

**OUTLINE OF SELECTED RECENT CASES
ON ISSUES SURROUNDING
DEEMED LIQUIDATION**

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Pursuant to 19 U.S.C. § 1504(d), entries subject to a statutorily imposed or court-ordered suspension of liquidation are deemed liquidated by operation of law at the rate asserted at entry if U.S. Customs and Border Protection (“CBP”) has not liquidated the entries within 6 months after CBP receives notice that the suspension of liquidation has been lifted.

- What triggers the 6 month period?
 - In the absence of judicial review, publication in the *Federal Register* of the U.S. Department of Commerce’s (“Commerce”) final results of administrative review
 - *International Trading Co. v. United States*, 281 F.3d 1268 (Fed. Cir. 2002) (pre-URAA)
 - *International Trading Co. v. United States*, 412 F.3d 1303 (Fed. Cir. 2005) (post-URAA)
 - Following judicial review, unambiguous, public instructions from Commerce to CBP, including e-mail instructions stating that there should no longer be any unliquidated entries.
 - *Fujitsu Gen. Am., Inc. v. United States*, 283 F.3d 1364, 1381 (Fed. Cir. 2002)
 - *NEC Solutions (America), Inc. v. United States*, 411 F.3d 1340 (Fed. Cir. 2005)
 - *Am. Int’l Chem. v. United States*, 387 F. Supp. 2d (Ct. Int’l Trade 2005)

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- Can the result of deemed liquidation be reversed through a timely protest of CBP's later, active liquidation confirming the occurrence of deemed liquidation?
 - Yes, where the AD/CVD cash deposit rate used for deemed liquidation is higher than the final assessment rate announced by Commerce.
 - *Koyo Corp. of U.S.A. v. United States*, 403 F. Supp. 2d 1305 (Ct. Int'l Trade 2005), app. docketed as 06-1226 (Fed. Cir.)
 - Perhaps.
 - *Norsk Hydro Canada, Inc. v. United States*, 350 F. Supp. 2d 1172, 1178-79 (Ct. Int'l Trade 2004), app. docketed as 06-1044, - 1052 (Fed. Cir.) (Case law is divided. In any event, an importer may request relief pursuant to 19 U.S.C. § 1520 which allows for correction of liquidation involving clerical errors, mistakes of fact, or other inadvertences.)
 - *Cemex, S.A. v. United States*, 279 F. Supp. 2d 1357, 1362 (Ct. Int'l Trade 2003) ("If a deemed liquidation or any liquidation is adverse to an importer, it has its protest remedies under 19 U.S.C. § 1514 and access to judicial review under 28 U.S.C. § 1581(a)."), *aff'd*, Court Nos. 04-1058, 04-1080 (Fed. Cir. Sept. 28, 2004)

- Does a preliminary injunction ("PI") insulate against the risk of deemed liquidation?
 - Yes. If the plaintiff moves for PI and even if the CIT does not issue the PI prior to expiry of the six month period, deemed liquidation will not apply to deprive the CIT of jurisdiction.
 - *SKF USA Inc. v. United States*, 435 F. Supp. 2d 1247 (Ct. Int'l Trade 2006)
 - Any liquidations that occur during the pendency of the PI are void.
 - *Nippon Steel Corp. v. United States*, Slip Op. 06-97 (Ct. Int'l Trade 2006)
 - In some circumstances the U.S. Government can be held in contempt for liquidating entries during the pendency of a PI.
 - *Yancheng Baolong Biochemical Products Co. v. United States*, 406 F.3d 1377 (Fed. Cir. 2005)

- Can an importer request a writ of mandamus to require that CBP act to liquidate entries in accordance with Commerce directives?
 - Perhaps. For example, the CIT may order Commerce to implement cash deposit instructions even pending appeal of those instructions.
 - *Decca Hospitality Furnishings v. United States*, 427 F. Supp. 2d 1249 (Ct. Int'l Trade 2006)