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CLIENT ALERT

Don’t Forfeit Your Refund: Considerations for Importers While IEEPA Litigation is Pending

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AUTHORS

Jeremy Bylund | Britt Mosman | Joshua N. Mitchell | David Levine
Aila Ganic

While the Supreme Court considers whether the Trump Administration lawfully relied on the International Emergency Economic Powers Act (“**IEEPA**”) when imposing wide-reaching tariffs,[1] importers should consider acting expediently to preserve their right to a tariff refund should the Court find the Administration’s use of IEEPA unlawful. There are several potential pathways for importers to claim tariff refunds, discussed in turn below.

The case challenging the IEEPA tariffs is one of first impression. If the Court rules against the Administration, the procedure for administratively unwinding the tariff regime and its effects is not entirely clear. Even if the Supreme Court affirms the judgments of the lower courts that struck down the tariffs, refunds of tariffs paid are not likely to be automatic.[2] Importers will likely need to take some affirmative action to seek a refund, and there is risk that waiting until after liquidation (i.e., the government’s final calculation of duties) may be too late.

1 *Learning Resources, Inc. v. Trump*, No. 24-1287 (U.S. argued Nov. 5, 2025).

2 The Government has stipulated that refunds *will* be automatic for the five named plaintiffs in *Learning Resources*; all others will likely need to pursue some sort of process. *See also*, the discussion of a potential reimbursement during the Supreme Court oral argument for *Learning Resources* (https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-1287_b07d.pdf at pp. 154-156).

Because of this uncertainty, large, well-known importers have made proactive filings in the U.S. Court of International Trade (the "**CIT**") in an attempt to ensure they will receive a refund of the tariffs they paid.[3] While importers *may* go straight to the CIT, importers can also pursue administrative remedies through U.S. Customs and Border Protection ("**CBP**") before commencing an action at the CIT.

The CIT challenges filed by by importers remain pending, but the CIT recently denied those plaintiffs emergency injunctive relief that would have suspended liquidation.[4] The CIT's opinion did little to clear up the ambiguity on whether importers must sue in the CIT *before* liquidation to preserve their rights or if protesting duties *after* liquidation will suffice. Below, we answer common questions importers might face about the process for preserving their rights and assess the risks associated with each approach.

I. What is liquidation? When does it occur?

"Liquidation" refers to CBP's final computation of duties on imports.[5] Upon the entry of goods into the United States, importers pay an estimated tariff that CBP can adjust for accuracy (resulting in additional costs or a refund to the importer) until the shipment is "liquidated." CBP typically liquidates a shipment within 314 days.

II. I paid IEEPA tariffs when my goods entered the U.S., will I automatically get a refund if the Supreme Court determines they were illegal? Will it matter if my entries were "liquidated"?

It seems unlikely that importers will automatically receive a refund if the Supreme Court determines the tariffs are unlawful. Instead, we believe importers will have to take some kind of action to claim a refund. Recent court decisions have failed to clarify when an importer must act—i.e., before or after liquidation—to protect its right to a refund.

While our confidence in predicting the contours of any particular solution is low, whether an entry has been liquidated may well impact the remedy or remedies available. Entries that have not yet been liquidated would almost certainly have their tariffs owed adjusted downward in the event of a ruling that strikes down the tariffs. At most, importers would need to file a standard post-summary correction[6] with CBP prior to liquidation to request a re-computation of applicable tariffs.

But where an entry has already been liquidated, an importer may have to file a protest, commence litigation, or both. Nor is it clear that doing so *after* liquidation will suffice to preserve the right to a refund. Some case law suggests that post-liquidation suits would face fatal jurisdictional hurdles.

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3 *See, e.g.*, *Costco Wholesale Corp. v. United States Customs and Border Protection et al.*, No. 25-cv-00316.

4 Op. & Order, *AGS Co. Auto. Solutions v. U.S. Customs & Border Protection*, No. 25-00255, at 2, 8 (Dec. 15, 2025) ("***AGS***").

5 See 19 CFR 159.1.

6 *Post Summary Corrections*, U.S. Customs and Border Protection, https://www.cbp.gov/trade/programs-administration/entry-summary/post-summary-correction.

