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Government Plans to Appeal Universal IEEPA Tariff Refund Order

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KEY POINTS

- The DOJ has appealed Judge Richard K. Eaton's universal refund order requiring CBP to return about $166 billion in IEEPA duties.
- The government's three-category framework for IEEPA refunds distinguishes unliquidated entries, finally liquidated entries with CIT suits, and finally liquidated entries without suits, with the last category driving the appeal.
- Judge Eaton denied the government's attempt to substitute lower-ranking officials for CBP Commissioner Rodney S. Scott, ordering Scott to testify despite the government's "apex doctrine" arguments.
- The government's appeal strategy must contend with prior concessions in *AGS Company Automotive Solutions v. U.S. Customs and Border Protection* and related CIT orders recognizing the court's authority to order reliquidation and IEEPA refunds.
- The appeal to the U.S. Court of Appeals for the Federal Circuit focuses on whether the CIT's exclusive jurisdiction and the Constitution's Uniformity Clause permit universal refund relief, while CBP continues processing CAPE refunds for unliquidated and nonfinal entries.

On May 29, 2026, the U.S. Department of Justice (DOJ) filed a notice of appeal and motion to amend the court's order in *V.O.S. Selections, Inc. v. United States* (Court No. 25-00066) before the U.S. Court of International Trade (CIT), challenging Judge Richard K. Eaton's universal order directing U.S. Customs and Border Protection (CBP) to refund approximately $166 billion in duties collected under the International Emergency Economic Powers Act (IEEPA). The same day, the CIT denied the government's separate motion to substitute lower-ranking officials for CBP Commissioner Rodney S. Scott's court-ordered live testimony at a June 9 hearing.

THE GOVERNMENT'S THREE-CATEGORY FRAMEWORK FOR ENTRY TYPES

The government's May 29 motion organizes the $166 billion in IEEPA refunds into three distinct categories based on entry type. As we have discussed previously, the Customs Automation Prototype Environment (CAPE) system currently processes both Category 1 entries and entries liquidated within the past 80 days that are eligible for voluntary reliquidation under 19 U.S.C. § 1501. Categories 2 and 3 require additional system development by CBP.

- **Category 1: Unliquidated or nonfinal entries still in CBP's control.** CBP is already processing refunds for these entries through the CAPE system. The government represents that it is "already in the process of refunding approximately $85 billion of these tariffs — over half the total amount of IEEPA tariffs paid." The government does not contest its obligation to issue refunds for this category, and additional claims continue to be filed and processed.

- **Category 2: Finally liquidated entries where importers have filed suit at the CIT.** Once an entry is finally liquidated, CBP asserts it has "no authority to reliquidate or refund money without a court order." The government's position is that refunds for these entries must be handled through "importer-specific orders requiring reliquidation" once CBP has completed programmatic changes for other refund categories. The CIT has so far declined to issue such importer-specific relief, and the government acknowledges that additional system enhancements will be needed before compliance is possible.

- **Category 3: Finally liquidated entries where importers have not filed suit.** This is the contested category. The CIT's universal injunction orders CBP to reliquidate these entries and issue refunds even to importers who have not filed their own lawsuits. The government contends this "exceeds the Court's jurisdiction and equitable authority under *Trump v. CASA, Inc.*, 606 U.S. 831, 839 (2025)" and has announced it will appeal this portion of the order to the Federal Circuit and seek a stay "except as to the particular importer plaintiffs in each case."

THE CIT DENIES THE GOVERNMENT'S ATTEMPT TO SHIELD THE CBP COMMISSIONER

In a separate but related development on the same day, Judge Eaton denied the government's motion to substitute Scott's court-ordered testimony at the June 9 hearing with lower-ranking officials. The government had invoked the "apex doctrine," arguing that high-ranking, Senate-confirmed officials should not be compelled to testify absent "extraordinary circumstances" where they possess first-hand knowledge that cannot be obtained from alternative witnesses. The government proposed Susan Thomas, CBP's executive assistant commissioner for Trade, or Brandon Lord, who had already submitted eight refund-status declarations, as substitutes.

Judge Eaton rejected this argument in a pointed two-page order. The court noted that Scott is "both a policy maker and an administrator" who is "responsible for the assessment and collection of duties, and when required, for their refund." The court stated that Scott's testimony is "necessary to ascertain if it is the Government's policy to return all of the unlawfully collected duties either by complying with the court's order, or by some other means — that is, if it is the Government's policy to refund the duties to importers both large and small." The court emphasized a significant concern: "most of the refunds that have been processed so far have gone to large importers, not small." The government has warned it will "promptly seek mandamus relief from the Federal Circuit" if the order stands.

THE GOVERNMENT'S PRIOR CONCESSIONS

The government's appeal should be considered in light of its prior statements to the CIT.

