Articles + Publications | July 6, 2026

Beyond CAPE: Importers Move for Class Certification to Recover Liquidated IEEPA Tariffs Not Covered in Phase 1 of Refund Process

WRITTEN BY

Ryan Last | Daniel N. Anziska

KEY POINTS

- Plaintiffs in *V.O.S. Selections, Inc. v. Trump* moved to certify a mandatory class under Rule 23(b)(2) covering all importers whose IEEPA tariff refund claims remain ineligible for processing through the government's CAPE program.
- The U.S. Supreme Court held in *Learning Resources, Inc. v. Trump* that IEEPA does not authorize the president to impose tariffs, requiring the government to process and pay refunds with interest on all affected entries.
- The government has limited CAPE to entries liquidated within the preceding 90 days, leaving "finally liquidated" entries — those liquidated more than 90 days ago — ineligible absent class certification or individual lawsuits.
- Unlike an opt-out Rule 23(b)(3) class, a Rule 23(b)(2) mandatory class would automatically bind all qualifying importers, with no sign-up requirement and no ability to exclude themselves from the outcome.
- Importers should assess whether their IEEPA tariff refund claims are currently CAPE-ineligible, preserve liquidation records, and consult trade counsel given the more than $166 billion collected under IEEPA across over 53 million entries.

On June 4, 2026, plaintiffs in *V.O.S. Selections, Inc. v. Trump* (Case No. 25-00066, U.S. Court of International Trade (CIT)) filed a motion seeking certification of a mandatory class under Rule 23(b)(2) on behalf of all importers whose tariff refund claims under the International Emergency Economic Powers Act (IEEPA) remain ineligible for processing through the government's administrative refund program, the Consolidated Administration and Processing of Entries program (CAPE). If granted, the certification would include every importer holding such claims and could compel the government to open CAPE to the entire class.

The motion is particularly relevant to importers who paid IEEPA tariffs and whose entries are now "finally liquidated" — meaning the entry's duties were finally fixed (liquidated) more than 90 days ago. Those entries are the principal category of claims currently ineligible for CAPE, but the proposed class is defined by current CAPE ineligibility rather than by final liquidation alone. The CIT's ruling on certification may determine whether affected importers can recover refunds through an administrative process or must file their own individual lawsuits.

BACKGROUND

In February 2026, the U.S. Supreme Court held in *Learning Resources, Inc. v. Trump*, 146 S. Ct. 628 (2026), that IEEPA does not authorize the president to impose tariffs. The Court concluded that all tariffs collected under IEEPA were unlawfully assessed and that the government is required to process and pay refunds — with interest —

on all affected entries.

Following that decision, the government established CAPE as an administrative system to process refunds. The government has indicated that it intends to make CAPE available for entries that are unliquidated or that liquidated less than 90 days ago — effectively the initial phase of the refund process. As of the motion's filing, however, the government had operationally limited CAPE to entries liquidated within the preceding 80 days. For entries that liquidated more than 90 days ago — so-called "finally liquidated" entries — the government has declined to open CAPE. The government's legal position on these entries is discussed below.

More than 330,000 importers paid IEEPA tariffs across more than 53 million entries. Of approximately $166 billion collected under IEEPA, billions in refunds remain unprocessed because they fall outside of CAPE's current eligibility window.

THE MOTION FOR CLASS CERTIFICATION

The named class representative, Terry Precision Cycling LLC, moved to certify a class under CIT Rule 23(b)(2) (substantially identical to Fed. R. Civ. P. 23(b)(2)). The proposed class is defined as:

"All importers who paid tariffs imposed under IEEPA and who hold claims that are not currently eligible for processing and refund through CAPE."

The motion argues that all prerequisites of Rule 23(a) are satisfied: (1) numerosity — the number of affected importers far exceeds the 40-member threshold typically required for class actions; (2) commonality — a single legal question applies to all class members (whether the government can refuse to reopen and correct entries that closed more than 90 days ago without a court order); (3) typicality — the named class representative's claims are similar to those of other class members (it holds at least four finally liquidated entries denied CAPE refunds); and (4) adequacy of representation — class counsel successfully litigated this case at the CIT, Federal Circuit, and Supreme Court levels.

The motion further contends that Rule 23(b)(2) certification is appropriate because the government has acted (or refused to act) on grounds that apply to all class members, and the relief sought — a single court order directing the government to make CAPE available to all class members — cannot be divided among individuals. The class does not seek individualized monetary damages from the CIT; each member's refund amount would be computed and paid by the government through CAPE once the court order is issued.

