

IEEPA Tariffs May Fall, but Refunds May Not: Why a New CIT Case Matters for Every Importer

WRITTEN BY

Ryan Last | Daniel N. Anziska | Charlene C. Goldfield

A major U.S.-based importer recently [filed suit](#) in the U.S. Court of International Trade (CIT) to preserve its ability to recover tariffs imposed under the International Emergency Economic Powers Act (IEEPA) that it has already paid. The suit does not just ask that the underlying IEEPA tariffs be declared unlawful; it asks the court to: (1) prevent U.S. Customs and Border Protection (CBP) from “liquidating” affected entries while the litigation is unresolved; and (2) preserve the importer’s path to a refund if the Supreme Court of the United States (SCOTUS) later holds the tariffs unlawful. The filing highlights a practical and time-sensitive problem: if CBP finalizes (liquidates) an entry and the importer fails to timely protest, the importer can lose the administrative and judicial routes to recover duties paid, including tariffs implemented pursuant to IEEPA. The move highlights a growing and time-sensitive concern across industry sectors: even if tariffs are struck down, recovery of duties already paid is not guaranteed unless companies take affirmative procedural steps now. Dozens of similar protective suits are expected to follow as parties race to protect refund rights ahead of liquidation deadlines.

Why This Case Matters Now

The CIT action is not solely a challenge to whether IEEPA authorizes the tariff regime — that question is already before the SCOTUS. Rather, it is a procedural fight over whether importers can be divested of refund rights through CBP’s liquidation process before the courts determine the underlying legality. To put it differently, the suit exists to keep the door open long enough for importers to collect refunds if the tariffs fall.

The Importer’s Litigation Theory

The plaintiff alleges that CBP’s upcoming liquidations of some of its entries will extinguish its ability to obtain potential refunds because liquidation triggers rigid administrative deadlines. To avoid that outcome, the importer seeks injunctive and declaratory relief directing CBP to delay liquidation or treat entries in a manner that preserves refund access until the courts resolve the dispute around the constitutionality of IEEPA tariffs. This litigation is emerging as a necessary tool to prevent refund rights from being cut off by calendar mechanics rather than case merits.

Understanding the Liquidation Process

Pursuant to [19 C.F.R. Part 159](#) and [19 U.S.C. § 1504](#), liquidation is the administrative act by which CBP finalizes duty calculations for an entry. Under typical processing timelines, entries liquidate approximately 314 days after arrival. Until liquidation, importers have broad flexibility: they may file Post-Summary Corrections (PSCs), seek

extensions of the one-year liquidation period, or adjust claims (e.g., if the tariff authority falters or the importer has made a mistake). The 314-day period is not a specific statutory requirement, but rather the typical, operational timeframe within which CBP aims to liquidate most entries. The actual statutory deadline is one year from the date of entry, as established by 19 U.S.C. § 1504(a).

Once liquidation occurs, however, the decision becomes final and conclusive, subject only to narrow time-bound remedies. PSCs disappear as an option, and the only ordinary remedy becomes the filing of a protest pursuant to [19 C.F.R. Part 174](#) and [19 U.S.C. § 1514](#), within 180 days of liquidation. If the protest is denied, importers must file suit in the CIT within 180 days of that denial. A protest is a formal administrative challenge filed on CBP Form 19 that asks CBP to review and reverse its liquidation decision by asserting special factual or legal grounds for refund or reclassification under 19 C.F.R. Part 174. If no protest is filed within 180 days, or if deadlines lapse, refund prospects collapse into limited, discretionary, or impractical avenues, such as CBP's voluntary reliquidation within the first 90 days after liquidation or litigation claiming "void" liquidations in rare circumstances. These residual avenues are unreliable and cannot support large-scale refund recovery. Thus, liquidation operates as the cliff edge — once crossed without a protest, the legal system treats duty collections as administratively final regardless of the lawfulness of the underlying tariff.

Applying the Calendar: Why the First Deadlines Are Imminent

The [first IEEPA tariff](#) took effect February 4, 2025. Applying standard processing cycles:

- Approximately 314-day liquidation period ? first entries will begin liquidating around December 15, 2025.
- 180-day protest period ? protests for those entries must be filed on or about June 13, 2026.

This means the first wave of entries subject to litigation risk will begin liquidating before the SCOTUS rules — and long before refund implementation can occur. The CIT suit is therefore strategic: it seeks to ensure that entries do not quietly liquidate and expire while the courts deliberate the legality of the tariffs.

Existing SCOTUS IEEPA Tariff Case

As we discussed in our prior alerts ([here](#) and [here](#)), the underlying legality of the tariffs issued by the Trump administration pursuant to IEEPA is already before the SCOTUS, and a decision from the Court is expected before the end of the year or early next year. If the SCOTUS holds that IEEPA did not authorize tariffs of this breadth, the legal theory for refunds strengthens. But even a favorable SCOTUS ruling may not automatically produce refunds for particular importers — importers need preserved administrative or judicial claims to compel reliquidation and refund for specific entries. That gap between a merits ruling and practical recovery is the problem the recent CIT suit seeks to close.

