

UNTANGLING THE TARIFF REFUND MESS

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OVERVIEW: On February 20, 2026, the Supreme Court held in *Learning Resources, Inc. v. Trump*¹ that the tariffs imposed by the administration under the International Emergency Economic Powers Act of 1977 (IEEPA)² were unlawful. What the court did *not* do is explain what the remedy should be, whether those who paid the tariffs should get their money back and, if so, how the refund process would work. Only Justice Kavanaugh addressed the issue, in his dissent, by noting an exchange during oral arguments between Justice Barrett and Neal K. Katyal (an attorney for V.O.S. Selections)³ that the refund procedure was likely to be a “mess.”⁴ It is a mess. It is a mess caused primarily by three factors: (1) the Trump Administration’s imposition of tariffs purporting to use authority granted by IEEPA, (2) lower courts’ failure to enjoin those tariffs which in turn was largely a function of the government’s stipulation that the tariffs *would* be refunded if found to be unlawful and (3) the Supreme Court’s failure to provide any guidance about how to proceed.⁵ This Report analyzes what may happen and makes recommendations about what should happen to resolve the mess. It considers legal, economic and fairness issues and examines the role of courts, the Executive Branch and Congress.

BACKGROUND: During 2025, President Trump issued several Executive Orders that imposed new and substantial tariffs on imports from every country in the world.⁶ The Administration claimed the authority to do so under IEEPA. The IEEPA tariffs have been changed many times.⁷ Most of these tariffs were branded “reciprocal,” although the rates imposed had nothing to do with the rates imposed by foreign governments.

Affected parties almost immediately challenged the Administration’s authority to impose tariffs under IEEPA. Both the U.S. Court of International Trade (CIT)⁸ and the U.S. District Court for the District of Columbia⁹ ruled against the Administration. The decision of the CIT against the Administration was upheld by the U.S. Court of Appeals for the Federal Circuit.¹⁰ However, the Federal Circuit Court, while affirming the decision of the CIT as to the illegality of the tariffs, vacated the CIT’s universal injunction and remanded the case to the CIT to consider whether the injunction met the standards for such injunctions recently outlined by the Supreme Court.¹¹ Moreover, the Federal Circuit Court explicitly neither affirmed nor reversed the CIT’s holding that any relief short of a universal injunction would be an unconstitutional violation of the Uniformity Clause of the Constitution.¹² As described in detail below, in a successful effort to fend off injunctions prohibiting the imposition of the IEEPA tariffs, the government made many stipulations and representations in numerous cases that the tariffs would be refunded if found to be unlawful. Thus, the tariffs continued to be collected. The Supreme Court granted certiorari on September 9, 2025 and consolidated the two cases.¹³ It heard oral arguments on November 5, 2025.¹⁴



MAGNITUDE OF THE PROBLEM: There are various estimates of how much money in IEEPA tariffs was collected. They range from \$130 billion to \$175 billion.¹⁵ In general, the estimates vary because it is unclear what percentage of the increase in 2025 tariff revenue is attributable to the IEEPA tariffs. According to a *Wall Street Journal* analysis, at least 1,800 companies have filed lawsuits seeking refunds and more than 300,000 importers have been subject to the tariffs.¹⁶

In calendar year 2025, \$287 billion in customs duties were collected, up 192 percent compared to the prior year when \$98 billion in duties were collected.¹⁷ Roughly a third of the 2025 duties (\$97.5 billion) came in the fourth quarter, so the annual collections in 2026 before the *Learning Resources* decision and the Trump Executive Order terminating collection of the tariffs¹⁸ were approaching a \$400 billion a year pace.¹⁹ It is not clear exactly how much of the increased tariff revenue is due to IEEPA tariffs as opposed to tariffs imposed under other provisions. The IEEPA tariffs, however, account for the bulk of the tariff increases imposed. If 80 percent of the increase in 2025 was due to the IEEPA tariffs, a reasonable estimate is that approximately \$190 billion of refunds are due.²⁰ If 60 percent of the 2025 increase was due to the IEEPA tariffs, then that amount falls to approximately \$142 billion. Based on incomplete U.S. Customs and Border Protection (CBP) data, it is probably around 70 percent.²¹ This implies that about \$166 billion in IEEPA tariffs were collected.

In a March 6, 2026 affidavit filed with the CIT, the CBP estimated that “as of March 4, 2026, over 330,000 importers have made a total of over 53 million entries in which they have deposited or paid duties imposed pursuant to IEEPA. As of March 4, 2026, the total amount of IEEPA duties and estimated duty deposits collected pursuant to IEEPA is approximately \$166 billion. Approximately 20.1 million entries remain unliquidated as of March 4, 2026.”²²

There is now an active market in refund claims where investors buy the rights to future tariff refunds from importers.²³ This, of course, creates an environment where individuals can potentially benefit from proximity to the government. Further, this creates the possibility of a situation where the beneficiaries of the refunds may be very different from those that paid the tariffs in the first place.

GENERAL LEGAL PRINCIPLES: There is strong reason to believe that the courts will require the administration to refund the tariffs in full both because of judicial estoppel and due process requirements. It is entirely unclear what means will be used to effect the refunds and what requirements will be imposed on importers who seek refunds. As discussed below, some courts may enter the fray in an unpredictable manner due to class action lawsuits.

Judicial Estoppel

“[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party



who has acquiesced in the position formerly taken by him. This rule, known as judicial estoppel, 'generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.'²⁴

In multiple cases litigating the legality of the IEEPA tariffs, the government stipulated or represented that if the tariffs were found to be unlawful, then it would refund any tariff revenue collected. This was done in an effort to fend off injunctive relief prohibiting the collection of the IEEPA tariffs.

