

IEEPA-Related Tariffs Are Gone – But the Fight Over Refunds Is Just Beginning

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While the U.S. Supreme Court's recent decision invalidating tariffs imposed under the International Emergency Economic Powers Act (IEEPA) resolves one legal issue, it has left unresolved another set of legal issues that will be highly complicated for businesses — how to obtain a refund for those duties that were paid but that the Court has determined the government lacked the authority to impose, and how claims to those refunds can be resolved once the refunds are issued. Across many supply chains, IEEPA-related tariffs were incorporated into pricing, reimbursed through contractual pass-through mechanisms, or absorbed through negotiated commercial adjustments. As refunds begin flowing back to importers of record, a new question emerges: Who ultimately “owns” the refunded duties — the importer that paid U.S. Customs and Border Protection (CBP), or a downstream party that bore some or all of the economic cost (e.g., distributors, manufacturers, retailers, or ultimately consumers)? This question will be determined not under customs laws and regulations, but under ordinary principles of commercial contract law.

When Refund Entitlement Becomes a Contract Question

Refunds issued by the U.S. government are typically paid to the importer of record because that party legally remitted the duties. Once payment is received, however, entitlement to retain those funds turns on how tariff risk and pricing authority were allocated between commercial counterparties. Courts addressing these disputes, when dealing with sophisticated parties, are unlikely to focus on economic hindsight or perceived fairness. Instead, they will examine what the parties agreed, expressly or implicitly, when transactions occurred. That inquiry rarely begins and ends with a single agreement.

In modern goods transactions governed by the Uniform Commercial Code (UCC), contractual obligations are frequently reflected across a broader commercial record, including master agreements, purchase orders, invoices, confirmations, and performance conduct over time. Where refund rights were never expressly addressed (which is common) courts may reconstruct the parties' allocation of tariff risk from this collective documentation.

Why the Commercial Record Now Matters

Many tariff-related pricing changes were implemented operationally rather than through formal contract amendments. Businesses reacted in real time, adjusting pricing through invoices, surcharge notices, or commercial correspondence as regulatory conditions evolved. As a result, courts may closely examine supply and distribution agreements, purchase orders and acknowledgments, invoice structures and duty line items, tariff surcharge communications, pricing negotiations reflected in emails, and the parties' course of performance.

Under UCC principles, consistent commercial conduct may clarify contractual meaning even where formal documentation is incomplete. How tariff costs were billed, described, and accepted may therefore become central evidence of whether payments were intended as reimbursement of governmental charges or as finalized commercial pricing. That distinction may ultimately determine ownership of refunded IEEPA-related tariffs.

Contractual Provisions Likely to Shape Refund Outcomes

Tariff Pass-Through and Duty Allocation Clauses

Courts will first examine whether contracts treated tariffs as identifiable pass-through expenses or merely permitted pricing adjustments reflecting increased costs. Express reimbursement language strengthens downstream arguments that refunds should follow the party that funded the duty payments. By contrast, provisions granting pricing discretion in response to cost increases may support the view that tariff impacts became embedded in negotiated product pricing rather than preserved as separately recoverable amounts. The legal consequence appears to be straightforward, at least in principle: reimbursement provisions point toward repayment obligations.

Change-in-Law and Regulatory Adjustment Provisions

Many commercial agreements authorized price adjustments arising from governmental action or regulatory change. Downstream parties may argue these clauses imply reciprocal adjustment once tariffs are invalidated. Importers, however, may contend that such provisions enabled permanent commercial repricing decisions made under then-existing market conditions, not temporary advances subject to later reconciliation. Courts will often assess whether these provisions were intended to restore economic balance or simply permit flexibility during regulatory volatility.

Pricing Structure and Surcharge Treatment

Operational pricing mechanics frequently carry substantial interpretive weight. Courts may consider whether tariffs were separately itemized on invoices, described as temporary surcharges, or incorporated into revised unit pricing. Separately identified duty charges may indicate reimbursement intent. Integrated pricing adjustments, by contrast, may demonstrate that the parties renegotiated the economic bargain itself, suggesting payments were final consideration for goods rather than conditional tariff reimbursements. In many disputes, pricing structure will serve as the clearest evidence of contractual intent.

