

Getting Duties Back: Where Recovery Stands Under IEEPA, Section 122, and Section 301 Forced Labor Tariffs

WRITTEN BY

Ryan Last | Daniel N. Anziska

KEY POINTS

- In its *Freestyle World* ruling on October 8, 2026, the Court of International Trade certified a class of importers that paid IEEPA duties and have not sued.
- Certification following CIT's *Freestyle* decision is not a refund order, so class members receive refunds only if the court enters a class-wide injunction and Customs and Border Protection processes their entries.
- Importers that have filed their own actions to recover IEEPA duties are excluded from the *Freestyle* class.
- Section 301 forced-labor tariffs remain in effect while the CIT weighs *In re Section 301 Forced Labor Cases*.
- Importers suing in the Court of International Trade to recover IEEPA duties must file within two years under 28 U.S.C. § 2636(i), and the *Freestyle* certification order does not address whether the class action pauses that deadline for class members.

Three different tariff programs. Three different statutes. Three different stages of litigation. Since 2025, U.S. importers have paid extraordinary duties under three programs: the International Emergency Economic Powers Act (IEEPA), Section 122 of the Trade Act of 1974 (Section 122), and Section 301 of the Trade Act of 1974 (Section 301) based on forced labor issues. Each program is now before the courts. The U.S. Supreme Court has held the IEEPA tariffs unlawful, the U.S. Court of International Trade's (CIT) ruling against the Section 122 tariffs is stayed on appeal, and the Section 301 challenge awaits a first decision. The question for importers is the same in every case, whether duties already paid can be recovered, but the answer differs for each program.

Beginning in February 2025, the president invoked IEEPA, citing declared national emergencies, to impose duties on goods from nearly every country. The Supreme Court [held those tariffs unlawful](#) in *Learning Resources, Inc. v. Trump*, 607 U.S. 229 (2026). Recovery is now largely a question of process. Under CIT supervision, U.S. Customs and Border Protection (CBP) has issued refunds through its Consolidated Administration and Processing of Entries (CAPE) program, and many importers have filed individual refund actions. On October 8, 2026, the CIT certified a nationwide class of importers that have not filed their own suits in *Freestyle World, Inc. v. CBP* (*Freestyle*).

Section 122 allows the president to impose a temporary tariff of up to 15% *ad valorem* for no more than 150 days to address "fundamental international payments problems." In *Oregon v. United States*, Slip Op. 26-47 (Ct. Int'l Trade May 7, 2026), the CIT held that these tariffs exceeded the president's authority, but limited relief to three importer plaintiffs. The U.S. Court of Appeals for the Federal Circuit has stayed that judgment pending appeal, so

any recovery, including for those plaintiffs, depends on the outcome of the appeal.

Under Section 301, the Office of the U.S. Trade Representative (USTR) determined that 60 trading partners had failed to prohibit or enforce bans on forced labor imports and imposed duties on their goods. A challenge is pending before the CIT, and no decision has been issued. The duties remain in effect, and no recovery mechanism exists unless the court sets the determinations aside.

SECTION 122 “BALANCE-OF-PAYMENTS” SURCHARGE: RULED UNLAWFUL, NOW STAYED

On February 20, 2026, the president issued Proclamation 11012 (the Proclamation), imposing a 10% worldwide tariff under Section 122. The Proclamation relied on the U.S. trade and current-account deficits. The tariffs ran from February 24 through July 24, 2026.

A 24-state coalition led by Oregon (No. 26-01472) and two private importers, Burlap and Barrel, Inc. and Basic Fun, Inc. (No. 26-01606), challenged the Proclamation before a three-judge CIT panel, which decided the cases together. On May 7, 2026 (Slip Op. 26-47), the panel held 2-1 that the Proclamation was *ultra vires*, and that the government must refund the tariffs paid. The majority read “balance-of-payments deficits” as Congress understood the term in 1974, meaning deficits measured by liquidity, official settlements, or basic balance, and found that trade and current-account figures do not qualify. However, the court found that only Washington (through the University of Washington) and the two private importers had standing; the claims of the other 23 states were dismissed. The court declined to issue a universal injunction and limited the injunction and refunds with interest to those three plaintiffs.

The Federal Circuit consolidated the government’s appeals (Nos. 2026-1804, -1805) and entered an administrative stay of the injunction on May 12, 2026. On June 11, 2026, it granted a stay pending appeal. In a nonprecedential order, the court found that legislative history cited by the government and the dissent “strongly call[s] into question” the CIT majority’s conclusion that a “balance-of-payments deficit” under Section 122 may be measured only by the three methods listed in the Senate Finance Committee’s report on the Trade Act of 1974 (S. Rep. No. 93-1298, Table 3) and in a December 1974 committee staff report. Those methods were standard in the fixed-exchange-rate era: (1) the “liquidity” balance, which tracked changes in U.S. official reserve assets and in liquid liabilities to all foreigners; (2) the “official settlements” balance, which tracked changes in U.S. official reserve assets together with liabilities to foreign official agencies; and (3) the “basic balance,” which combined the current account with long-term capital flows. The Federal Circuit did not adopt its own reading of the statute. It also found irreparable harm to the government, citing the risk of follow-on suits, and no substantial injury to the plaintiffs because refunds with interest would be available if they prevail.