For example, in *V.O.S. Selections, Inc. v. Trump*, the government made the following representation:

2. Conversely, a stay would not cognizably harm plaintiffs. If tariffs imposed on plaintiffs during these appeals are ultimately held unlawful, then the government will issue refunds to plaintiffs, including any postjudgment interest that accrues. (p. 25)²⁵

In *Learning Resources, Inc. v. Trump*, the government made the following argument:

Accordingly, plaintiffs have shown nothing more than a "temporary loss of income" as a result of the tariffs they challenge, which does not constitute irreparable harm. See *Sampson v. Murray*, 415 U.S. 61, 90 (1974). Their speculative allegations of harm from a single self-interested declarant, combined with the availability of a refund were the challenged tariffs held unlawful, preclude a finding that the extraordinary remedy of a preliminary injunction is necessary to prevent imminent irreparable injury. (p. 40)²⁶

In *Popsockets, LLC v. U.S. Customs and Border Protection*, the government made the following stipulation:

2. Defendants stipulate that they will not oppose the Court's authority to order reliquidation of entries of merchandise subject to the challenged IEEPA duties and that they will refund any IEEPA duties found to have been unlawfully collected, after a final and unappealable decision has been issued finding the duties to have been unlawfully collected and ordering defendants to refund the duties. Defendants stipulate to this, even though they disagree with plaintiff regarding the merits and appropriateness of granting injunctive relief.²⁷

In *AGS Company Automotive Solutions v. U.S. Customs and Border Protection* the government made the following stipulation:

[E]ven if future entries are liquidated, defendants do not intend to oppose the [c]ourt's authority to order reliquidation ... Such reliquidation would result in a refund of all duties determined to be unlawfully assessed, with interest.²⁸



As recently as January 2026 in *AGS Company Automotive Solutions v. U.S. Customs and Border Protection* the government made the following representation to the CIT:

The Court asks defendants to clearly define “the challenged IEEPA duties” referenced in *Popsockets* in light of our request that our stipulation apply to current and future similarly situated plaintiffs. Similarly situated plaintiffs are those who challenge IEEPA tariffs in a manner and on grounds that substantially overlap with the IEEPA tariffs cases presently before the Supreme Court. In particular, the Court asks whether we view the stipulation as applying to the challenged IEEPA tariffs imposed on Brazil and India that are not at issue in AGS or V.O.S. The answer is yes.²⁹

Given these various stipulations and representations made by the government during the IEEPA tariff litigation, it is highly probable that courts will find that the government is estopped from now claiming that it is not required to refund the unlawful tariffs collected by the administration.

Fair and Adequate Relief Required

In general, when a tax is determined to be invalid for either constitutional or statutory construction reasons, the courts require that the taxes paid be refunded. They do not require a specific means to achieve that result so long as the means provided is “fair and adequate.”

For example, in *United States v. Butler*,³⁰ the Supreme Court held unconstitutional various “floor stock taxes” and “processing taxes” imposed by the Agricultural Adjustment Act of 1933. In *Anniston Mfg. Co. v. Davis*,³¹ the Court ruled that a “fair and adequate remedy” was required – in this case a refund of the taxes paid but found unconstitutional in *Butler* – but that an administrative remedy to process the refunds was adequate and did not mandate access to the judicial process provided that “legal rights are still suitably protected.”³²

In *Bacchus Imports, Ltd. v. Dias*,³³ the Supreme Court held that Hawaii’s liquor excise tax scheme – which allowed tax preferences for alcoholic beverages manufactured from certain products grown in the State – violated the Commerce Clause because it had the purpose and effect of discriminating against interstate commerce. In *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*,³⁴ a similar Florida tax scheme was struck down by the trial court under *Bacchus Imports*. The trial court enjoined future enforcement of the preferential rate reductions but declined to order a refund or any other form of relief for taxes McKesson had already paid. The court’s order was stayed pending appeal, and the State continued to collect taxes with the local preferences still in effect. The Florida Supreme Court ultimately affirmed in all respects, ruling that the refusal to order a refund was proper in light of ‘equitable considerations.’ The U.S. Supreme Court required the refund of the unconstitutional tax.



The State may not, as respondents contend, deny McKesson retrospective relief on the theory that the highest tax rate would have been imposed on all distributors had the State known that the tax scheme actually enacted would be declared unconstitutional, such that McKesson would have paid the same tax in any event. Since this approach in fact treats McKesson worse than distributors of the favored local products, it is inconsistent with the requirement of due process ... Neither of the 'equitable considerations' cited by the State Supreme Court is sufficient to override the constitutional requirement of retrospective relief.³⁵

In *United States v. United States Shoe Corp.* (decided March 31, 1998),³⁶ the Supreme Court held that a Harbor Maintenance Tax was a tax, not a user fee, and therefore an unconstitutional violation of the Export Clause.³⁷ Five months later on August 28, 1998, the CIT, after “[h]aving considered defendant’s and various plaintiffs’ proposals for a claims resolution plan and comments on the court’s proposed plan to resolve the numerous suits filed with the court to recover unconstitutionally exacted Harbor Maintenance Taxes,” entered an unprecedented “Order Establishing Claims Resolution Procedure” to govern the refund process.³⁸ This eight page order provided a detailed, uniform process for exporters to recover unlawfully imposed export taxes. The order included form exemplars, timetables, processing speeds and requirements for monthly reports from the Customs Service to the court about its progress.³⁹ The process established appears to have worked well.⁴⁰ Over time, the process was modestly amended by rulemaking by the Customs Service.⁴¹ As discussed below, this Order could serve as a template for the CIT with respect to the IEEPA tariffs. The magnitude of the current undertaking, however, is roughly 200 times greater.⁴²

Exhausting Administrative Remedies

The law generally requires that tariffs have been paid and that all administrative remedies have been exhausted before a lawsuit may be filed at the CIT seeking a tariff refund.⁴³ This is analogous to the more general requirement under the Administrative Procedure Act to exhaust administrative remedies.⁴⁴

The normal “protest” process for refunding tariffs that were unlawfully or mistakenly imposed is a slow and cumbersome process involving three lengthy U.S. Code sections and 23 different sections of the Code of Federal Regulations.⁴⁵ It is virtually certain that when faced with the need to resolve approximately three hundred thousand cases involving over \$160 billion dollars, it will break down. Delays will be lengthy. The CBP has said as much in recent CIT filings.⁴⁶ In addition, a slow, complex and expensive process will have a disproportionately adverse effect on small firms both because the associated legal fees and other costs will be a disproportionate share of the generally lower tariffs paid on smaller import transactions and because smaller firms will have more difficulty managing the cash flow problems associated with long delays.



The process need not be complex. The factual issue is simply whether firms paid IEEPA tariffs or not. If so, they are entitled to a refund.

