

IEEPA Tariff Refunds May Come With an Unforeseen Cost — Exposure to Consumer Class Actions

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The Supreme Court's February 20, 2026, [decision](#) in *Learning Resources, Inc. v. Trump* upended the legal basis for billions of dollars in tariffs on imports imposed by the Trump administration. The Court held that the International Emergency Economic Powers Act (IEEPA) did not authorize the sweeping tariff regime, but it did not address how past collections should be refunded, leaving refund mechanics and timing to be worked out through U.S. Customs and Border Protection (CBP) in coordination with the U.S. Court of International Trade (CIT). While the ruling opened the door for importers to seek substantial refunds from the federal government, including through developing CBP refund procedures and related CIT orders, it also created a new front of litigation risk for companies that passed tariff costs through to consumers.

Under U.S. import laws and regulations, any refunds will be paid to the importer of record, not to downstream purchasers or consumers. Companies now face contract, consumer protection, and corporate governance questions about who should ultimately benefit from any IEEPA duty refunds. Plaintiffs' firms have begun recruiting plaintiffs and filing putative class action lawsuits aimed at capturing a share of any refunds or refund opportunities.

Troutman Pepper Locke's [Tariff and Trade Task Force](#) has been monitoring these tariffs since they were first enacted, tracking their implementation, escalation, and the litigation culminating in *Learning Resources*. We are now helping companies navigate the intersection of tariff refunds and the associated consumer class actions and shareholder risk.

CIT Refund Litigation: The Backdrop for Consumer Claims

Since the Supreme Court agreed to hear *Learning Resources*, more than 2,000 importers have filed refund-related actions in the CIT. Public CBP and U.S. Department of the Treasury data indicate that IEEPA duty collections reached roughly \$133 billion by mid-December 2025, with some observers estimating that total collections potentially subject to refund could approach \$175 billion once entries through early 2026 are included — a figure that underscores the stakes for both the government and private actors.

In a March 4, 2026, [order](#) (as later amended) in *Atmus Filtration, Inc. v. United States*, the CIT directed CBP to liquidate or reliquidate affected entries without IEEPA duties and to return those duties (plus interest) through the ordinary liquidation and reliquidation process. CBP has responded by developing a new Automated Commercial Environment (ACE) module, the Consolidated Administration and Processing of Entries (CAPE), which will allow importers or their brokers to upload lists of affected entries and trigger mass recalculation and refunding of IEEPA

duties. CAPE is not yet live, and the CIT has temporarily suspended its requirement of immediate refunds while CBP completes and deploys this process. As we discussed in our recent [client alert](#), CBP reported that, as of March 19, 2026, development of the CAPE claim?portal component was approximately 73% complete, the mass processing component 25% complete, the review and liquidation/reliquidation component 80% complete, and the refund component 63% complete. CBP is scheduled to provide a further status update on its refund implementation plans at a March 31, 2026, hearing before the CIT in the *Atmus* litigation. This continuing uncertainty around how and when refunds will be paid matters for class action defendants: many consumer complaints are premised not only on refunds already received, but also on companies' eligibility to pursue refunds and their alleged duty to seek and share those refunds.

Emerging Consumer Class Actions: New Risks for Companies That Passed Through Tariffs

As refund litigation proceeds in the CIT and CBP continues to build out the CAPE refund process, a second wave of litigation is building downstream. Plaintiffs' firms are recruiting consumers and filing putative class actions in state and federal courts targeting companies that paid IEEPA tariffs and then incorporated those costs into consumer-facing prices. The core allegations are that the companies:

- Passed tariff burdens through to consumers (via explicit surcharges, fees, or higher prices);
- Are now in a position to seek or receive refunds from the government, particularly in light of the CIT's refund order and CBP's development of the CAPE portal; and
- Have an obligation to share those refunds or refund opportunities with consumers rather than retaining the full benefit.

Plaintiffs are advancing a familiar mix of claims and legal theories:

- **Consumer protection claims** under state unfair and deceptive practices statutes, focusing on how tariff-related charges were described, whether their contingent or refundable nature was disclosed, and whether pricing was adjusted after the tariffs were invalidated and refund avenues became available;
- **Contract claims** asserting that provisions allowing pass-through of "duties, taxes, or governmental charges" did not cover charges later deemed unlawful, or that the contracts implicitly required the return of unlawfully collected amounts; and
- **Restitution and unjust enrichment** claims contending that companies would receive a windfall if they keep refunds funded by consumer payments.

These theories are likely to be refined and replicated across industries, particularly for retailers, manufacturers, and distributors that adopted tariff surcharges or related fees during the life of the IEEPA tariffs and are now positioned to pursue IEEPA duty refunds.

Potential Defenses for Companies Facing Consumer Class Actions

Although the cases are still at their very early stages and the contours of this litigation are still developing, there appear to be a number of potential defenses that companies will be able to raise in response to tariff-related consumer claims.

1. Standing and Ripeness

Many consumer suits rely on speculative harms — for example, the idea that a company *might* recover refunds in the future and then choose not to share them. Where no refund has yet been paid and no obligation to refund has been established, companies can argue that:

- The alleged injury is not concrete or imminent; and
- Claims based on hypothetical future refunds are not ripe for adjudication.

These justiciability arguments may provide a basis for early dismissal or narrowing of claims.

2. Contract and Pricing Theories

Companies can also look to the nature of their consumer transactions. In many instances:

- Retail sales are governed by a contract for a specific price at the time of purchase, when the tariffs were valid and enforced as a matter of law; and
- Contracts and terms of sale give sellers discretion to adjust pricing and recover “taxes, duties, or governmental charges” without promising to revisit those charges if the legal landscape later changes.

