

- Finally, DOC and Customs have implemented the statutory directive, set out in Section 1632 of the Pension Protection Act of 2006, to deny bonding privileges to new shippers for a three-year trial period.

(d) **Security.** Concerns about significant under-collection of AD duties, made more acute by the Byrd Amendment, spurred consideration of various proposals to enhance collection and bolster the security measures applied at the time merchandise subject to AD proceedings enters the United States. Under-collection has many causes, and many responsive measures have been considered during the post-2000 period, two of which have been implemented. One is the suspension of bonding privileges in the new shipper review, while the other is an “enhanced bonding” requirement implemented by U.S. Customs to make it easier to collect in situations of expected differentials between cash deposit rates and higher assessment rates later established for the same entries. Customs put enhanced bonding into effect through changes to its basic Customs Bond Directive (99-3510-004) made in July 2004 and August 2005. Enhanced bonding is viewed as facilitating full collection by providing some security against the possibility that importers will default on payment of increased duties. It has so far been made applicable only to “agriculture/aquaculture merchandise” and in fact only to shrimp. It has also been provisionally found to violate WTO rules¹⁰ and has been partially sidelined by a court injunction pursuant to *National Fisheries Institute v. U.S. Bureau of Customs and Border Protection*, No. 05-00683 (CIT 2006).

(e) **Sunset reviews.** The practice regarding public notice of, and waiver of participation in, sunset reviews has evolved since 2000. On public notice, DOC decided in 2005 to begin using Federal Register notices, rather than direct communications to potentially interested parties, to announce upcoming sunset reviews.

As to waiver, Section 751(c)(4)(B) of the Tariff Act provides that where an interested party “waives” its participation in a sunset review, DOC “shall conclude that revocation of the order ... would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.” Under DOC’s implementing regulation, 19 CFR 351.218(d)(2), paragraph (d)(2)(I) covers “affirmative waivers” by parties electing not to participate, while paragraph (d)(2)(iii) treats failure to file a complete substantive response to a notice of initiation as a “deemed waiver.” The WTO found this approach to be inconsistent with the Anti-dumping Agreement.¹¹ To implement this decision, DOC published changes to its regulations to eliminate the possibility that order-wide likelihood determinations could be based on assumptions flowing from parties’ waiver of participation.

10 United States—Measures Relating to Shrimp from Thailand, WT/DS343/R (February 29, 2008).

11 United States—Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods from Argentina, WT/DS268/R, WT/DS268/AB/R (adopted December 17, 2004).