ECONOMIC AND FAIRNESS CONSIDERATIONS: WINDFALLS AND LOSSES: The IEEPA tariffs have been paid (in the sense of transferring money to the Treasury by check or electronically) by more than 300,000 'importers of record.'⁴⁷ An importer of record is either the actual importer or one of approximately 11,000 customs brokers.⁴⁸ Although the tariffs have been paid by importers of record, virtually every American has borne some of the economic burden of the tariffs because the tariffs resulted in price increases paid by consumers (in the case of imported retail goods) and in price increases paid by consumers and producers (in the case of imported manufacturing inputs). They have also resulted in lost jobs, and lower wages. They have caused lost profits or even losses and business failures. They have reduced capital investment and future productive capacity. Some of the burden of the tariffs was also undoubtedly borne by foreign producers selling goods in the U.S. but the administration narrative that almost all of the burden of tariffs is on foreigners is simply false.⁴⁹ Both because of administrative complexity, cost and fundamental issues related to lack of information, it will never be possible to untangle all of this in a fully fair manner that accurately recompenses those who bore the actual economic burden of the tariffs by paying higher prices, earning lower wages, or losing their job or business.

But policymakers may not be satisfied with a result where importers, having long since sold the imported goods, usually at higher prices reflecting the payment of the tariffs, receive a windfall. Such a windfall would accrue to the benefit of the importers who imported directly or retained a customs broker.

Under the ordinary principles of the law of agency,⁵⁰ customs brokers will presumably be required to return tariffs received from the government to their clients. It may be advisable for the CIT or Congress to clarify this issue and require customs brokers to do so to avoid litigation. Some significant number of the client-importers will have gone out of business and wound up their affairs, so even this raises issues.⁵¹

In the absence of legal clarity or requirements, importers will, of course, choose to do different things with their refunds. Some firms will keep the money, so the payment will benefit the owners of the importer. Some will forward some or all of the refund to the firm's customers who paid higher prices. Some will use it to reduce prices on future sales. Some firms may provide some or all of the refund to their workforce, as US Trade Representative Jamieson Greer has called for.⁵² Which of these responses is the most appropriate remedy to the illegally imposed tariffs is case dependent. Some firms raised prices to fully reflect the imposition of the tariffs. Some absorbed some of the tariffs. In the latter case, a full refund of the tariffs would overcompensate the buyers.

What Should Happen Now? The courts, the Executive Branch, and the Congress all can and should take steps to expeditiously resolve the situation and to establish a streamlined process for making the IEEPA tariff refunds.



Lower Court Action

On February 24, 2026, the V.O.S. Selections plaintiffs filed a motion in the Federal Circuit seeking an immediate mandate requiring that refunds be issued.⁵³ On February 27, 2026, the government replied and sought to stay the mandate.⁵⁴ Similar motions were filed in the CIT. On March 2, 2026, the Federal Circuit issued a mandate effectively remanding the case to the CIT to oversee the refund process.⁵⁵

On March 4, 2026, CIT Judge Richard K. Eaton, entered an order in *Atmus Filtration, Inc. v. U.S.* requiring that all of the IEEPA tariffs be refunded and wrote that the “Chief Judge has indicated that I am the only judge who will hear cases pertaining to the refund of IEEPA duties.”⁵⁶ This presumably means that the CIT is contemplating a case consolidation/master case process similar to the HMT refund process described above or the section 301 cases,⁵⁷ a process it has used in the past. It should do so in the IEEPA refund cases.

The March 4th Order has been suspended, most recently on March 12th, as a result of various CBP affidavits filed with the CIT. The March 12th order reads in relevant part:

Upon consideration of the Declaration of Brandon Lord, Executive Director, Trade Programs Directorate, Office of Trade, U.S. Customs and Border Protection (“Customs”), dated March 12, 2026 (ECF No. 39), which confirms that Customs is making satisfactory progress to timely complete the development of a process to issue refunds of International Emergency Economic Powers Act (“IEEPA”) duties paid, with interest; and taking note of Mr. Lord’s Declaration of March 6, 2026 (ECF No. 31), in particular paragraph 22, which indicates that the process of issuing refunds can be expedited to those importers who take the necessary steps to receive refunds electronically...the suspension of the amended Order dated March 5, 2026 (ECF No. 29), as ordered by the court on March 6, 2026 (ECF No. 33), is continued; and it is further ORDERED that Defendant shall file, by 2:00 p.m. EDT on Thursday, March 19, 2026, a short report describing the progress Customs has made toward the development of a process to issue refunds of IEEPA duties paid with interest.⁵⁸

On March 27, 2026 the CIT ordered the CBP to refund the IEEPA tariffs:

“ORDERED that, with respect to any and all unliquidated entries that were entered subject to IEEPA duties, U.S. Customs and Border Protection is hereby directed to liquidate those entries without regard to the IEEPA duties. Any liquidated entries for which liquidation is not final shall be reliquidated without regard to those duties. Any liquidated entries for which liquidation is final shall be reliquidated without regard to the IEEPA duties. For the avoidance of doubt, nothing in this order addresses issues concerning duty free de minimis treatment under 19 U.S.C. § 1321 that are



otherwise before this Court. See *Axle of Dearborn, Inc. v. Department of Commerce et al.* (1:25-cv-00091-3JP).⁵⁹

Class Action Lawsuits

As discussed above, virtually every American has borne some economic burden because of the IEEPA tariffs. The scope of losses goes far beyond just the importers of record that are litigating in the CIT and seeking a refund from the CBP.

It was virtually inevitable that once the Supreme Court ruled the tariffs to be unlawful, and refunds started to be made, that enterprising lawyers representing those other than importers of record would seek recompense by filing lawsuits and seeking to certify a class harmed by the tariffs. Such complaint was filed on March 11 in Illinois by Matthew Stockov against Costco.⁶⁰ Class action lawsuits have also been filed against FedEx, UPS, Lululemon and other firms.⁶¹ The proposed class in the lawsuit is “All persons in the United States that purchased, from any Costco retail channel, any good subject to the tariffs imposed under IEEPA, during the period February 1, 2025 through February 24, 2026.” The plaintiff’s legal theories include that Costco violated numerous consumer fraud and unfair and deceptive trade statutes and unjust enrichment.⁶² It is virtually certain that many other lawsuits against other importers of record will follow.

Costco is an unusual retailer because it requires shoppers to present a membership card at check-out and therefore knows who purchased what items. Although it would be a massive administrative undertaking, in principle Costco could calculate the tariffs paid on each item sold (provided Costco was the direct importer), assess whether or not it raised prices on those items for the full amount of the tariff,⁶³ determine which customers bought those items and return the amount of tariffs that were passed through to customers.

