes and fees at the time of entry with “no change”
- CBP reviews and determines a refund of duties is due back to the importer
- CBP disagrees with any estimations at time of entry and determines additional duties are due to CBP.

Although the statute of limitations may vary based on the right of action, most sureties may be able to consider the risk to be reduced once liquidation/re-liquidation has taken place. Once all the entries under a bond period are liquidated, the exposure may be reduced for the whole period provided there are no open claims, protests or petitions. Once all the time-frames for any statute of liability have passed, the liability is considered extinguished or exhausted.

For example, a principal obtains a new continuous bond effective 5/12/2018 and it is terminated before its anniversary on 10/31/2018 as the principal’s activity required a higher limit. A new bond is filed at the higher limit on 11/1/2018 and this bond then renews on its anniversary on 11/1/2019. Entries made under both bonds create three bond periods that “stack” the liability to \$1.1M during this time-frame. The next page demonstrates how bond stacking reached \$1.1M.



Bond Period by Bond No.	Bond Period Start	Bond Period End	Bond Number	Bond Amount	Liquidation Status/ Notes open or closed periods
1	5/12/2018	10/31/2018	181C123456	\$300,000	3 entries made under this period. One entry remains unliquidated. Two entries liquidated but one has an increase in duty. Liability under this period is still open due to statute of limitations and exposure not yet considered reduced due to one open bill and one unliquidated entry.
1	11/1/2018	10/31/2019	181C123457	\$400,000	4 entries made under this period and none are liquidated. Liability considered open due to statute of limitations and not reduced due to no liquidation.
2	11/1/2019	10/31/2020	181C123457	\$400,000	3 entries made under this period and none are liquidated. Liability considered open due to statute of limitations and not reduced due to no limitation.
Total Stacking Bond Liability				\$1,100,000	

Entries Made

Entry Number	Entry Date	Entered Value	Estimated Duty	Estimated Taxes	Estimated Fee	Liquidated Date	Liquidation Type
45422222	12-May-18	\$800,689	\$18,642.31				
00654222	24-May-18	\$5,910	\$419.33		\$25.67	9-Sept-18	Liq. With No Change
42224180	03-July-18	\$501,077	\$57,000.24		\$2.05	21-Sept-18	Liq. With Bill (Increase in duty of \$62,000)
42344297	03-Nov-18	\$38,567	\$11,699.04		\$183.62		
42228053	04-Feb-18	\$50,950					
42227899	04-May-19	\$3,802			\$0.20		
42228145	04-May-19	\$4,975					
42341294	05-Dec-19	\$4,801					
83023408	05-May-20	\$144,777	\$2,659.50		\$210.05		
00234451	07-May-20	\$1,886	\$133.91		\$2.05		

