Articles + Publications | October 2, 2026

A CAPEable Solution: How We Can Help With CBP's CAPE Phase 3 Rollout for CIT Plaintiffs Seeking IEEPA Tariff Refunds

WRITTEN BY

Ryan Last | Daniel N. Anziska | Michael B. Jordan

KEY POINTS

- U.S. Customs and Border Protection's Consolidated Administration and Processing of Entries (CAPE) refund process will launch Phase 3 on October 6, 2026, opening refunds of finally liquidated duties imposed under IEEPA to importers that are plaintiffs in pending Court of International Trade cases.
- On July 17, 2026, CIT Judge Eaton ordered CBP to reliquidate all entries for which more than 80 days had elapsed since liquidation, including finally liquidated entries, without regard to IEEPA duties.
- CBP has been offsetting IEEPA refunds against other disputed debts importers owe, relying on its administrative offset authority under 31 U.S.C. § 3716, which raises due process concerns when refunds are offset against amounts still under protest or litigation.
- Troutman Pepper Locke's new IEEPA Tariff Refund Recovery Practice resource details how the firm supports clients across CAPE declaration strategy, CBP protest filings, debt-offset defense, Federal Circuit appellate strategy, and pass-through class action exposure.

On October 6, 2026, U.S. Customs and Border Protection (CBP) will launch Phase 3 of the Consolidated Administration and Processing of Entries (CAPE) refund process, opening the door to refunds of finally liquidated duties imposed under the International Emergency Economic Powers Act (IEEPA) for the first time. Unlike Phases 1 and 2, Phase 3 eligibility is limited to importers that are plaintiffs in pending IEEPA cases at the Court of International Trade (CIT). This alert explains the eligibility requirements for Phase 3, the July 17, 2026, CIT order that made Phase 3 possible and how our team can help you navigate the IEEPA tariff refund process and manage related risks.

BACKGROUND

The Supreme Court Decision and CIT Remedial Orders

On February 20, 2026, the Supreme Court held in *Learning Resources, Inc. v. Trump* that IEEPA does not authorize the president to impose tariffs. The ruling invalidated both the "trafficking" tariffs on goods from Canada, Mexico, and China (effective February–March 2025) and the "reciprocal" tariffs announced in April 2025. The Court left refund questions to the CIT. On March 4, 2026, the CIT ordered CBP to liquidate unliquidated entries without regard to IEEPA duties and to reliquidate entries that had been liquidated but were not yet final. A subsequent March 27, 2026, order in *Atmus Filtration* clarified that finally liquidated entries — those for which the statutory reliquidation period had expired — were also subject to reliquidation. However, CBP took the position that it could not reliquidate finally liquidated entries without an importer-specific court order, which set the stage for the

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July 17, 2026, order discussed below.

CAPE Phases 1 and 2

CBP established CAPE to process IEEPA refunds. Phase 1 launched April 20, 2026, covering unliquidated entries and entries within 80 days of liquidation. Phase 2 launched June 29, 2026, and added certain reconciliation entries and antidumping/countervailing duty (AD/CVD) entries. Phase 3 was delayed from its original August target so CBP could add validations to ensure that reliquidation removes only IEEPA duties and leaves tariffs imposed under Section 232 of the Trade Expansion Act of 1962 (Section 232), Section 301 of the Trade Act of 1974 (Section 301), AD/CVD orders, merchandise processing fees, and harbor maintenance fees untouched.

CAPE PHASE 3: SCOPE AND ELIGIBILITY

On July 17, 2026, Senior Judge Richard K. Eaton issued an order directing CBP to reliquidate all entries for which more than 80 days had elapsed since liquidation — including finally liquidated entries — without regard to IEEPA duties. The order applies to plaintiffs in approximately 3,700 IEEPA cases assigned to Judge Eaton. This order provides the judicial authorization CBP said it needed to process refunds for finally liquidated entries through CAPE. Phase 3 deploys on October 6, 2026. Eligibility requirements are as follows:

- Only importers of record that are plaintiffs in a pending IEEPA refund case at the CIT may participate.
- The plaintiff must have provided its importer of record (IOR) number to CBP.
- Plaintiffs that submitted their IOR numbers by July 30, 2026, may file CAPE Phase 3 declarations on October 6. Plaintiffs that submitted after July 30 are not disqualified — CBP has indicated they will be able to file on a rolling biweekly basis thereafter, with further instructions to follow.

Some commentary has described Phase 3 eligibility in terms of whether a “protective” action was filed before liquidation became final. That framing is imprecise. Eligibility depends on (1) plaintiff status in a pending CIT IEEPA case and (2) a CIT reliquidation order covering the entries. Importers that file new actions may be able to obtain relief through the same framework by securing injunctive relief similar to the July 17 order. However, actions under 28 U.S.C. § 1581(i) must be brought within two years after the cause of action accrues. Importers with finally liquidated entries should not count on a later class-wide remedy and should evaluate filing promptly.

UNRESOLVED ISSUES

On June 2-3, 2026, the Department of Justice appealed to the Federal Circuit, arguing that the CIT’s orders constitute an impermissible universal injunction to the extent they require refunds to non-litigant importers. The consolidated appeals principally concern whether universal injunctive relief is consistent with the Supreme Court’s decision in *Trump v. CASA, Inc.* Importantly, the government has not challenged the availability of refunds for existing plaintiffs’ finally liquidated entries — it has consistently taken the position that such refunds will be processed pursuant to individualized court orders. Accordingly, importers that commence an action before the CIT and obtain an order similar to the July 17 order should be able to seek refunds through CAPE regardless of the appeal’s outcome. Separately, plaintiffs in *V.O.S. Selections* have moved for class certification to reach importers not eligible through CAPE. The motion was argued on August 6, 2026, and remains pending, but a pending class motion is not a reason to delay filing an individual action.