These features can undercut efforts to recast ordinary pricing decisions as contractual promises to rebate future tariff refunds.

3. Restitution and Unjust Enrichment

Restitution-based claims may be vulnerable where:

- Tariff surcharges or fees were clearly disclosed and paid voluntarily;
- Plaintiffs rely on generalized “price inflation” theories without identifying specific tariff-related line items; or
- The economic incidence of the tariff is diffuse, making it difficult to trace a direct enrichment from individual class members.

4. Consumer Protection and Disclosure

Consumer protection statutes will be a central battleground. Key potential defenses include:

- Demonstrating that tariff-related charges and pricing were accurately described at the time of sale;
- Emphasizing that companies generally have no duty to predict or disclose the possibility that a tax or tariff will later be invalidated; and
- Showing that the company responded to *Learning Resources* in a consistent and transparent fashion.

Arbitration and Class Action Waivers

Many companies rely on arbitration provisions and class action waivers embedded in online terms of use or point-of-sale agreements. Early motion practice may focus on enforcing individual arbitration requirements and class waivers that significantly limit aggregate litigation risk. The enforceability of these provisions will often turn on state

law doctrines and the robustness of assent mechanisms (e.g., clickwrap versus passive browsewrap).

What Companies Should Do Now

Companies that paid IEEPA-related tariffs and could be targeted in consumer class actions should move quickly to assess their posture and mitigate risk. The following steps can help:

1. Understand Your Tariff and Pass-Through Profile

Begin by mapping your exposure:

- Which products and time periods were subject to IEEPA tariffs?
- How were those costs passed through — explicit surcharges, fees, or embedded price changes?
- What internal analyses or board-level discussions exist around tariff strategy and pricing?
- Which entities in your supply chain were the importer of record on IEEPA duty entries, and whether the entity that may receive CBP refunds is the same entity that contracted with consumers or other counterparties.
- Whether your customs and finance teams can generate a CAPE-ready CSV file of all entries with IEEPA duties (including entry numbers, dates, Harmonized Tariff Schedule of the United States classifications, duty amounts, and brokers) so you can act quickly once CBP's portal opens.

This baseline will be vital for both defense strategy and potential settlement negotiations.

2. Review Contracts, Terms of Sale, and Dispute Resolution Provisions

Companies should closely examine:

- Contract language on “taxes, duties, and governmental charges,” including whether refunds are addressed, and whether the parties expressly allocate ownership of any government duty refunds (including refunds obtained through CBP's CAPE process);
- Risk-allocation provisions that bear on who ultimately absorbs tariff-related costs; and
- Arbitration clauses and class action waivers, along with the mechanisms by which consumers agreed to them.

Where appropriate, companies may also want to consider whether updates to standard terms are warranted on a go-forward basis, including clarifying how any future tariff or duty refunds will be handled between the parties.

3. Evaluate Tariff-Related Disclosures and Marketing

Review how tariff-related charges were described in:

- Receipts and invoices;
- Online FAQs and customer communications; and
- Advertising or promotional materials that referenced tariffs or “government surcharges.”

Identify statements that plaintiffs might try to characterize as misleading now that the tariffs have been invalidated, and consider whether any remedial disclosures or clarifications are appropriate. Any new customer

communications concerning potential IEEPA duty refunds should be carefully aligned with your strategy for pursuing refunds through CAPE and responding to consumer or shareholder claims.

4. Align Refund Strategy With Litigation and Governance Risk

Decisions about whether, when, and how to pursue government refunds should be made with an eye toward both consumer and shareholder exposure. Companies should:

- Model the economics of various scenarios (e.g., pursue refunds and share some portion with consumers versus forgo refunds and defend litigation);
- Ensure that board and management deliberations are well documented to reflect a reasoned business judgment;
- Coordinate positions across trade, litigation, and investor relations teams; and
- Distinguish among unliquidated entries, entries within the 180-day protest window, and finally liquidated entries, as each category may be treated differently under current CIT orders and CBP refund procedures.

5. Prepare for Litigation and Discovery

Even before a complaint is filed, companies should preserve transaction-level data that could be critical to class certification and damages arguments, as well as the entry-level customs data that will support or rebut allegations about IEEPA duty incidence and refund eligibility. Companies should reach out to a member of **Troutman Pepper Locke's Tariff and Trade Task Force**.

How Troutman Pepper Locke's Tariff and Trade Task Force Can Help

Troutman Pepper Locke's **Tariff and Trade Task Force** — working alongside our **Class Actions** team — has been engaged on these tariffs since they were first enacted. We have followed their development, the challenges brought in the CIT and other courts, and the Supreme Court's ruling in *Learning Resources*, as well as the CIT's subsequent refund orders and CBP's evolving CAPE refund process. We are assisting companies with:

- Designing and executing IEEPA refund strategies, including CIT litigation and related administrative proceedings, and advising importers of record and affiliated entities on how to structure, pursue, and allocate CBP refunds, (including refunds obtained through CAPE);
- Assessing and defending against consumer class actions and shareholder claims tied to tariff pass-through and refunds;
- Updating contracts, disclosures, arbitration agreements, and class action waivers to address tariff-related risks going forward, including specific provisions allocating the benefits and burdens of any IEEPA duty refunds; and
- Advising on data mapping, entry reconciliation, and documentation to support CAPE submissions, potential CBP audits, and parallel consumer or shareholder litigation.

If you have questions about your company's exposure or potential strategies in light of *Learning Resources*, please contact a member of **Troutman Pepper Locke's Tariff and Trade Task Force**.

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