Legal Precedent

Courts have, at times, ordered refunds or remanded for refund proceedings after invalidating tax or tariff authority, including in challenges to unconstitutional export taxes and malformed trade duties. But outcomes turn on statutory procedure: in customs matters, recovery often hinges on whether importers preserved claims through the required administrative steps. Prior tariff disputes illustrate the mixed results — some litigants secured reliquidation

or refund remands, while others were denied relief because they did not meet preservation requirements. In *United States v. U.S. Shoe Corp.*, [523 U.S. 360 \(1998\)](#), the SCOTUS held that the Harbor Maintenance Tax, as applied to exports under 26 U.S.C. §§ 4461–4462, violated the Constitution’s Export Clause because it functioned as a tax rather than a true user fee; after that merits win, refunds were available, but exporters’ recovery depended on following the prescribed procedural paths, including timely claims. The practical takeaway is that winning the merits is not the same as getting money back; even a favorable SCOTUS ruling will likely leave remedial questions to the CIT and CBP, and importers must have timely protests or other preserved claims to convert a legal victory into actual refunds.

Lawsuit Strategic Significance

1. **Timing and Preservation of Rights.** Liquidation deadlines are ticking. If CBP liquidates entries before importers take proper steps (PSCs, protest, litigation), importers risk waiving rights to refunds even if the tariffs are later invalidated. The suit attempts to protect those rights now.
2. **Remedial Test Case.** Even if the SCOTUS rules in favor of petitioners on the merits, the remedial question — how refunds will be processed and whether courts must order reliquidation/refunds for particular importers — will be litigated. The CIT case could become the vehicle to resolve those remedial questions.
3. **Broad Consequences for the Market.** If courts are reluctant or constrained in ordering large-scale refunds (for practical or statutory reasons), importers may face strange results: tariffs struck down but no easy path to recover amounts already paid unless they preserved and litigated their claims. That risk explains the surge in filings.

Impact to Importers

Large importers with resources are filing protective litigation or pressing CBP for liquidation extensions; they are tracking entries and making targeted administrative filings to preserve rights. Smaller importers may face harder choices: they may not be able or willing to litigate in the CIT, yet they risk losing refund rights if they fail to track and protest liquidations. The administrative tools (PSC, protest, or extension requests) remain available but require timely action and administrative resources. Either way, failure to act within these deadlines significantly diminishes refund prospects.

Key Uncertainties to Watch

- *Will the SCOTUS rule for the petitioners on the merits?* If yes, will it direct refunds generally or leave relief to the courts and/or CBP to implement? The oral argument indicated skepticism from some justices as to the lawfulness of these tariffs, but a final vote is required.
- *Will CBP agree to systemic reliquidation/refund procedures if the tariffs are invalidated?* CBP has issued no formal guidance and remains silent on whether it will implement a systemic reliquidation and refund process if the IEEPA tariffs are ultimately invalidated. In informal discussions, CBP has indicated that its current guidance is not to extend liquidation periods pending the outcome of the SCOTUS and CIT cases. Instead, CBP urges importers to continue paying IEEPA tariffs and file protests, which CBP will hold in abeyance until the courts rule. Although the CIT possesses authority to order retroactive refunds (including for already liquidated entries) and precedent requires the government to return unlawfully collected duties, both the U.S. Court of Appeals for the Federal Circuit and SCOTUS have repeatedly cautioned that such relief is not automatic, may be limited to named plaintiffs or require individual administrative claims, and could be restricted to prospective effect — leaving importers with substantial litigation and timing risk in recovering the estimated \$210 billion in duties already paid.
- *Will courts uniformly permit wide remedial relief (orders of large-scale reliquidation), or will relief be limited to*

specific, litigating importers? That remedial question is the principal reason for the protective CIT filings now.

Conclusion

The single most important theme is preserve, preserve, preserve — both administrative and judicial claims now. The first liquidation wave begins December 15, 2025, with protest deadlines closing June 13, 2026. If your business paid IEEPA tariffs, review affected entries immediately to implement a preservation strategy. Because the remedy is time-sensitive and procedure-governed, doing nothing risks forfeiting recovery even if the IEEPA tariffs are later declared unlawful.

Troutman Pepper Locke has a dedicated Tariff + Trade Task Force to aid our clients in navigating and anticipating the impacts that evolving tariffs have on their businesses. As your business develops strategies to mitigate continued tariff uncertainty, the Troutman Pepper Locke Tariff + Trade Task Force are here to help guide you through the process.

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