III. Do I need to do anything right now? Conversely, do I need to wait for liquidation (or some other event) to occur?

Whether an importer can—or should—take any immediate action and file a pre-liquidation suit in the CIT depends on the liquidation status of its imports and its risk tolerance related to the tariff payments it has already made. For some importers with limited exposure, taking a wait-and-see approach to the Supreme Court's decision in *Learning Resources, Inc. v. Trump*,[7] and not expending resources on litigation, may be a viable route. But for importers whose tariff entries are large and face imminent liquidation, we believe the more prudent course is likely to file a pre-liquidation suit in the CIT to preserve refund rights.

Importers that choose to take action to preserve their right to a refund do not need to wait for liquidation before challenging the tariffs in the CIT. As discussed further below, this step would almost certainly preserve the right to a potential tariff refund.

If an importer prefers to pursue administrative remedies as a first step, entries must be liquidated before an importer files an official protest with CBP.[8]

a. If liquidation has not occurred

Importers with entries that have not yet been liquidated remain in a relatively strong position with multiple courses of action available. Importers with unliquidated entries at the time the Supreme Court renders its decision have the easiest path to claiming a tariff refund—as noted above, this would likely happen by submission of a post-summary correction.

CBP has discretion to extend liquidation dates, and importers with approaching liquidation dates may accordingly seek such an extension in an attempt to put off the final tariff calculation until after the Supreme Court has ruled. But CBP's recent practice indicates that it will probably not view the ongoing IEEPA challenge as a sufficient basis to grant the request. Certain current litigants, for example, had petitioned CBP to delay liquidation, but those efforts failed, forcing lawsuits.

Importers facing imminent liquidations whose dates cannot be extended should seriously consider filing suit in the CIT before liquidation to challenge the legality of the IEEPA tariffs, as more than one hundred such importers have done. The CIT has jurisdiction under 28 U.S.C. § 1581(i) and 28 U.S.C. § 2631(i) to hear cases challenging the legality of duties. Given the reasoning in the CIT's *AGS* order, no request for a preliminary injunction is likely to succeed, and the filing of the complaint should be sufficient to protect an importer's rights. Given the large number of importers who have already filed such litigation, we believe that filing such a suit is unlikely to garner retributive attention from the Administration for additional follow-on suits. Because of ambiguities in the case law concerning post-liquidation challenges, we recommend filing suit before liquidation, if possible.

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7 No. 24-1287 (U.S., argued Nov. 5, 2025).

8 19 CFR 174.31.

b. If liquidation has occurred

Importers with entries that have already been liquidated who nonetheless want to preserve their right to a refund should first file a protest with CBP using a CBP Form 19 to request that CBP remove the IEEPA tariffs. A protest of this nature may be filed before the Supreme Court decision, but must be filed within 180 days of an entry's liquidation. If the protest is denied by CBP, a summons must be filed in the CIT within 180 days after receiving notice of the denial in order to maintain the protest.

Importers who file a protest have the option to request an accelerated disposition so that if the protest is denied, they can seek review by the CIT as soon as possible. Here, because the goal of the protest is to extend the timeline of the review and preserve the importer's rights while the Supreme Court deliberates, we would not generally recommend requesting an accelerated disposition.

Importers with liquidated entries may also eschew the protest process and try to proceed straight to the CIT to contest the validity of the IEEPA tariffs imposed on their merchandise. But this avenue poses litigation risk due to CIT and Federal Circuit cases about mootness and administrative exhaustion.

Commencing an action in front of the CIT directly and filing a protest with CBP serve different, but related, functions. Filing a lawsuit in the CIT ensures an importer has established its claim to judicial relief, while filing a protest ensures an importer has claimed any potential administrative remedy. While administrative remedies available through CBP are also theoretically available in the CIT, there is significant uncertainty about the potential order that the Supreme Court might craft (or another entity would craft on the Court's order) if it strikes down the tariffs. Accordingly, preserving rights in both arenas may be beneficial for importers with significant IEEPA tariff expenditures.

IV. Do I need to go through CBP before challenging the tariffs in court?

No, an importer does not have to first go through CBP before challenging the tariffs in the CIT. Whether that suit is pre-liquidation or post-liquidation, however, will determine the kinds of arguments the government may make in opposition to the lawsuit. Post-liquidation suits may face mootness, jurisdictional, and administrative-exhaustion arguments.