Relatively few retailers could possibly do that. Most do not even know the identity of many of their customers. Cash payments accounted for 14 percent of all payments. People in households earning less than \$25,000 per year used cash for 24 percent of payments.⁶⁴ Credit cards, debit cards and mobile phone apps accounted for most of the remaining retail transactions. While the retailer may have access to the name and credit or debit card information of their customers, it is not clear that they could gain access to sufficient customer information to make an accurate tariff refund without information sharing from the banks and technology companies that provide these payment methods. They may or may not have access to information about tariffs paid on particular items. They may or may not be able to crosswalk between customer payment information and specific items purchased. In many cases the retailer would simply be unable to accurately determine what refund is “due.” And even in cases where they can, the administrative cost of doing so may well approach or exceed the amount of tariff paid.

The class action lawsuits raise the possibility that an importer may effectively be punished for choosing to rapidly refund the tariffs to ultimate consumers or workers.



They may do so and then the class action lawsuit judgment may require them to refund the tariffs again to a different set of people. Unless Congress steps in, firms may be reluctant to rapidly refund the tariff money until the legal situation clarifies.

Customs and Border Protection

Brandon Lord, Executive Director, Trade Programs Directorate, Office of Trade, U.S. Customs and Border Protection (CBP) stated in a March 6th CIT filing that:

The current system requires refunds be certified for accuracy by personnel from both CBP's Office of Field Operations and Office of Finance, separately, before submission to the Department of the Treasury for issuance. Assuming each Entry Summary with IEEPA tariffs is entitled to a refund, then 53,173,939 refunds would need to go through this process. There is no workaround in ACE that would allow this process to be circumvented.⁶⁵

ACE is the Automated Commercial Environment system used by CBP.

And as discussed above, the current protest system is complex.

In January, CBP published an interim final rule stating that effective February 6, 2026, CBP will issue all refunds electronically.⁶⁶ So far, this has been less than a rousing success. Brandon Lord stated in a March 6th CIT filing that:

There are 330,566 importers who have paid IEEPA duties or duty deposits. While CBP has issued numerous communications regarding the new rule, only 21,423 entities (mostly importers or their customs brokers) have completed the set-up process to receive their refunds electronically.⁶⁷

The CBP must do better. CBP should implement a much simpler system for refunding the unlawful tariffs than the current protest system. CBP should promulgate an interim final rule as quickly as possible and then seek public comment for a 60-day period before a potentially revised final rule is promulgated. Such a system should make use of the Automated Commercial Environment (ACE) system and prepopulate as many fields in the system with data already held by CBP as possible. It should require only that the importer of record provide information that has not already been provided to CBP. It should require that the importer of record establish only five things: (1) the importer's identifying contact information, (2) the importer's payment information (i.e. how the refund should be paid to the importer), (3) the date and (4) amount of IEEPA tariffs paid, if liquidated, or the date and amount of deposit paid, if not liquidated and (5) the minimum information required to accurately identify the underlying importation transaction.

There is reason to believe that CBP, on its own initiative, is doing something along these lines.



On March 12, in a court filing CBP said:

CBP is developing a new capability within its system of record for imported merchandise — the Automated Commercial Environment (ACE) — to prepare to calculate and provide valid refunds of additional ad valorem duties imposed under IEEPA. This new ACE functionality is called the Consolidated Administration and Processing of Entries (CAPE). CBP is designing CAPE with four integrated components:

- Claim Portal,
- Mass Processing,
- Review and Liquidation/Reliquidation, and
- Refund

These components reflect both how CBP anticipates refund requests will proceed through CAPE and how CBP is structuring its development efforts. Each of these components, along with an update on its development, is discussed below.⁶⁸

The CAPE Claim Portal will be web-based and serve as the entry point for importers and brokers to submit IEEPA refund requests (“CAPE Declaration”) to CBP. Once operational, a new tab will be available in both importer and broker ACE Portal accounts.⁶⁹

On March 11, 2026, CBP estimated that its development of the Claim Portal component was 70 percent complete.⁷⁰ CBP estimated that its development of the Mass Processing component was 40 percent complete.⁷¹ CBP estimated that its development of the Review and Liquidation/Reliquidation component was 80 percent complete.⁷² CBP estimated that its development of the Refund component was 60 percent complete.⁷³ On March 19, CBP revised its estimates: Claims Portal (73 percent complete – +3), Mass Processing (45 percent complete – +5), Review and Liquidation/Reliquidation (80 percent complete – no change) and Refund (63 percent complete – +3).⁷⁴

The Role of Congress

Congress should enact legislation that does at least eight things. Congress should:

- 1) Explicitly require that the unlawful IEEPA tariffs be refunded by CBP within one year. A shorter time frame is probably unrealistic given the magnitude of the problem.
- 2) Require that any import transaction that was liquidated with unlawful IEEPA tariffs be reliquidated without the tariffs so that the tariffs can be refunded.
- 3) Require CBP to institute a much simpler system for refunding the unlawful tariffs than the current protest system. It could require that CBP put out an



interim final rule within a specified period (e.g. 30 days) and then seek public comment during a 60-day period before a final rule is promulgated. Such a system should make use of the ACE system and prepopulate as many fields in the system with data already held by CBP as possible. It should require only that the importer of record provide information that has not already been provided to CBP. It should require that the importer of record establish only five things: (1) the importer's identifying contact information, (2) the importer's payment information (i.e. how the refund should be paid to the importer), (3) the date and (4) amount of IEEPA tariffs paid, if liquidated, or the date and amount of deposit paid, if not liquidated and (5) the minimum information required to accurately identify the underlying importation transaction.

- 4) Provide explicit statutory guidance regarding importer disposition of the refunds. This could leave it up to the importer to decide. Although deeply problematic for the reasons outlined above, it could require that the importer make a good faith effort to refund the tariff refund to its customers that paid higher prices due to the IEEPA tariffs. The legislation would need to explain the mechanics of how this would work in practice and provide safe harbors for good faith compliance.
- 5) Impose a permanent moratorium on class action litigation regarding the tariff refunds. If Congress does not address the class action lawsuit issue, the resultant situation could involve thousands of class action lawsuits, years of delay, massive enrichment of lawyers and a patchwork of different results as each lawsuit is separately litigated, settled or judgement rendered, with a different result for each importer of record. This would also require the administration of the settlement funds or judgements by third-party class action administrators involving the delay and expense of class notification, claim verification, claimant communications, claim disbursement and fund tax administration. Lastly, failure to do so is likely to result in delays by importers refunding tariffs to consumers or workers to prevent having to refund the tariffs twice – once to the group the importer chose to refund the tariffs to and again to whomever the class action lawsuit judgment requires the refund be paid to.
- 6) Preempt any state laws purporting to impose requirements on refund disposition.
- 7) Instruct CBP to prioritize liquidation and payment of small business claims.
- 8) Clarify that customs brokers have a fiduciary duty to return tariff refunds to their clients.

