

Liquidate Now, Litigate Later: Court Rejects Bid to Halt Liquidation of Entries Subject to IEEPA Tariffs

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On December 15, 2025, the U.S. Court of International Trade (USCIT) issued a decision in *AGS Company Automotive Solutions et al. v. United States*, Slip Op. 25-154, addressing how importers can preserve their rights to recover duties imposed under the International Emergency Economic Powers Act (IEEPA) on certain goods imported into the United States. In this [consolidated case](#), brought by a group of importers including a large national retailer, the USCIT held that liquidation of entries subject to IEEPA tariffs will not, by itself, prevent the court from ordering reliquidation (the process by which it restarts the liquidation clock and duties are recalculated) and refunds if those tariffs are ultimately found unlawful by the Supreme Court of the United States. The relevant appeals have been consolidated and are currently pending before the Supreme Court.

The USCIT confirmed that importers who have already filed timely court challenges to the IEEPA tariffs will not lose their ability to obtain refunds solely because their entries liquidate while the Supreme Court considers the legality of these tariffs. At the same time, the decision does not create a general, automatic refund mechanism for all affected importers. The opinion focuses on the court's authority to grant judicial relief in cases properly before it and on the federal government's litigation representations in those cases.

The court also clarified that these constitutional challenges to the IEEPA tariffs fall within the USCIT's residual jurisdiction under 28 U.S.C. § 1581(i) — rather than the ordinary protest route — and that claims for judicial relief are subject to a two-year statute of limitations. Residual jurisdiction empowers the USCIT to hear civil actions arising out of laws governing import transactions that do not fit within its more specific jurisdictional grants, effectively serving as a catch-all for review of certain trade-related agency actions. This underscores an important distinction: liquidation may create “administrative finality” under the customs statutes, but it does not extinguish the USCIT's authority to grant relief in these constitutional cases.

The key takeaway is that liquidation, by itself, will not extinguish refund rights while the IEEPA tariffs are being challenged. Although the USCIT did not explicitly state that importers must be plaintiffs in this litigation, it did indicate that refunds may not be recoverable solely through filing administrative protests under 19 U.S.C. § 1514(a).

Plaintiffs' Concerns and USCIT's Holding

As discussed in a previous [alert](#), the plaintiffs sought to suspend liquidation on the grounds that importers would suffer irreparable harm if U.S. Customs and Border Protection (CBP) were allowed to finalize (*i.e.*, liquidate) the assessment of certain IEEPA duties, thereby limiting importers' ability to challenge those duties and obtain

refunds should the Supreme Court rule the IEEPA tariffs unconstitutional. In the ordinary course, once CBP liquidates an entry, the duty assessment generally becomes final, with only narrow avenues remaining to contest or change that assessment.

Plaintiffs were particularly concerned that CBP could begin liquidating entries as early as December 15 — approximately 314 days after entry — consistent with CBP's internal operating guidelines, rather than the full one-year period set by statute, and that such liquidation could effectively foreclose importers' ability to protest and risk waiving potential refund rights.

Ultimately, the USCIT found no irreparable injury because the government, through the U.S. Department of Justice, has “made very clear — both in this case and in related cases — 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.” In other words, the government represented that it would not oppose the USCIT restarting the liquidation process for entries at issue in this and related IEEPA litigation if the tariffs are struck down.

The USCIT emphasized that the IEEPA litigation presents a constitutional question — one that CBP has no authority to resolve and that rests exclusively with the courts. As a result, there can be no effective administrative protest of the IEEPA tariffs themselves, and liquidation does not create true finality as to their lawfulness. Instead, the court retains jurisdiction to order reliquidation and grant refunds if the Supreme Court ultimately determines the tariffs to be unlawful.

US Government's Response and the Limits of Administrative Relief

While the government has acknowledged that the USCIT has authority to order reliquidation in these circumstances, it has not committed to any automatic or administrative refund process if the Supreme Court strikes down the IEEPA tariffs.

