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Insights: Alerts

The Road Ahead for IEEPA Tariff Refunds

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Last week we reported on the Supreme Court's ruling invaliding the “reciprocal tariffs” and “fentanyl/trafficking tariffs” rolled out in 2025 on the basis that the International Emergency Economic Powers Act (IEEPA) did not grant the Trump Administration the power to regulate tariffs. Following the Supreme Court's decision, the plaintiffs in the underlying appellate court filed a motion requesting immediate issuance of a mandate to the United States Court of International Trade (CIT) to facilitate the disposition of the underlying CIT case and over 900 other suits challenging the IEEPA tariffs. The plaintiffs effectively asked for a mandate requiring the Government to establish and carry out a process for granting refunds to parties filing cases seeking refunds of the improper IEEPA tariffs.

On Monday, the Government filed a response to the plaintiffs' request arguing that there is no basis to speed up the ordinary process of things and, if anything, the court of appeals should withhold issuance of the mandate for a period of 90 days “to allow the political branches an opportunity to consider options.” There is already proposed legislation to pressure U.S. Customs and Border Protection (CBP) to refund all IEEPA-related tariffs within 180 days and that CBP must report every 30 days to Congressional committees on the status of the refunds. The court of appeals was not convinced by the Government's response and granted plaintiffs' request for immediate issuance of mandates. Aside for indicating that the mandates “shall issue forthwith,” the court of appeals did not provide any other indication as to when those mandates would be issued.

The Government routinely refunds importers, and there is even recent precedent. Following President Trump's “Liberation Day” February 2025 Executive Order which set the stage for reciprocal tariffs, the President issued an Executive Order in April that precluded the “stacking” of reciprocal tariffs with other tariffs. There, CBP did not issue refunds automatically and instead issued them through Post Summary Corrections (PSCs) and protests.

Nonetheless, the road ahead for IEEPA-related refunds will be complicated and potentially long.

Notification of a definitive process could take the better part of 2026. For example, after the Supreme Court's 1998 ruling in *United States v. U.S. Shoe Corp.*, in which the court held that the Harbor Maintenance Tax was unconstitutional, refunds took seven years to be fully provided after years of follow-on litigation and affirmative claim filings.

As we mentioned in our prior Client Alert, there are two potential paths: CBP's administrative process via PSCs and/or protests and lawsuit in the CIT.

In preparing for these paths, importers should consider the following steps:

- Self-audit entries – Audit all relevant entries from February 2025 going forward where IEEPA tariffs were paid. Be able to distinguish IEEPA tariffs from others for each entry. Gather entry summary documents (CBP Form 7501) and proof of IEEPA tariffs paid on each entry. Determine the status of each entry—i.e., has CBP liquidated the entry; if not, estimate when liquidation will occur.
- PSC – For entries not yet liquidated, use CBP's ACE portal to initiate the PSC and update the entry summary to remove or reduce the IEEPA tariff amount and clearly indicate in the comments/notes section that the change is due to the IEEPA tariffs being unauthorized under the Supreme Court's recent ruling. Upload any necessary supporting documentation.
- Protest – Submit a protest to CBP within 180 days of liquidation. The reason for the protest should be that inclusion of IEEPA tariffs on duty liability was in error based on the Supreme Court's recent ruling that IEEPA tariffs were unauthorized.
- Suit in CIT – To bypass CBP's administrative process and avoid delay, file suit at CIT immediately.

Each importer's situation will vary, and the best path forward will be a function of many different considerations including amount of refund owed, relationships and potential disputes with customers and suppliers, and appetite for litigation.

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