Congress should also consider appropriating additional resources to CBP to hire temporary personnel to process the refunds. CBP, making the heroic assumption that it can process refunds in five minutes, estimates that it will take 4,431,161 man hours to process the refunds.⁷⁵ This is the equivalent of about 2,300 full-time employees for



a year (assuming 1900 hours annually per employee). It will take longer and involve more people because it is unrealistic to expect an average processing time of five minutes.

Senate Bill

The Tariff Refund Act of 2026 (S. 3905), introduced by Sen. Wyden [D-OR] and currently having 26 cosponsors, is constructive but incomplete.⁷⁶ It should be amended to address the other issues that need to be addressed.

The bill would require that refunds be made, with interest, within 180 days, which is unrealistic given the number of refunds that must be processed and current CBP staffing and funding levels. It would require CBP, to the extent practicable, to prioritize the payment of refunds to small business concerns. It would require reliquidation of liquidated entries at the rate of duty applicable to the article in the absence of any duty imposed under IEEPA.

The bill states that it the sense of Congress that "(3) importers, wholesalers, and larger businesses, especially those that raised prices or passed on direct costs from those unlawful duties while they were in place, should pass on the refunds to their customers, including small businesses and families impacted by those duties" but provides no mechanism or explanation of how that can or should be done and provides no safe harbors for good faith compliance. It does not address the simplification of the refund process, the preemption of potential state laws governing the disposition of refunds, the critical class action lawsuit issue or the clarification of customs brokers' fiduciary duty.

House Bills

The Restoring Economic Lifelines for Independent Enterprises and Family Businesses (RELIEF) Act (H.R. 7736), introduced by Rep. Horsford (D-NV) with 49 current cosponsors, would require CBP to liquidate or reliquidate all entries and provide a refund within 90 days.⁷⁷ Given the magnitude of the problem, a 90-day timeline is unrealistic. It does not address any of the other issues that Congress should address.

The Tariff Relief for Consumers Act (H.R. 7822),⁷⁸ introduced by Rep DeLauro [D-CT] on March 5, 2026 with two current cosponsors, would require that the Secretary of the Treasury, in consultation with the CBP, to promulgate a regulation within 30 days that establishes a process whereby "covered importers" set forth a process to "lower the prices paid by their customers for goods formerly subject to such tariffs, in full proportion to the refund applied to be received with respect to such goods." The importer would be required "to demonstrate, to the extent practicable —

(A) that such reductions in prices are targeted towards essential consumer goods;



(B) to the extent that the covered importer does not trade in essential consumer goods, that the covered importer has implemented other means by which prior customers of the importer can receive rebates or refunds on prospective purchases commensurate with the amount refunded."

Undertaking such a complex regulatory project without any public comment within 30 days is both unrealistic and unwise.

The bill would prohibit importers from conducting stock buybacks or distributing dividends unless the covered importer certifies to the Secretary of the Treasury that the covered importer has completed the steps to lower prices for consumers as required by the new regulation. This is an unwise intrusion on corporate governance in the name of trade policy that could have a substantial adverse impact on stock values. The bill would require CBP to make all refunds within 180 days, which is unrealistic given the magnitude of the problem and the complexity of the process that the bill would establish.

The term "covered importer" would mean an entity that "paid \$5,000,000 or more in tariffs or other duties." The term "essential consumer goods" would be defined to mean a list of specific consumer goods.⁷⁹

The bill does not address the preemption of potential state laws governing the disposition of refunds, the critical class action lawsuit issue or the clarification of customs brokers' fiduciary duty.

The Payback Act (H.R. 7646) introduced by Rep. Crockett [D-TX] and currently having no cosponsors⁸⁰ would require the Secretary of the Treasury within 120 days to "develop and publish a formula to calculate refunds to American consumers for amounts paid that were attributable to covered [IEEPA] tariffs" and to (1) quantify total consumer cost increases tied to covered tariffs using data from U.S. Customs and Border Protection, the Bureau of Economic Analysis, and other relevant Federal datasets; (2) estimate pass-through effects from importers, distributors, and retailers to end consumers; and (3) incorporate equitable adjustments based on household income and geographic disparities." It would, to the maximum extent practicable, require that the refunds be issued automatically using existing Treasury and Internal Revenue Service payment systems, including direct deposit or refundable tax credits and require "for individuals not captured through existing systems, that the Secretary establish "a streamlined application process requiring minimal documentation."

This bill is notable in two respects. First, it appears to be the only bill that would require that the refunds go to consumers rather than importers. Second, it basically does not address any of the actual issues about how that would be done. It does not address, for example, where the money would come from. It does not address the fact that refunds will go to importers of record not consumers in the absence of legislation much clearer and more detailed than this bill. It does not address how the rebate



would be determined but instead leaves that to the Treasury Secretary. It does not address the question of how the Treasury Department and CBP would coordinate.

SUMMARY OF RECOMMENDATIONS: Congress should enact legislation that:

- (1) requires that the unlawful IEEPA tariffs be refunded by CBP within one year;
- (2) requires that any import transaction that was liquidated with unlawful IEEPA tariffs be reliquidated without the tariffs so that the tariffs can be refunded;
- (3) requires the CBP to institute a much simpler system for refunding the unlawful tariffs than the current protest system. It should require that CBP put out an interim final rule within a specified period (e.g. 30 days) and then seek public comment during a 60-day period before a final rule is promulgated. Such a system should make use of the ACE system and prepopulate as many fields in the system with data already held by CBP as possible. It should require only that the importer of record provide information that has not already been provided to CBP. It should require that the importer of record need establish only five things: (1) the importer's identifying contact information, (2) the importer's payment information (i.e. how the refund should be paid to the importer), (3) the date and (4) amount of IEEPA tariffs paid, if liquidated, or the date and amount of deposit paid, if not liquidated and (5) the minimum information required to accurately identify the underlying importation transaction;
- (4) provides explicit statutory guidance regarding importer disposition of the refunds. This could leave it up to the importer to decide or it could require that the importer make a good faith effort to refund the tariff refund to its customers that paid higher prices due to the IEEPA tariffs. The legislation would need to explain the mechanics of how this would work in practice and provide safe harbors for good faith compliance;
- (5) imposes a permanent moratorium on class action litigation regarding the tariff refunds;
- (6) preempts any state laws purporting to impose requirements on refund disposition;
- (7) instructs CBP to prioritize liquidation and payment of small business claims; and
- (8) clarifies that customs brokers have a fiduciary duty to return tariff refunds to their clients.

