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To Sue or Not to Sue: That Is the Question for IEEPA Tariff Refunds

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KEY POINTS

- The U.S. Supreme Court held in *Learning Resources, Inc. v. Trump*, 607 U.S. 229 (2026), that IEEPA does not authorize the President to impose tariffs, but the ruling has not resulted in automatic refunds for all importers.
- CBP's CAPE refund system has disbursed over $86 billion in unlawfully collected IEEPA duties, but importers with "finally liquidated" entries can access CAPE Phase 3 refunds only by filing suit at the CIT and obtaining a reliquidation order.
- The two-year statute of limitations under 28 U.S.C. § 1581 is already running on IEEPA entries from early 2025, with some filing deadlines expiring as early as February 2027.
- Two pending class certification motions — including a Rule 23(b)(2) motion in *V.O.S. Selections, Inc. v. United States* and a separate motion in *Freestyle World, Inc. v. United States* — could provide non-litigant importers a path to refunds without filing individual CIT lawsuits.
- The government's Federal Circuit appeal, relying on *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), challenges the CIT's authority to grant universal refund relief, making individual protective filings the most certain path to recovery for importers with significant finally liquidated exposure.

Despite the U.S. Supreme Court's invalidation of tariffs imposed under the International Emergency Economic Powers Act (IEEPA) in *Learning Resources, Inc. v. Trump*, 607 U.S. 229 (2026), winning at the Supreme Court has not meant winning a refund — at least not for everyone. Over $86 billion in unlawfully collected duties has already been disbursed through U.S. Customs and Border Protection's (CBP) Consolidated Administration and Processing of Entries (CAPE) refund system, but a significant portion of outstanding refunds remains out of reach for importers with "finally liquidated" entries who have not filed individual lawsuits at the U.S. Court of International Trade (CIT).

Whether filing suit is presently required depends on where an importer's entries stand in the liquidation cycle. For importers whose entries are unliquidated or within 80 days of liquidation, CAPE is processing refunds automatically — no lawsuit is needed. For importers with finally liquidated entries, the picture is far less certain. CBP has no current administrative pathway to refund those duties absent a court order.

Two class certification motions — if granted — could open a path to recovery without individual litigation. But certification is contested, appeals are possible, and the two-year statute of limitations under 28 U.S.C. § 1581 is already running on the earliest IEEPA entries. Importers with substantial finally liquidated exposure who wait for these parallel proceedings to resolve risk finding themselves permanently foreclosed from recovery.

THE SUPREME COURT'S DECISION AND ITS AFTERMATH

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On February 20, 2026, the U.S. Supreme Court held in a 6-3 decision that IEEPA does not authorize the President to impose tariffs, reasoning that the statute's authority to "regulate… importation" does not encompass the power to tax or raise revenue through tariffs — a core congressional function reserved to the legislature under Article I, Section 8 of the Constitution. The decision consolidated *Learning Resources, Inc. v. Trump* (No. 24-1287) and *Trump v. V.O.S. Selections, Inc.* (No. 25-250), with Chief Justice Roberts authoring the majority opinion, joined by Justices Sotomayor, Kagan, Gorsuch, Barrett, and Jackson.

Following the ruling, the CIT, under Senior Judge Richard K. Eaton, issued a series of orders directing CBP to refund unlawfully collected IEEPA duties to all importers of record (IORs). On April 17, 2026, the CIT entered an injunction ordering CBP to refund IEEPA duties for three categories of entries: (1) unliquidated entries (entries where CBP has not yet calculated the final duty owed); (2) liquidated entries for which liquidation is not yet final (entries where a final duty amount has been set, but the 90-day window to challenge or administratively correct the determination has not yet expired); and (3) "finally liquidated" entries (entries where the 90-day window has closed and CBP no longer has unilateral authority to reopen the determination).

THE CAPE REFUND SYSTEM

To facilitate refunds, CBP developed CAPE within the Automated Commercial Environment (ACE). CAPE has been deployed in phases:

- **Phase 1** (launched April 20, 2026): Processes refunds for unliquidated entries and entries within 80 days of liquidation. CBP estimates this phase covers approximately 63% of entries for which IEEPA refunds are due.