In December 2025, in *AGS Company Automotive Solutions v. CBP* (Slip Op. 25-154), the DOJ affirmatively represented to the CIT that it "will not object to the [c]ourt ordering reliquidation of plaintiff's entries subject to the challenged IEEPA duties if such duties are found to be unlawful." The CIT found this constituted an "unequivocal position" and held the government judicially estopped from reversing course. The court also confirmed that it "unanimously agreed" it "has the explicit power to order reliquidation and refunds where the government has unlawfully exacted duties."

On January 8, 2026, the government further stipulated in the CIT that it would refund IEEPA tariffs for "all current and future similarly situated plaintiffs" following a "final and unappealable decision" — a commitment covering IEEPA tariffs imposed on all countries, including Brazil and India. On January 14, 2026, the CIT issued an order in

AGS recognizing that the government itself acknowledged the CIT's jurisdiction and authority to order refunds of any and all IEEPA duties.

The doctrine of judicial estoppel prevents a party from taking a position in court that is inconsistent with a position it successfully maintained in earlier proceedings. The government used its December 2025 and January 2026 representations in opposing importers' motions for preliminary injunctions — arguing that injunctions were unnecessary because refunds would be available. If the doctrine applies, the government would face a high bar in arguing that the CIT lacks authority to order the very relief the government previously told the court was available.

THE CIT'S JURISDICTIONAL DISTINCTION FROM *CASA*

The government's *CASA*-based challenge to the universal injunction involves the CIT's institutional posture. Unlike the Article III district courts whose universal-injunction authority was addressed in *CASA*, the CIT possesses exclusive nationwide jurisdiction over tariff and customs matters under 28 U.S.C. § 1581. The Constitution's Uniformity Clause requires that "all Duties, Imposts and Excises shall be uniform throughout the United States." One question presented is whether this provision supports uniform relief when tariffs are found unlawful, rather than a piecemeal, importer-by-importer approach.

Judge Eaton's order in *Euro-Notions Florida* directly addressed this distinction, concluding that the prohibition on universal injunctions discussed in *CASA* does not apply to the CIT because its statutory authority differs from that of ordinary federal district courts. Whether this reasoning survives appellate review at the Federal Circuit remains to be seen — the Federal Circuit previously vacated the CIT's universal injunction in *V.O.S. Selections* and remanded for reconsideration in light of *CASA*. However, that remand was directed at the original merits-phase injunction, not the post-judgment refund order now at issue.

PRACTICAL IMPLICATIONS FOR IMPORTERS

The appeal does not halt the refund process. CBP continues to process CAPE submissions and has already refunded approximately $85 billion in IEEPA duties on unliquidated and nonfinal entries. As of May 11, 2026, approximately 126,237 CAPE declarations had been submitted, with roughly $35.46 billion in anticipated refunds and interest for approximately 8.3 million accepted entries.

For importers with unliquidated or nonfinal entries, nothing changes. These refunds are proceeding through CAPE regardless of the appeal.

For importers with finally liquidated entries who have filed suit, the government has acknowledged its refund obligation but insists on importer-specific court orders. System enhancements are still needed to process these refunds.

For importers with finally liquidated entries who have not filed suit, this is where the appeal creates the most meaningful risk. If the Federal Circuit agrees with the government's *CASA* argument, these importers may need to file their own lawsuits to obtain refunds. The two-year statute of limitations under 28 U.S.C. § 1581(i) provides a window, but importers should monitor developments closely and be prepared to file if the legal landscape shifts.

WHAT TO WATCH

Several near-term developments will shape the trajectory of this dispute.

June 9 hearing. Judge Eaton has scheduled a hearing at which Scott is ordered to testify regarding the government's compliance timeline and whether it is the government's policy to refund duties to "importers both large and small." The government has threatened mandamus relief at the Federal Circuit if the order stands. This hearing could produce significant new guidance on the CIT's expectations and tolerance for further delay.

CIT ruling on the government's motion to amend. The government's motion asks the CIT to narrow its universal refund order. Judge Eaton has not yet ruled on this motion.

Federal Circuit proceedings. The notice of appeal has been filed, but no briefing schedule has been set. The government is also expected to seek a stay of the universal injunction pending appeal. Whether the Federal Circuit grants a stay will be a critical early indicator of how it views the merits.

CAPE Phase 2 and beyond. CBP continues to develop additional CAPE functionality for more complex entry categories, including reconciliation entries, drawback claims, and historically liquidated entries. The pace of these enhancements will determine how quickly remaining refund-eligible entries can be processed.

CONCLUSION

The government's appeal targets the scope of the CIT's remedial authority — not the underlying determination regarding the IEEPA tariffs in *Learning Resources, Inc. v. Trump*. If the appeal is successful, it could result in some narrowing of relief for nonplaintiff importers with finally liquidated entries and potential delay. The government's prior concessions, the CIT's jurisdictional posture, and the Uniformity Clause are among the legal issues that will be addressed on appeal. Importers should continue to pursue refunds through CAPE for qualifying entries and should consult with trade counsel regarding whether filing suit at the CIT is advisable to preserve rights on finally liquidated entries.

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