Incoterms and Allocation of Import Responsibility

Delivery terms may provide additional context regarding risk allocation: (i) DDP (Delivered Duty Paid) arrangements may indicate seller responsibility for duties; and (ii) FOB (Free on Board) or CIF (Cost, Insurance, and Freight) structures may suggest buyers assumed import-related exposure. While Incoterms do not independently resolve refund ownership, they help courts understand which party contractually bore import risk when goods entered U.S. commerce, an important backdrop when assessing reimbursement expectations.

Integration, Modification, and Reservation-of-Rights Clauses

Contract provisions governing modification and integration may significantly shape refund disputes. Agreements requiring written amendments may limit reliance on informal emails or operational discussions suggesting reimbursement expectations. Conversely, documented reservations of rights or temporary surcharge language may support downstream recovery arguments. These clauses frequently determine whether tariff-era pricing adjustments are treated as provisional accommodations or binding commercial outcomes.

Potential Claims Asserted by Downstream Parties

Downstream purchasers seeking repayment may rely on both contractual and equitable theories, including:

- Breach of contract where duties were invoiced as pass-through charges;
- Unjust enrichment claims alleging improper retention of refunded funds;
- Breach of the implied covenant of good faith and fair dealing under UCC-governed agreements;
- Restitution or disgorgement based on payments made under legal assumptions later invalidated; and
- Equitable reallocation arguments tied to payments made solely because tariffs were presumed lawful.

Each theory ultimately depends on demonstrating that IEEPA-related tariff payments functioned as reimbursement rather than negotiated price consideration.

Importer Defenses Supporting Refund Retention

Importers, however, may rely on equally well-established commercial defenses.

- *Commercial Pricing Independence*: Importers may argue tariff exposure informed overall pricing decisions rather than creating reimbursement obligations. Once incorporated into negotiated pricing, payments may constitute consideration for completed sales transactions, unaffected by subsequent governmental refunds.
- *Absence of Refund or Reconciliation Obligations*: Courts are generally reluctant to impose repayment duties not reflected in agreements negotiated by sophisticated parties. Contractual silence regarding refund allocation may therefore favor importer retention.
- *Allocation of Regulatory and Market Risk*: Where agreements place cost volatility or regulatory change risk on buyers, importers may argue tariff exposure formed part of the negotiated commercial risk allocation existing at the time of sale.
- *Course of Performance*: Extended performance under revised pricing without reconciliation mechanisms may evidence mutual understanding that tariff-related payments were final when made.
- *Voluntary Payment, Waiver, and Accord and Satisfaction*: Buyers that knowingly paid tariff-adjusted invoices (particularly following negotiation or continued performance) may face defenses grounded in voluntary payment, waiver, estoppel, or accord and satisfaction principles recognizing commercially settled expectations.
- *Integration and No-Modification Protections*: Integration clauses limiting informal modification may further support importer arguments that tariff pricing adjustments represented definitive commercial agreements rather than temporary arrangements awaiting refund reconciliation.

Why Routine Commercial Documents May Decide the Outcome

In many cases, refund entitlement will not turn on headline contractual language but on how tariff costs were implemented in practice. Courts may closely analyze invoice descriptions, pricing communications, purchase order exchanges, and whether either party reserved rights as tariff legality remained uncertain. Documentation once

viewed as routine operational paperwork may now function as the primary evidence defining contractual intent and ownership of refunded duties.

The Bottom Line

The Court's decision eliminates the legal basis for IEEPA-related tariffs. It does not determine how refunded duties unwind across private commercial relationships. Customs laws and regulations dictate who receives repayment from the government. However, contract law, shaped by pricing structure, risk allocation, and commercial performance, will determine who ultimately retains it. For many companies, the next phase of the IEEPA unwind will resemble a contract dispute far more than a trade compliance exercise. Recovering refunds may be procedural. Determining entitlement to those funds may require careful legal analysis of agreements, transactional records, and years of supply-chain conduct.

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