- **Phase 2** (launched June 29, 2026): Expands CAPE to accept entries flagged for reconciliation (entry types 01, 02, and 06) for which the reconciliation entry (entry type 09) has not been filed, limited to unliquidated entries and entries within 80 days of liquidation. On July 7, CBP further restricted the eligibility of warehouse entries (types 21 and 22) in favor of warehouse withdrawals.

- **Phase 3** (operational as of late July 2026): Addresses finally liquidated entries that have been liquidated for more than 80 days. Because CBP lacks unilateral authority to reopen these entries, a court order is required. CAPE Phase 3 is therefore available only to importers who have filed suits at the CIT and obtained reliquidation orders pursuant to the July 17, 2026, CIT order.

Certain entry categories remain ineligible for CAPE processing regardless of the phase, including entries designated on a drawback claim, entries covered by an open protest, entries without a liquidation status in ACE, type 03 entries pending liquidation, and reconciliation entries themselves.

THE CIT'S JULY 2026 ORDERS: RELIQUIDATION AUTHORITY FOR LITIGANTS

On July 15 and July 17, 2026, the CIT issued significant orders that advanced refund processing for litigating importers.

- **Reliquidation of finally liquidated entries.** Judge Eaton ordered CBP to "reliquidate, without regard to IEEPA duties, any and all of Plaintiffs' entries that have been liquidated for more than 80 days and on which Plaintiffs made estimated deposits pursuant to IEEPA." This order applies only to importers who have filed cases at the CIT — approximately 3,700 pending lawsuits. The government had previously maintained that it lacked legal authority to reliquidate finally liquidated entries absent a specific court order; Judge Eaton's order expressly "provides the Government with that legal authority." Notably, the CIT entered this relief through an interlocutory order rather than a final judgment, preserving the court's supervisory jurisdiction so that plaintiffs encountering difficulties may seek the court's assistance during implementation.

- **New lead case designation.** After Euro-Notions Florida, Inc. voluntarily dismissed its case, Judge Eaton designated *Freestyle World, Inc. v. United States* (CIT No. 26-01088) as the new lead case for the consolidated IEEPA refund litigation. The selection of *Freestyle World* — which has a pending class certification motion — may signal the court's inclination toward addressing the refund gap for nonlitigant importers through class-action mechanisms.

  On July 13, 2026, the CIT also rescinded its administrative order imposing automatic stays on newly filed refund cases. As a result, importers that file suit going forward may immediately request the same reliquidation relief now afforded to existing litigants, rather than having their cases stayed upon filing.

THE FEDERAL CIRCUIT APPEAL: THE GOVERNMENT'S CHALLENGE TO UNIVERSAL RELIEF

In June, the U.S. Department of Justice (DOJ) filed an appeal in multiple related actions to the U.S. Court of Appeals for the Federal Circuit challenging the CIT's universal refund order. The government's arguments center on two points:

1. **Universal injunction prohibition.** DOJ argues that under *Trump v. CASA, Inc.*, 606 U.S. 831 (2025) — a June 2025 Supreme Court ruling involving birthright citizenship that broadly barred federal courts from issuing "universal injunctions" benefiting persons who are not parties to the case — the CIT's refund order impermissibly extends relief to nonlitigant importers.
2. **Absence of statutory authority for nonlitigant reliquidation.** DOJ contends that CBP cannot reprocess finally liquidated entries without an importer-specific court order, meaning each importer must independently file a lawsuit to obtain refunds.

The CIT's position is that *CASA*'s prohibition on universal injunctions does not apply to the CIT because of that court's exclusive nationwide jurisdiction under 28 U.S.C. § 1581 and the Constitution's Uniformity Clause (Art. I, Sec. 8, Cl. 1), which requires that "all Duties, Imposts and Excises shall be uniform throughout the United States." This constitutional provision independently supports uniform refund treatment across all ports and importers — a structural argument that goes beyond the CIT's statutory jurisdiction and reflects a foundational principle of the tariff system itself.

The government's opening brief was due August 3, 2026. The importers' response brief is expected in September, with a ruling anticipated later this year.