Congress should also consider appropriating additional resources to CBP to hire temporary personnel to process the refunds.



CBP should implement a much simpler system for refunding the unlawful tariffs than the current protest system. CBP should promulgate an interim final rule as quickly as possible and then seek public comment for a 60 day period before a potentially revised final rule is promulgated. Such a system should make use of the ACE system and prepopulate as many fields in the system with data already held by CBP as possible. It should require only that the importer of record provide information that has not already been provided to CBP. It should require that the importer of record need establish only five things: (1) the importer's identifying contact information, (2) the importer's payment information (i.e. how the refund should be paid to the importer), (3) the date and (4) amount of IEEPA tariffs paid, if liquidated, or the date and amount of deposit paid, if not liquidated and (5) the minimum information required to accurately identify the underlying importation transaction.

Based on filings with the CIT on March 12th and March 19th, the CBP appears to be building a new system within ACE called the Consolidated Administration and Processing of Entries (CAPE) that would establish a system along these lines.

The CIT should use a case consolidation/master case process similar to those used for HMT refunds or the section 301 cases.

ENDNOTES

¹ *Learning Resources, Inc. v. Trump*, 607 U.S. ___ (2026) https://www.supremecourt.gov/opinions/25pdf/24-1287_new_3135.pdf.

² 50 U.S.C. §§ 1701–1708 (Chapter 35 of Title 50).

³ VOS Selections was a party in *Trump v. V.O.S. Selections* (25-250) that was consolidated by the Supreme Court with *Learning Resources v. Trump*.

⁴ *Learning Resources, Inc. v. Trump*, 607 U.S. ___ (2026), Kavanaugh, dissenting opinion at page 63 https://www.supremecourt.gov/opinions/25pdf/24-1287_new_3135.pdf (“In the meantime, however, the interim effects of the Court’s decision could be substantial. The United States may be required to refund billions of dollars to importers who paid the IEEPA tariffs, even though some importers may have already passed on costs to consumers or others. As was acknowledged at oral argument, the refund process is likely to be a “mess.” Tr. of Oral Arg. 153–155.”). See also *Learning Resources, Inc. v. Trump* oral argument transcript https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/24-1287_b07d.pdf.

⁵ President Trump’s observation was “They take months and months to write an opinion and they don’t even discuss that point,” he told reporters at the White House. “Wouldn’t you think they would have put one sentence in there saying that, ‘keep the money’ or ‘don’t keep the money,’ right? I guess it has to get litigated for the next two years.” This is accurate except that it is unlikely to take two years to resolve the issue in lower courts. Ari Hawkins, “What Happens to Billions in Tariff Money Already Paid? Supreme Court Leaves Refunds Unsettled,” *Politico*, February 20, 2026 <https://www.politico.com/news/2026/02/20/tariff-refunds-supreme-court-00791244>.

⁶ See Annex I, “Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits,” Executive Order No. 14257, April 2, 2025 <https://www.govinfo.gov/content/pkg/FR-2025-04-07/pdf/2025-06063.pdf>.

⁷ “Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits,” Executive Order 14257, April 2, 2025 <https://www.govinfo.gov/content/pkg/FR-2025-04-07/pdf/2025-06063.pdf>. See also, for example, “Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border,” Executive Order 14193, February 1, 2025 <https://www.govinfo.gov/content/pkg/FR-2025-04-07/pdf/2025-06063.pdf>; “Imposing Duties to Address the



Situation at Our Southern Border," Executive Order 14194, February 1, 2025 <https://www.govinfo.gov/content/pkg/FR-2025-02-07/pdf/2025-02407.pdf>;
 "Modifying Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China," Executive Order 14357, November 4, 2025 <https://www.govinfo.gov/content/pkg/FR-2025-11-07/pdf/2025-19825.pdf>;
 "Imposing Tariffs on Countries Importing Venezuelan Oil," Executive Order 14245, March 24, 2025 <https://www.govinfo.gov/content/pkg/FR-2025-03-27/pdf/2025-05440.pdf>;
 "Addressing Threats to the United States by the Government of Brazil," Executive Order 14323, July 30, 2025 <https://www.govinfo.gov/content/pkg/FR-2025-08-05/pdf/2025-14896.pdf>;
 "Addressing Threats to the United States by the Government of the Russian Federation," Executive Order 14329, August 6, 2025 <https://www.govinfo.gov/content/pkg/FR-2025-08-11/pdf/2025-15267.pdf>;
 "Addressing Threats to the United States by the Government of Cuba," Executive Order 14380, January 29, 2026 <https://www.govinfo.gov/content/pkg/FR-2026-02-03/pdf/2026-02250.pdf>;
 "Addressing Threats to the United States by the Government of Iran," Executive Order 14382, February 6, 2026 <https://www.govinfo.gov/content/pkg/FR-2026-02-11/pdf/2026-02813.pdf>;
 "Ending Certain Tariff Actions," Executive Order 14389, February 20, 2026 <https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03832.pdf>.

⁸ *V.O.S. Selections v. Trump*, U.S. Court of International Trade, Slip Opinion 25-66, May 28, 2025 <https://www.cit.uscourts.gov/sites/cit/files/25-66.pdf>.

⁹ *Learning Resources, Inc. v. Trump*, U.S. District Court for the District of Columbia, Memorandum Opinion Denying Defendants' Motion to Transfer Venue; Granting Plaintiffs' Motion for a Preliminary Injunction, Civil Action No.: 25-1248 (May 29, 2025) https://www.scotusblog.com/wp-content/uploads/2025/06/20250617121437410_No.-..._Learning_Resources_Appendix.pdf.

¹⁰ *V.O.S. Selections v. Trump*, U.S. Court of Appeals for the Federal Circuit, August 29, 2025 (Case No. 2025-1812, 2025-1813) https://www.cafc.uscourts.gov/opinions-orders/25-1812.OPINION.8-29-2025_2566151.pdf.

¹¹ Specifically, the CIT was required to evaluate the injunction in light of *Trump v. CASA, Inc.*, 606 U.S. 831 (2025) which generally limited breadth of universal injunctions' provisions to only those "necessary to provide complete relief to the plaintiffs" as opposed to everyone that may be affected. ("Because the universal injunction lacks a historical pedigree, it falls outside the bounds of a federal court's equitable authority under the Judiciary Act").