CBP Offsets

CBP has been offsetting IEEPA refunds against other amounts it says importers owe, including disputed debts unrelated to IEEPA. The government will likely rely on its administrative offset authority under 31 U.S.C. § 3716 and the Treasury Offset Program, which generally assumes a valid debt subject to notice and an opportunity for review. Offsetting refunds against amounts still under protest, litigation, or administrative review raises due process and statutory questions. Importers should review open CBP bills, liquidated damages claims, and AD/CVD debts now and be ready to object promptly if a refund is reduced.

PASS-THROUGH EXPOSURE

As refunds arrive, attention is turning to who ultimately bore the tariff cost. At least one consumer class action has already been filed against an importer that announced customer discounts funded by IEEPA refunds rather than direct refunds to purchasers. Similar claims against other importers and retailers are expected. Likely theories include:

- Unjust enrichment, based on the premise that a company that passed tariff costs to customers and then recovered them from the government holds a windfall.
- State consumer protection claims, especially where companies used express "tariff surcharge" line items or made public statements linking price increases to tariffs.
- Contract claims by business customers under surcharge provisions, pricing-adjustment clauses, or most-favored-customer terms that may require refunds to be shared.

Public companies should also consider when and how to recognize refund receivables and interest in Securities and Exchange Commission filings, whether exposure to pass-through claims calls for loss-contingency analysis, and whether public statements about refunds are consistent with litigation positions.

OTHER TARIFF DEVELOPMENTS

The Supreme Court's decision does not affect tariffs imposed under Section 232 or Section 301. Separately, the administration's 10% global tariff under Section 122 of the Trade Act of 1974 (Section 122) was held unlawful by a divided CIT panel on May 7, 2026, in *State of Oregon v. United States* and *Burlap and Barrel, Inc. v. Trump*, but relief was limited to the plaintiffs. The government appealed, and on June 11, 2026, the Federal Circuit stayed the CIT's injunction pending appeal, finding the government had made a sufficient showing of likelihood of success on the merits. The Section 122 tariffs expired on July 24, 2026. Section 122 duties are not refundable through CAPE, so importers seeking refunds must act through protests or litigation and should continue to monitor the appeal.

The administration has turned to Section 301 as its main longer-term tariff authority, along with sectoral Section 232 tariffs, and has opened wide-ranging investigations to support new Section 301 tariffs. These replacement tariffs should not be treated as permanent — Section 301 actions can be modified and are subject to four-year review. Challenges to replacement tariffs are expected, and their prospects will depend on the statutory authority and procedural record behind each action.

RECOMMENDED ACTIONS

1. **Inventory entries by liquidation status.** Use Automated Commercial Environment (ACE) reports to sort every entry with IEEPA duties into unliquidated, liquidated-but-not-final, and finally liquidated categories. Identify entries already processed through CAPE Phases 1 and 2.

2. **CIT plaintiffs: prepare for October 6.** Confirm that your IOR number was submitted to CBP. If submitted by July 30, prepare CAPE Phase 3 declarations for filing at launch. If submitted after July 30, you remain eligible but will file on a rolling biweekly basis — watch for CBP's instructions. Confirm that a reliquidation order has been entered in your case.
3. **Non-plaintiffs with finally liquidated entries: evaluate filing now.** The government's position is that refunds of finally liquidated entries require an importer-specific court order. Importers that file new CIT actions may be able to obtain relief through the same framework by securing an order similar to the July 17 order. Given the two-year limitations period under 28 U.S.C. § 2636(i), evaluate promptly whether to file. Be cautious about relying on the pending Federal Circuit appeal or class certification motion as a substitute for preserving your own claim.
4. **Validate Automated Clearing House refund information.** Confirm that current, accurate Automated Clearing House refund details are on file in ACE for every relevant IOR number.
5. **Reconcile entry data.** Check that IEEPA duties were reported on the correct Harmonized Tariff Schedule Chapter 99 lines and identify misreported or misallocated IEEPA duties that CAPE validations may reject. Coordinate with customs brokers on corrections and CAPE submissions.
6. **Assess offset exposure.** Review open CBP bills, liquidated damages claims, and AD/CVD debts that CBP could offset against refunds. Be ready to challenge improper offsets.
7. **Manage pass-through risk.** Map where tariff costs were passed through, including surcharge line items and price increases. Review customer contracts for refund-sharing obligations, prepare consistent communications for customers and investors, and coordinate with disclosure and accounting advisors on receivables and contingencies.
8. **Preserve Section 122 refund rights and plan for replacement tariffs.** File protests within 180 days of liquidation for entries that paid Section 122 duties. Model exposure under current and proposed Section 301 and Section 232 actions.

To see how Troutman Pepper Locke's Tariff + Trade Task Force supports clients across every stage of IEEPA refund recovery — including CAPE Declaration strategy, CBP protest filings, debt-offset defense, Federal Circuit appellate strategy, and pass-through class action exposure — visit our new IEEPA Tariff Refund Recovery Practice resource.

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