If the Federal Circuit agrees with the DOJ, importers who have not filed suit may be permanently foreclosed from obtaining refunds on finally liquidated entries — unless they join a certified class.

CLASS CERTIFICATION: THE MOST VIABLE PATH FOR NONLITIGANTS

Two pending class certification motions represent what may be the best available avenue for nonlitigant importers to recover IEEPA tariff refunds:

V.O.S. Selections, Inc. v. United States (CIT No. 25-00066)

On June 4, 2026, plaintiffs filed a Motion for Class Certification under Rule 23(b)(2), proposing a class defined as "all importers who paid tariffs imposed under [IEEPA] and who hold claims that are not currently eligible for processing and refund through [CAPE]."

Because the class is sought under Rule 23(b)(2) — which applies to injunctive or declaratory relief — class membership would be automatic and mandatory. Importers would not need to opt in; any favorable ruling would bind the entire class. Critically, however, because Rule 23(b)(2) does not permit opt-out, importers who prefer to pursue individualized remedies (*e.g.*, to address unique entry-specific issues or to control litigation strategy) would not be able to exit the class if certification is granted. Any settlement or adverse ruling would also bind all class members.

The government's opposition (filed June 25, 2026) advances several arguments:

- *Class certification is untimely.* The government argues that certification cannot be granted after the merits have been resolved, characterizing the motion as impermissible "one-way intervention" — a procedural doctrine that prevents absent class members from waiting to see a favorable outcome before joining a class, while avoiding the risk of an unfavorable one.

- *The relief sought is monetary, not injunctive.* The government contends that what plaintiffs truly seek is money (refunds), not injunctive relief (access to CAPE). Under Rule 23(b)(2), classes may only be certified for injunctive or declaratory relief — not for claims where the primary objective is a monetary payment to individual class members.

- *Individualized processing required.* The government asserts that even after gaining CAPE access, each entry requires individual review and processing — meaning refunds are not "indivisible" class-wide relief but rather thousands of separate claims that must be assessed one by one.

Plaintiffs' response (filed July 22, 2026) argues that class certification must be established at an "early practicable time" but not necessarily before merits determinations, and that the CIT is the only court with jurisdiction — all IEEPA tariff refund cases are brought before the same judge — eliminating inequitable-ruling concerns.

Oral argument on class certification was held on August 6, 2026. Notably, a closed settlement conference was held on August 5 — if those discussions bear fruit, a negotiated resolution could bypass the litigation tracks entirely. A ruling on certification is anticipated in the coming weeks.

Freestyle World, Inc. v. United States (CIT No. 26-01088)

A separate Motion for Class Certification was filed on June 23, 2026, though a stay was subsequently placed on the request. As the newly designated lead case, *Freestyle World* occupies a position of procedural prominence. Plaintiffs may submit a response in support by August 14, and oral argument is scheduled for August 19, 2026.

A certified class is legally distinct from a universal injunction. Class members are, by definition, parties to the case — so relief granted to a class would not violate the *CASA* prohibition on orders benefiting nonparties. In other words, class certification could serve as a legal workaround for whatever limitations the Federal Circuit imposes on the CIT's injunctive power.

OPTIONS FOR IMPORTERS

Based on the current legal landscape, importers should consider the following courses of action:

Option 1: File an Individual CIT Lawsuit

For importers with significant outstanding IEEPA refunds on finally liquidated entries, filing a protective action at the CIT remains the most certain path to recovery.

- **Advantages:** Importers who have filed suits are already receiving refund instructions under CAPE Phase 3 and the July 17 reliquidation order. Individual litigants are insulated from adverse outcomes in the Federal Circuit appeal.

- **Time Sensitivity:** The two-year deadline to file suit under 28 U.S.C. § 1581 is measured from the date of deposit. Entries subject to IEEPA duties beginning in February 2025 will have deadlines expiring as early as February 2027. That said, an importer can defer filing until at least February 4, 2027, without prejudice and still receive interest through the date of reliquidation. Additional restrictions on eligible suits — such as deadlines regarding when a suit was filed — may be implemented as decisions are made in pending cases.

- **Recommended For:** Importers facing substantial losses who cannot afford to rely on the uncertain outcomes of class certification or the Federal Circuit appeal.