¹² Article I, Section 8, Clause 1 ("all Duties, Imposts and Excises shall be uniform throughout the United States;").

¹³ *Learning Resources, Inc. v. Trump*, 607 U.S. ___ (2026) (Docket 24-1287)

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-1287.html>. Note: This case was consolidated with *Trump v. V.O.S. Selections* (25-250).

¹⁴ *Ibid.*

¹⁵ Louise Radnofsky, Lydia Wheeler and Chao Deng, "The \$130 Billion Race for Companies to Get Their Tariff Money Back," *Wall Street Journal*, February 25, 2026 <https://www.wsj.com/us-news/law/the-130-billion-race-for-companies-to-get-their-tariff-money-back-1dcc5123> (\$130 billion); Scott Lincicome, "And Now for the Battle Over Tariff Refunds," *Bloomberg*, February 24, 2026 <https://www.bloomberg.com/opinion/articles/2026-02-24/tariff-refunds-trump-is-likely-to-make-getting-them-difficult> (\$175 billion); "State of U.S. Tariffs: SCOTUS Ruling Update," The Budget Lab at Yale, February 20, 2026 <https://budgetlab.yale.edu/research/state-us-tariffs-scotus-ruling-update> (\$142 billion).

¹⁶ Radnofsky, Wheeler and Deng, *Ibid.* See also Ashley Akers, "Act Fast for Tariff Refunds as Trump Walks Back DOJ Assurances," *Bloomberg Law*, February 23, 2026 <https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/act-fast-for-tariff-refunds-as-trump-walks-back-doj-assurances>.

¹⁷ Marina Azzimonti, Jacob Titcomb and John O'Trakoun, "How Much Revenue Has Been Raised by Tariffs So Far?," *Macro Minute*, Federal Reserve Bank of Richmond, January 13, 2026 https://www.richmondfed.org/research/national_economy/macro_minute/2026/how_much_revenue_raised_by_tariffs_so_far.

¹⁸ "Ending Certain Tariff Actions," Executive Order 14389, February 20, 2026 <https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03832.pdf>.

¹⁹ *Ibid.*

²⁰ Per Treasury Department data (see Azzimonti, Titcomb and O'Trakoun, *op. cit.*), approximately \$287 billion in duties were collected in 2025, \$189 billion more than in 2024. Assuming that 80 percent of the increased duties were due to IEEPA, then the IEEPA tariffs were \$151 billion in 2025. Assuming that duty collection in the first quarter of 2026 is the same as the fourth quarter of 2025 and that 80 percent of the increased duties will be due to IEEPA, then \$58 billion of IEEPA duties would be collected in the first quarter of 2026. This amount needs to be reduced by one-third to \$39 billion, since the tariffs will not be collected in March. Thus, the IEEPA tariffs would be about \$190 billion (151+39=190). If the assumption were made that 60 percent of the increase were due to



IEEPA tariffs, then this amount would be \$142 billion. Note also that the level of imports increased from \$3,438.4 billion in 2025 from \$3,295.2 billion, a 4.3 percent increase. This would account for a small portion of the increase tariff revenue. See "U.S. International Trade in Goods and Services, December and Annual 2025," U.S. Bureau of Economic Analysis <https://www.bea.gov/news/2026/us-international-trade-goods-and-services-december-and-annual-2025>. Tariff revenue increased 192 percent from 2024 to 2025.

²¹ \$133.5 billion in IEEPA tariffs through December 14, 2025. "Trade Statistics," <https://www.cbp.gov/newsroom/stats/trade>.

²² *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Declaration of Brandon Lord, March 6, 2026, Paragraph 12 (Court No. 26-01259)

https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.31.0_2.pdf. Lord is the Executive Director, Trade Programs Directorate, Office of Trade, U.S. Customs and Border Protection (CBP).

²³ Caitlin McCabe, Ben Glickman and Sarah Nassauer, "Wall Street Traders Are Pouncing on the Tariff Refund Chaos: Investors are Paying More for Tariff-Refund Claims since the Supreme Court's Decision," *Wall Street Journal*, February 25, 2026 <https://www.wsj.com/finance/wall-street-traders-are-pouncing-on-the-tariff-refund-chaos-d0144703>; Sasha Rogelberg, "Meet the Quiet Winners of the Supreme Court Tariff Ruling: Hedge Funds Creating a \$100 billion Market Snapping up Rights to Importers' Tariff Refunds," *Fortune*, March 7, 2026 <https://fortune.com/2026/03/07/winners-supreme-court-tariff-ruling-hedge-funds-creating-100-billion-secondary-market-refunds-brandon-howard-lutnick/>.

²⁴ *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (citations omitted). "[C]ourts have uniformly recognized that its purpose is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment," *New Hampshire v. Maine*, 532 U.S. 742, 749-750 (2001). "[J]udicial estoppel forbids use of intentional self-contradiction . . . as a means of obtaining unfair advantage," *New Hampshire v. Maine*, 532 U.S. 742, 751.

²⁵ *V.O.S. Selections, Inc. v. Trump*, Emergency Motion for a Stay Pending Appeal and an Immediate Administrative Stay, United States Court Of Appeals for the Federal Circuit, May 29, 2025 https://storage.courtlistener.com/recap/gov.uscourts.caafc.23105/gov.uscourts.caafc.23105.6.0_4.pdf.

²⁶ *Learning Resources, Inc. v. Trump*, Memorandum of Law in Opposition to Plaintiffs' Motion for a Preliminary Injunction, U.S. District Court for the District of Columbia, May 1, 2025 <https://storage.courtlistener.com/recap/gov.uscourts.dcd.279804/gov.uscourts.dcd.279804.16.0.pdf>.

²⁷ *Popsockets, LLC, v U.S. Customs and Border Protection*, Joint Stipulation, United States Court of International Trade, Court No. 25-0037. December 12, 2025 <https://storage.courtlistener.com/recap/gov.uscourts.cit.17394/gov.uscourts.cit.17394.8.0.pdf>

²⁸ Joint Stipulation Regarding Reliquidation, quoted at page 4 of *AGS Company Automotive Solutions v. U.S. Customs and Border Protection*, United States Court of International Trade. Opinion and Order, Slip Op. 25-154, December 15, 2025 <https://storage.courtlistener.com/recap/gov.uscourts.cit.17270/gov.uscourts.cit.17270.29.0.pdf>.