The USCIT's opinion notes that the government is effectively bound, through principles like judicial estoppel, by the positions it has taken in this and related cases — specifically, its assurances that it will not oppose court-ordered reliquidation of affected entries. But those assurances are directed at the litigation before the USCIT, not at the broader universe of importers who have not filed suit.

This decision, therefore, underscores that traditional administrative mechanisms — such as routine protests of liquidation — may not be sufficient on their own to secure refunds of IEEPA duties. The court's reasoning and the government's concessions are framed narrowly around the power of the USCIT to grant judicial relief in cases that are properly brought. Importers who have not filed suit cannot rely on this decision as assurance that liquidation will be “fixed” later through systemic administrative action, even if the Supreme Court ultimately invalidates the tariffs.

The Pending Supreme Court Case

The USCIT's ruling comes against the backdrop of the Supreme Court's [review](#) of the IEEPA tariff regime in consolidated appeals challenging the legality of these tariffs. The Court heard oral argument in November 2025, and a decision is widely expected by mid-2026. Should the Supreme Court hold that these tariffs are not

authorized under IEEPA or are otherwise unlawful, that decision will likely shape what procedural avenues importers must use to recover duties already paid.

There are several key uncertainties that may be addressed — or left open — by the Supreme Court's ruling, including:

- **The scope of any refund discussion:** Whether the Supreme Court signals that relief is limited to parties before the courts or contemplates broader remedial pathways.
- **CBP's potential response:** Whether CBP establishes a systemic reliquidation or refund process, or defers to litigation-based remedies.
- **Judicial remedial discretion:** How lower courts will treat requests for broad remedial relief, including for importers that were not parties to earlier suits.

A significant number of importers have already filed cases in the USCIT seeking full refunds of IEEPA duties, and the recent decision helps ensure that those plaintiffs will not be procedurally barred from relief by the mere passage of time and liquidation of their entries. At the same time, the decision does not guarantee refunds, does not bind the government to any particular refund process, and does not expand rights for importers that have not yet filed suit.

Moving Forward

In light of the recent USCIT ruling and the pending Supreme Court decision, importers that have paid or continue to pay IEEPA tariffs may wish to evaluate their exposure and potential preservation strategies. In particular, companies may consider:

- **Mapping their exposure:** Identifying all entries subject to IEEPA tariffs since their inception and quantifying the duties at issue.
- **Tracking liquidation and protest timelines:** Monitoring liquidation dates closely (with December 15, 2025, representing the first major wave, and associated protest deadlines occurring in mid-June 2026) and understand how those dates interact with both administrative options and the USCIT's two-year limitations framework for judicial relief.
- **Evaluating litigation posture:** Coordinating with legal counsel to determine whether to file or join USCIT litigation now, rather than relying on the possibility of future administrative relief or a broad Supreme Court remedy.

The analysis can be more complex where companies indirectly bear the cost of IEEPA tariffs through pass-through pricing rather than acting as the importer of record themselves. In many cases, only the importer of record has standing to pursue customs remedies or seek refunds, even if another party in the supply chain ultimately shouldered the economic burden of the duties. Companies in this position may wish to coordinate with their suppliers, contract manufacturers, or other entities serving as the importer of record to understand: (i) who controls potential claims; (ii) what steps those parties plan to take to preserve potential refund rights (e.g., protests or litigation); (iii) how any recovery might be shared or allocated; and (iv) whether existing contracts adequately address tariff-related rights, obligations, and cooperation in pursuing potential relief.

Inaction could, in some circumstances, result in forfeiting or narrowing potential recovery and may limit the avenues available to seek such recovery, even if the IEEPA tariffs are later declared unlawful. This remains true

even though the USCIT has confirmed that liquidation alone will not bar judicial relief in properly filed cases.

Troutman Pepper Locke has a dedicated **Tariff + Trade Task Force** to aid clients in navigating and anticipating the impacts that evolving tariffs have on their businesses. We will continue to monitor developments in the Supreme Court and the USCIT and can help guide you through appropriate preservation and recovery strategies.

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