Option 2: Monitor Class Certification Proceedings

The Rule 23(b)(2) class certification pending in *V.O.S. Selections* would, if granted, automatically encompass all importers with outstanding IEEPA tariff refund claims not currently eligible for CAPE processing.

- **Advantages:** No individual action required; membership is automatic and mandatory.

- **Risks:** Government opposition is vigorous, and certification is not guaranteed. Even if certified, the government may appeal the certification order, further delaying relief.

- **Timeline:** Rulings in *V.O.S. Selections* could come within weeks; *Freestyle World* proceedings are scheduled through August 19.

Option 3: Track the Federal Circuit Appeal and Settlement Developments

The Federal Circuit's ruling will define whether the CIT can order refunds for nonlitigants at all. The importers' response brief is expected in September, with a ruling likely later this year. However, if the government loses its appeal before the limitations period expires, the original universal refund order would apply to all claims — meaning importers would not need to file individual cases to recover.

- Importers who adopt a "wait and see" approach risk their filing deadline expiring before the appeal resolves.

Option 4: Monitor Legislative Developments

Congress retains authority to address IEEPA refund claims by statute. The government has previously signaled interest in allowing Congress an opportunity to formulate a legislative solution for refunds.

- **Upside Scenario:** Congress mandates CBP to process all outstanding IEEPA refund claims regardless of litigation status, providing a universal administrative pathway.

- **Downside Scenario:** Legislation could limit or extinguish refund rights for nonlitigants, or impose conditions that narrow eligibility.

- **Recommended For:** Importers with material exposure should monitor Congressional activity as a tail risk, but should not rely on legislative action as a primary recovery strategy given the uncertainty and timeline involved.

PROTECTIVE PROTESTS

Importers may question whether they must file an administrative protest under 19 U.S.C. § 1514 within 180 days of liquidation to preserve IEEPA refund rights. Under the ordinary customs framework, § 1514 requires importers to challenge CBP decisions by filing a protest within 180 days of liquidation; failure to do so typically renders those decisions final and unreviewable. This requirement applies to the full range of CBP determinations — classification, valuation, rate advancement, and other duty assessments — and remains a critical deadline in all non-IEEPA tariff contexts.

For IEEPA duties specifically, the CIT held — most notably in *AGS Co. Automotive Solutions v. CBP* — that CBP's collection of IEEPA duties was a nonprotestable ministerial act rather than a discretionary "CBP decision" subject to § 1514. The court reasoned that CBP was merely executing the requirements of the executive order imposing the tariffs and exercised no independent discretion that an importer could challenge administratively. The government has acquiesced in this position at hearings, maintaining that CBP lacks discretion to decide protests on IEEPA matters — though no formal written ruling or guidance confirms this beyond the CIT's orders. The CIT's July 2026 reliquidation orders may further moot the question for litigants, as those orders provide an independent basis for CBP to reprocess finally liquidated entries without reliance on the protest mechanism.

Despite the CIT's reasoning, the most prudent course of action for many importers is to file protective protests on IEEPA entries where the 180-day window remains open. A protest is inexpensive, nonprejudicial to a CIT case, and preserves an additional avenue of administrative review in the event the legal landscape shifts — particularly given the government's pending Federal Circuit appeal and unresolved questions regarding entries liquidated between 81 and 180 days ago that fall outside CAPE's current processing scope. For entries that have already passed the 180-day mark without a protest, the CIT's nonprotestability holding and the reliquidation orders provide the strongest available basis for recovery. Importers should not interpret this analysis as diminishing the obligation to file protests for non-IEEPA tariff matters, where § 1514's 180-day deadline remains strictly enforced.

CONCLUSION

Importers should not assume that administrative solutions will materialize. CBP's August 4 progress report made no mention of any pathway for nonlitigant importers, and the next progress report is not due until August 25, 2026. Given the running of limitations periods, importers with substantial outstanding IEEPA refunds should evaluate whether filing a protective action at the CIT is warranted before deadlines expire.

For guidance on IEEPA tariff refund strategy, CIT litigation, or protective protest filings, please contact Troutman Pepper Locke's Tariff + Trade Task Force or the Sanctions + Trade Controls Practice Group.

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