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PROPOSED JUDICIAL CHALLENGE TO CBP'S REFUSAL TO
ALLOW IMPORTERS TO FILE "ADD" AND "CVD"
REIMBURSEMENT STATEMENTS AFTER LIQUIDATION

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Department of Commerce Regulations provide that importers are not allowed to reimburse foreign exporters for antidumping duties ("ADD") and countervailing duties ("CVD") deposited at time of entry or assessed upon liquidation. To ensure that reimbursement is not taking place, Customs and Border Protection ("CBP") requires that importers submit non-reimbursement statements for each shipment. If a statement is submitted in proper form prior to liquidation, CBP will find that ADD/CVD has not been reimbursed. If a statement is not submitted prior to liquidation, CBP will presume that ADD/CVD has been reimbursed and will assess twice the ADD/CVD otherwise due.

CBP will not reject an entry because a non-reimbursement statement has not been filed. In all too many instances, the failure to submit the statement is not discovered until after liquidation when additional duty bills are issued for double the ADD/CVD. CBP has taken the position that these statements cannot be submitted after liquidation. Thus, submitting a statement with a timely filed protest will not cure the prior failure to submit the statement. CBP routinely denies protests on this issue, notwithstanding the fact that a valid non-reimbursement statement has been presented with the protest and that no reimbursement has actually occurred.

We believe that CBP's position that non-reimbursement statements cannot be filed after liquidation with a timely filed protest is contrary to law. We further believe that this position can be successfully challenged through litigation in the Court of International Trade. Whereas many of these entries involve amounts which would not individually justify further legal action, we are in the process of forming a group of aggrieved parties to pursue this potential litigation. Importers or brokers with potential claims are encouraged to contact our office to determine whether they can participate and benefit from this effort.