From a legal standpoint, the viability of a Rule 23(b)(2) class here turns on the principle that any monetary recovery is "merely incidental" to the injunctive relief sought.

The Supreme Court has held that (b)(2) certification is appropriate where "a single injunction or declaratory judgment would provide relief to each member of the class," but not where each member would be entitled to an individualized award of monetary damages (564 U.S. 338 (2011)). Plaintiffs rely on post-*Dukes* appellate decisions — including *Johnson v. Meriter Health Services Employee Retirement Plan*, 702 F.3d 364 (7th Cir. 2012), *Amara v. CIGNA Corp.*, 775 F.3d 510 (2d Cir. 2014), and *Gooch v. Life Investors Insurance Co. of America*, 672 F.3d 402 (6th Cir. 2012) — holding that (b)(2) certification remains proper where a single injunction directs the defendant, rather than the court, to compute and pay the resulting monetary relief outside the judicial forum.

WHY CLASS CERTIFICATION NOW — AND THE GOVERNMENT'S POSITION

This case was litigated through every level of the federal court system. Plaintiffs prevailed at the CIT, the U.S. Court of Appeals for the Federal Circuit, and the U.S. Supreme Court, which issued its merits ruling on February 20, 2026. Plaintiffs did not move for class certification during the appellate process. According to the motion, there was no reason to anticipate that the government would decline to process refunds for certain affected importers following the Supreme Court's ruling.

As noted above, the government has limited CAPE to recently liquidated entries. The government's legal position is twofold: first, it contends it lacks authority to reopen and correct (reliquidate) finally liquidated entries and pay refunds through CAPE without an individualized court order; and second, relying on *Trump v. CASA, Inc.*, 606 U.S. 831 (2025) — which addressed the limits on courts granting relief that extends beyond the parties before them — it argues the CIT cannot order relief for importers who are not named plaintiffs in the pending suit.

Plaintiffs dispute both contentions, arguing the government retains statutory power to reopen and correct any entry and that *CASA* does not bar class-wide relief. Plaintiffs contend that without certification, the government's *CASA* argument would require potentially tens of thousands of similarly situated importers to each file a separate lawsuit presenting the same legal question — a result the motion characterizes as imposing unnecessary burdens on importers, the court, and the government.

Plaintiffs further argue that a Rule 23(b)(2) mandatory class is appropriate at this stage because the underlying legal question has already been decided by the Supreme Court. In a typical Rule 23(b)(3) opt-out class, concerns may arise that potential class members will wait to see how the case is decided before choosing whether to participate. Plaintiffs contend that concern does not apply here, because the legal question has been resolved and the only remaining dispute is how refunds will be processed.

WHY THIS MATTERS: THE MANDATORY CLASS DISTINCTION

A key feature of this motion is that a Rule 23(b)(2) class is mandatory — meaning class membership is automatic and binding.

Unlike a Rule 23(b)(3) class — which requires individual notice and allows members to exclude themselves — a Rule 23(b)(2) class includes all qualifying members automatically. If the CIT certifies this class, every importer meeting the class definition will be bound by the outcome. There is no sign-up requirement and no ability to opt out.

This has several practical consequences:

- Importers within the class definition become class members automatically, regardless of whether they are aware of the litigation.
- The class judgment — whether favorable or unfavorable — will bind all members.
- If the CIT grants certification and issues the requested court order, the government would be required to make CAPE available to all class members. If certification is denied, importers with finally liquidated entries may need to file their own individual lawsuits to obtain refunds.

WHAT IMPORTERS SHOULD CONSIDER

- **Assess exposure.** Importers should determine whether they paid IEEPA tariffs and whether any of their refund claims are currently ineligible for CAPE processing — most commonly because the entries are finally liquidated (more than 90 days past liquidation). Importers holding any CAPE-ineligible claims fall within the proposed class definition.
- **Monitor the litigation.** The government's response to the certification motion is forthcoming. The CIT's ruling will determine whether administrative refunds become available to this group or whether individual litigation is required.
- **Preserve records.** Importers should retain documentation of IEEPA tariff payments, entry summaries, and liquidation dates to support refund claims if the class is certified and CAPE is opened.
- **Consult counsel.** Importers with substantial refund exposure or time-sensitive claims should consult trade counsel to evaluate whether any protective action is warranted in the interim.

RELATED INDUSTRIES + PRACTICES

- Sanctions + Trade Controls
- Tariff + Trade Task Force
- White Collar Litigation + Investigations