The CIT’s ruling has not been reversed, but it is stayed, and the statutory question is now before the Federal Circuit for a ruling on the merits. Because the tariffs were limited to 150 days, the issue for importers is whether they can recover duties already paid. Nonparty importers are not covered by the CIT’s refund order.

IEEPA TARIFFS: REFUNDS AND A NEWLY CERTIFIED IMPORTER CLASS

On October 8, 2026, in *Freestyle* (Slip Op. 26-123, No. 26-01088), Judge Richard K. Eaton certified, under CIT Rule 23(b)(2), a class of “[a]ll importers of record who paid duties imposed by the [IEEPA tariff orders] between February 1, 2025, and February 19, 2026, excluding any entity that has separately filed an action seeking to

recover IEEPA duties payments.” The class seeks an injunction directing CBP to liquidate or reliquidate class members’ entries without IEEPA duties. The court scheduled a conference for October 13, 2026, and directed the parties to submit a proposed scheduling order by October 22, 2026.

Importers within the definition are class members without filing anything, and a Rule 23(b)(2) class generally carries no opt-out right. Certification is not a ruling on the merits or an order directing refunds. The court has not yet entered a class-wide injunction, so class members will receive refunds only if the court grants that relief and CBP then processes their entries.

Importers that have filed their own CIT actions are excluded from the class and may obtain court-ordered reliquidation in their own cases. Class members must instead wait for class-wide relief, and the government may appeal the certification order. The class excludes “any entity that has separately filed an action,” but the opinion does not say whether that applies to suits filed after certification.

The two-year limitations period under 28 U.S.C. § 2636(i) still applies. Whether the class action pauses that deadline for class members is not addressed in the certification order. For importers with large finally liquidated balances, a protective individual suit may still be the more certain path.

The *Freestyle* class covers IEEPA duties only. We are not aware of any class action proposed for Section 122 or Section 301 duties.

SECTION 301 FORCED-LABOR TARIFFS: A NEW CHALLENGE NEARS DECISION

In March 2026, USTR opened Section 301 investigations of 60 trading partners for failing to adopt or enforce prohibitions on imports made with forced labor. On July 23, 2026, it issued final determinations imposing 10% or 12.5% tariffs on all of them, with specified product exclusions and planned tariff-rate quotas for certain textile and apparel imports from Bangladesh, Cambodia, Indonesia, and Malaysia. [As previously reported in this alert](#), the tariffs took effect July 24, 2026.

In *In re Section 301 Forced Labor Cases* (No. 1:26-cv-03555), a coalition of importers (including Learning Resources, Hand2mind, and Burlap and Barrel) and several states argue that the determinations cannot be upheld under Section 301, because USTR made no country-specific findings, they are arbitrary and capricious under the Administrative Procedure Act, and the government’s reading would be an unconstitutional delegation. The government defends the action as consistent with longstanding U.S. policy against forced-labor imports and argues that the determinations are largely unreviewable because the president directed them. The panel heard argument on September 30, 2026, and ordered supplemental briefing due October 16, 2026. No decision has been issued, and the duties remain in effect.

WHAT IMPORTERS SHOULD DO NOW

- **Inventory exposure by program.** Quantify IEEPA, Section 122, and Section 301 duties by entry, and confirm which entity is the importer of record. Only importers of record have clear standing to seek refunds.
- **Protect refund rights.** Relief obtained by others will not automatically reach nonparties outside a certified class. A CIT action under 28 U.S.C. § 1581(i) must be commenced within two years after the claim accrues (28 U.S.C. § 2636(i)). For IEEPA duties, importers that have not sued should confirm whether they fall within the certified *Freestyle* class and monitor the court’s further orders on how relief will be implemented.

- **Watch liquidations.** The government has said it will not contest reliquidation for prevailing plaintiffs, but importers should still track liquidation dates and preserve their records.
- **Budget for Section 301 duties.** Plan for the duties while that case is being litigated and model the outcome if the determinations are set aside.

For questions about recovering duties paid under IEEPA, Section 122, or Section 301, contact the attorneys in Troutman Pepper Locke's [Tariff + Trade Task Force](#), including authors [Ryan Last](#) and [Dan Anziska](#). Our team helps importers evaluate refund options and track filing deadlines.

RELATED INDUSTRIES + PRACTICES

- [Sanctions + Trade Controls](#)
- [Tariff + Trade Task Force](#)
- [White Collar Litigation + Investigations](#)