The CIT has jurisdiction under 28 U.S.C. § 1581(i) over civil actions brought against the United States challenging the validity of tariffs, as well as the administration and enforcement of those tariffs. This means that an importer does not need to file a protest and wait for a denial in order to bring suit in the CIT. However, because of the uncertainty regarding what the Supreme Court will deem necessary to receive a refund, it may be advantageous to contemporaneously file a protest with CBP in the event filing a protest proves to be a necessary component of any compensatory scheme. As explained above, filing a protest is only an option if your entries have been liquidated.

V. Do I lose anything by filing suit in the CIT without filing a protest with CBP?

Importers may lose out on a potential administrative remedy if they file suit in the CIT without filing a protest with CBP. They may also face arguments from the government about mootness and administrative exhaustion. Filing

a protest with CBP challenges the administrative decision made by CBP to apply the IEEPA tariffs to the specific shipment, while commencing a suit in the CIT challenges the overall legality of the tariffs. Again, there is significant uncertainty as to whether any eventual tariff refund scheme would necessarily include the filing of a protest.

VI. What does the CBP protest process look like? How long does it take?

CBP typically liquidates imports of goods within 314 days of their entry[9] into the United States. Once the importer receives notice of liquidation, the importer has 180 days to file a protest under 19 CFR Part 174 to challenge any import-related determinations made by CBP. CBP Form 19 is used to file a protest, and the form is filed with CBP either at the port of entry or electronically. Protests may be amended prior to the end of the 180-day period to file.

Protests will be reviewed by the relevant CBP Center director within two years from when the protest was filed. If a protest has been denied, either in whole or in part, the importer may commence an action in the CIT within 180 days after the date of mailing of the notice of denial. Further, an importer may request an accelerated disposition of a protest, which shortens the timeline of review for the Center director to 30 days from the date of mailing the acceleration request. If the Center director does not respond to an accelerated disposition request within 30 days, the protest is deemed denied, and the importer may then bring a claim to the CIT.

Notably, CBP will likely have a relatively straightforward basis on which to deny protests that challenge imposition of IEEPA tariffs. Pursuant to 19 CFR 174.11(b)(2), matters subject to protest include "classification and rate and amount of duties chargeable." However, because a CBP officer is not using his or her discretion when imposing the IEEPA tariffs on imported merchandise, CBP will likely maintain that this tariff decision cannot be protested under the ministerial duty doctrine[10] and will accordingly deny the protest.

VII. What does the CIT litigation process look like?

Filing suit in the CIT is relatively straightforward. Importers would file a complaint before the CIT, pay a filing fee, and await the Supreme Court's decision. If the Supreme Court affirms the lower courts' judgments striking down the IEEPA tariffs, the litigation should resolve in short order.

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Importers should be cognizant of their entries' liquidation timelines and the options for preserving their tariff refunds in the event the Supreme Court deems the tariffs unlawful. If entries have not been liquidated, importers may file a case before the CIT. If entries have been liquidated, importers should consider filing a protest with CBP, filing a case before the CIT, or both. While significant uncertainty in the Supreme Court's likely approach remains, importers should assess their risks and risk tolerance, and take action to protect their interests where warranted.

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[9] Note that "entry" here is a term of art, and refers to the entry of goods into U.S. commerce. So, for instance, goods could be kept in a warehouse in a Free Trade Zone on U.S. soil, but are not "entered" until they are withdrawn (and not re-exported).

[10] See *Thyssenkrupp Steel N. Am., Inc. v. United States*, 886 F.3d 1215, 1224-25 (Fed. Cir. 2018) ("The 'ministerial' standard, in its ordinary meaning, excludes actions requiring genuine interpretive or comparable judgments as to what is to be done.")

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Jeremy Bylund
202 303 1053
jbylund@willkie.com

Britt Mosman
202 303 1057
bmosman@willkie.com

Joshua N. Mitchell
202 303 1232
jmitchell@willkie.com

David Levine
202 303 1062
dplevine@willkie.com

Aila Ganic
202 303 1225
aganic@willkie.com

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