



PRESERVING IEEPA REFUND CLAIMS - AVAILABLE OPTIONS

(December 5, 2025)

The news that Costco and some other importers have filed lawsuits at the U.S. Court of International Trade (CIT) has caused many importers to focus on how to obtain refunds of International Emergency Economic Powers Act (IEEPA) tariffs paid in 2025 should the U.S. Supreme Court issue a decision that strikes down these tariffs. While Costco has filed a lawsuit at the CIT, there are multiple refund strategies to consider. Each option has its own advantages and disadvantages. Differences in importer circumstances may recommend different approaches to obtain potential refunds. This memorandum provides options for clients to consider. Since the best option is based on importer-specific considerations, we encourage clients to consider the contents of this memorandum and contact us to discuss the options and determine the best strategy.

I. IMPORTER OPTIONS

A. Court-Directed Refund Process

If the Supreme Court issues an importer-favorable decision, the Supreme Court may direct an orderly refund process. Alternatively, the Supreme Court could remand the case to the CIT to determine an orderly refund process. In either event, a court-directed refund process could remove the need for importers to file an independent court action or administrative Protests.

B. Extend Liquidation

One way to preserve an importer's right to contest duties paid on a Customs entry is to prevent the entry from liquidating. Customs law and regulations permit an importer to request that U.S. Customs and Border Protection (CBP) extend entry liquidations past the regular 314-day period. We understand CBP may be denying liquidation extension requests that are based only on the pending Supreme Court decision.

C. Protest

The rate and amount of duties chargeable on a Customs entry is subject to the CBP administrative Protest process. The time limit to file Protests is 180 days after Customs entry liquidation. Customs entries are regularly liquidated by Customs 314 days after entry. The IEEPA (fentanyl) tariffs on China went into effect on February 4, 2025, so the earliest subject Customs entries should begin liquidating on December 15, 2025, under the regular 314-day liquidation cycle. The IEEPA tariffs on Canada and Mexico went into effect on March 4, 2025, so entry liquidations should begin on January 12, 2026. The IEEPA reciprocal tariffs went into effect on April 5, 2025, so subject entries should begin liquidating on February 13, 2026. The IEEPA tariffs on Brazil and India went into effect in August 2025, so subject entries should not begin liquidating until June 2026 under the 314-day liquidation cycle.

Based on these initial liquidation dates, Protests can be filed on the first liquidating Customs entries until June 13, 2026, for the IEEPA (fentanyl) China tariffs, until July 11, 2026, for the IEEPA Canada and Mexico tariffs, until August 12, 2026, for the IEEPA reciprocal tariffs, and until December 2026 for the IEEPA Brazil and India

tariffs. Thus, assuming the regular 314-day liquidation period, there is still more than 180 days to file Protests requesting refunds of the IEEPA tariffs.

An issue with filing Protests currently is that while there are multiple lower court decisions striking down the IEEPA tariffs, the Supreme Court decision is still pending. It is to be noted that Customs will likely either deny or not rule on a Protest while the Supreme Court decision is still pending, so the filing of a Protest could be futile. However, if an entry is liquidated and no Protest is filed within 180 days of entry liquidation, it is possible that those entries could be deemed by the Courts as not eligible for a refund even if the Supreme Court ultimately issues an importer-favorable decision.

Another issue with filing Protests is that while Customs entries are typically liquidated by CBP in the ordinary 314-day liquidation cycle, CBP may liquidate them earlier after entry reviews, CBP Form 28/29 responses, or Post-Summary Correction (PSC) filings. This could shorten the above periods for filing Protests.

D. Protective CIT Lawsuit

Clients may consider filing their own lawsuit with the CIT, as Costco has done, challenging the IEEPA tariffs. The lawsuit can request a Court Order enjoining CBP from liquidating entries or a Government stipulation that the IEEPA tariff payments are recoverable even for entries that have undergone final liquidation. Costco has requested such an Injunction, but the CIT has not yet issued an Injunction.

II. CONSIDERATIONS

There are numerous considerations to determine the best strategy, including:

A. Entry Liquidation

When and what entries will begin liquidating? If you have been paying substantial IEEPA (fentanyl) tariffs on China since February 2025, this is more of a proximate issue than if your exposure is primarily to the IEEPA Canada/Mexico or IEEPA reciprocal tariffs that did not go into effect until April 2025.

B. Supreme Court Decision

When will the Supreme Court issue its decision? If the Supreme Court issues its decision in late December or January, it would provide clarity on the refund process before most Customs entries have liquidated. The longer the Supreme Court takes to issue its decision, the more entries will have liquidated. The Supreme Court often releases the majority of its decisions by mid-June, so that is likely the latest the decision will be issued. Additionally, the VOS Selections, Inc. IEEPA tariffs case that is currently being decided by the Supreme Court was filed under the CIT's Section 1581(i) "residual" jurisdiction. Importers have two years to file suit at the CIT for such claims. That is how the HMTX Industries case was brought at the CIT to contest the Section 301 China List 3 and 4A duties. Importers rushed to file those cases right before two years had elapsed since the implementation of the duties in order to protect their opportunity to recover the duties on all subject entries.

C. Public Visibility/Potential Trump Administration Response/Costs

Does your company want the cost and public visibility involved in filing a lawsuit? Companies that are currently negotiating with the Trump Administration on certain matters may not want to be seen as challenging the tariffs. Companies involved in initial lawsuits are likely to incur more costs because they cannot rely on precedents set by earlier litigants.

D. Refund Timing

Would filing a lawsuit expedite refunds? There is no simple answer. Refund timing depends on the Supreme Court decision and resulting refund process.

III. PREPARATIONS

To address the first consideration and provide the basis for any decision, importers should know their IEEPA tariffs paid to date by type of IEEPA tariff (China fentanyl, Canada/Mexico, Brazil, India, and Reciprocal) and the liquidation status of each Customs entry. Therefore, we strongly recommend that clients undertake the following actions:

A. ACE Portal Reports

Run ACE Portal reports to document Customs entries, including Entry Line details with HTSUS classifications to identify IEEPA tariffs paid and liquidation dates (including currently scheduled liquidation dates). As previously noted, some entries could have already liquidated while many may still be months from liquidating. If you need assistance in running ACE reports and identifying this information, please contact us. We can provide a list of tariff classifications subject to the IEEPA tariffs and assist with running reports and filtering the data.

B. Recordkeeping

Validate that the company satisfies the Customs recordkeeping requirements by maintaining ready access to Customs entry records for Customs entries with IEEPA tariffs and related "(a)(1)(a)" business records.

C. Electronic Refunds

Consider signing up for electronic ACH refunds with CBP to expedite refunds being received electronically instead of by check.

IV. CONCLUSION

There is no single best option for obtaining IEEPA tariff refunds in the event of a favorable Supreme Court decision. Our law firm would be pleased to assist you in filing a CIT action if the decision is made to proceed with a lawsuit. Given our ongoing representation, and unlike other law firms, arrangements can be made without onerous and costly contingency fee structures.

However, as described above, filing a CIT action may not be the best approach. We encourage you to consider the contents of this memorandum and then contact us to discuss the most appropriate course of action under your individual circumstances. We look forward to working with you to secure the most favorable possible outcome for your company should the Supreme Court strike down the IEEPA tariffs.

Please contact [Marshall Miller](#), [Brian Murphy](#), [Sean Murray](#), or [David Ostheimer](#) with questions.

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