



where are those refunds?

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It appears somewhat more likely the trade community will get a decision sooner rather than later from the Courts about the IEEPA refunds. However, in the meantime, CBP has said do not file a Post Summary Correction, they will not be accepted as a matter of policy. The current lawsuits all proceed under 26 U.S.C. § 1581(i), which is the Court of International Trade's residual jurisdiction provision. This is significant in the sense that protests would not be considered valid. The supporting view is that no decision by CBP is involved in the assessment and liquidation process, so there are no grounds for a protest to be filed. The opposite view argues CBP chose to assess the tariffs and that is reviewable by filing a protest. Which position do you take?

On the other hand, if entries liquidate with the IEEPA tariff charged after February 20, 2026, those should be subject to protest since CBP made the decision to illegally assess the IEEPA tariff after it was ruled illegal by the Supreme Court. This argument stands up even in the case, as here, that CBP needed a reasonable period of time to reprogram its computers. There are two separate courses of action possible, which further complicates how companies will move forward. Because there are so many unknowns, consulting with trade counsel is highly recommended.

V.O.S., one of the successful plaintiffs at the Supreme Court, filed a request for a permanent injunction ordering the refunds. The Court gave the government until February 27th to file its response. As such, importers likely want to get with their trade counsel to file lawsuits before the Court publishes its decision. If your lawsuit has already been filed and the Court decides liquidated entries will not be the subject of refunds unless there is a claim, by filing now, you have your claim perfected. Due to the current lack of clarity, it may turn out that lawsuits may not be needed, depending on how the Court rules, but better safe than sorry!

On Friday, the 27th, the Government filed its response. To no one's surprise, the response decries any need for quick action. According to the logic applied by the Dept. of Justice ("Justice"), the damages incurred by importers is one related

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to money, and being owed money is typically not a ground on which to speed a matter to resolution. Justice also points out the actual order has yet to be transmitted by the Supreme Court to the Court of Appeals for the Federal Circuit ("CAFC") and by the CAFC to the Court of International Trade ("CIT"). As such, Justice concludes there is no reason to lift the current stays just yet. It wants time for the process to run its course, including giving Congress time to act. Justice proposes a ninth (90) day delay. The CAFC took little time to rebuke Justice. The order was issued earlier today. The CAFC has instructed the CIT to go forward considering the refund issue. One warning, however, is there is language in the Justice motion saying V.O.S. can only proceed to obtain its own refunds. It does not have the power to seek refunds for others who have filed and are represented by their own counsel. So, that issue has been squarely framed, but not yet decided.

One must feel somewhat sorry for the CIT judges, since they are already inundated with lawsuits focused around refunding the IEEPA tariffs. The last count was something in the vicinity of 2,000 lawsuits have been filed.

Now that the motion has been decided, next comes what will be filed before the C.I.T. to frame the issue for decision by the Court? Will there be oral argument or will the C.I.T. decide the motion on the pleadings filed?

Once we finally get to the point of the CIT issuing an order for the refunds, the next question is whether that decision will be appealed. The consensus answer is yes! Also, we have yet to see what process might apply to importers filing refund claims. There are some "edge" issues which must also be addressed, such as the impact on drawback and reconciliation entries, plus those tariffs where a bilateral agreement applies, the tariff was capped at a specific percentage and was paid as part of the "regular" duties at time of entry.

The other topic which is potentially lurking is those entries which were in-transit. The definition of in-transit generally means goods were clearly en route to the U.S. However, the IEEPA tariffs are written to say the goods not only need to be en route, but on their final carrier. Will that revised definition be found valid? FYI - that same language also appears in the Section 122 Executive Order. So, lots of things to iron out before refunds will actually be issued. Stay tuned for more update, including whether interest will be paid.

*This article is a follow up to **"IEEPA Tariffs Overturned."***

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