²⁹ *AGS Company Automotive Solutions v. U.S. Customs and Border Protection*, Defendants' Response to Court's January 8, 2026 Letter, Consol. Court No. 25-00255, January 8, 2026 https://storage.courtlistener.com/recap/gov.uscourts.cit.17270/gov.uscourts.cit.17270.34.0_2.pdf.

³⁰ 297 U.S. 1 (1936).

³¹ 301 U.S. 337 (1937).

³² 301 U.S. 337, 343 (1937).

³³ 468 U.S. 263 (1984).

³⁴ 496 U.S. 18 (1990).

³⁵ 496 U.S. 18, 20 (1990). See also *Atchison, Topeka & Santa Fe Railway Company v. O'Connor*, 223 U.S. 280 (1912).

³⁶ 523 U.S. 360 (1998).

³⁷ "No Tax or Duty shall be laid on Articles exported from any State." (Article I, Section 9, Clause 5).

³⁸ *United States Shoe Corp. v. The United States*, Slip Op. 98-126, U.S. Court for International Trade, August 28, 1998. (Court No. 94-11-00668) (Judge Jane A. Restani).

³⁹ *Ibid.*

⁴⁰ Alexandra B. Hess and James E. Ransdell, "HMT — A Tax, or Not a Tax? That Is But the First of Many, Many Questions," *UC Davis Law Review*, Vol. 57 (March 2024), pp.79-118 <https://lawreview.law.ucdavis.edu/sites/g/files/dgvnsk15026/files/2024-04/57-online-Restani.pdf> ("In essence, claimants were required to submit a standard form and a copy of their complaint to Customs, which would then query its computer records for information on the claimant's export HMT payments made prior to the two-year limitations period, and provide that to the claimant. If satisfied with Customs' tally, the claimant would fill out and sign a judgment form and transmit it to the Department of Justice to be countersigned and filed with the court.



Judge Restani prescribed a minimum pace for Customs to work through claims and required periodic reports to the court. The majority of claimants utilized this process, though alternative avenues existed, e.g., for plaintiffs who brought cases under § 1581(a) of the U.S. Court of International Trade's jurisdictional statute. Given that over \$730 million dollars had been refunded to exporters only two years after entry of Judge Restani's Order, the Judge's approach was undoubtedly a success.") pp. 90-91.

⁴¹ "Time Limitation for Requesting Refunds of Harbor Maintenance Fee and for Making Other Claims Against Customs." Customs Service, Department of the Treasury, Notice of Proposed Rulemaking, *Federal Register*, Vol. 65, No. 242, December 15, 2000, pp. 78430-78431 <https://www.govinfo.gov/content/pkg/FR-2000-12-15/pdf/00-31969.pdf>; "Amended Procedure for Refunds of Harbor Maintenance Fees Paid on Exports of Merchandise," Interim Regulation. Customs Service, Department of the Treasury, *Federal Register*, Vol. 66, No. 60, March 28, 2001, pp. 16854-16858 <https://www.govinfo.gov/content/pkg/FR-2001-03-28/pdf/01-7603.pdf>; "Time Limitation for Requesting Refunds of Harbor Maintenance Fees," Customs Service, Department of the Treasury, Final Rule, *Federal Register*, Vol. 66, No. 127 July 2, 2001, pp. 34813-34819.

⁴² \$166 billion compared to \$730 million.

⁴³ 28 U.S.C. § 2637 - Exhaustion of administrative remedies

(a) A civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 may be commenced in the Court of International Trade only if all liquidated duties, charges, or exactions have been paid at the time the action is commenced, except that a surety's obligation to pay such liquidated duties, charges, or exactions is limited to the sum of any bond related to each entry included in the denied protest.

(b) A civil action contesting the denial of a petition under section 516 of the Tariff Act of 1930 may be commenced in the Court of International Trade only by a person who has first exhausted the procedures set forth in such section.

(c) A civil action described in section 1581(h) of this title may be commenced in the Court of International Trade prior to the exhaustion of administrative remedies if the person commencing the action makes the demonstration required by such section.

(d) In any civil action not specified in this section, the Court of International Trade shall, where appropriate, require the exhaustion of administrative remedies.

There are some exceptions. See 28 U.S.C. §2637(c) and 28 U.S.C. § 1581(h); 28 U.S.C. 2637(d) allows, in principle, for exceptions.

⁴⁴ 5 U.S.C. §704.

⁴⁵ See 19 U.S.C. §1514; 19 U.S.C. §1515 and 19 U.S.C. §1520. See also 19 Code of Federal Regulations:

§ 24.36 Refunds of excessive duties, taxes, etc.

§ 173.1 Authority to review for error.

§ 173.2 Transactions which may be reviewed and corrected.

§ 173.3 Voluntary reliquidation.

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

§ 173.4a Refund of excess duties, fees, charges, or exaction paid prior to liquidation.

§ 174.11 Matters subject to protest.

§ 174.12 Filing of protests.

§ 174.13 Contents of protest.

§ 174.14 Amendment of protests.

§ 174.15 Consolidation of protests filed by different parties.

§ 174.16 Limitation on protests after reliquidation.

§ 174.21 Time for review of protests.

§ 174.22 Accelerated disposition of protest.

§ 174.23 Further review of protests.

§ 174.24 Criteria for further review.

§ 174.25 Application for further review.

§ 174.26 Review of protest after application for further review.

§ 174.27 Disposition after further review.

§ 174.28 Consideration of additional arguments.

§ 174.29 Allowance or denial of protests.

§ 174.30 Notice of denial of protest.

§ 174.31 Judicial review of denial of protest.



⁴⁶ See *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Declaration of Brandon Lord, March 6, 2026, Paragraph 12 (Court No. 26-01259)

https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.31.0_2.pdf.

⁴⁷ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Declaration of Brandon Lord, March 6, 2026, Paragraph 12 (Court No. 26-01259)

https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.31.0_2.pdf.

⁴⁸ "Customs Brokers and Freight Forwarders," International Trade Administration <https://www.trade.gov/customs-brokers-and-freight-forwarders>.

⁴⁹ Economic incidence is different than legal incidence. Mary Amiti, Chris Flanagan, Sebastian Heise, and David E. Weinstein, "Who Is Paying for the 2025 U.S. Tariffs?," *Liberty Street Economics*, Federal Reserve Bank of New York, February 12, 2026 <https://libertystreeteconomics.newyorkfed.org/2026/02/who-is-paying-for-the-2025-u-s-tariffs/>; "Tracking the Economic Effects of Tariffs," The Budget Lab at Yale, February 18, 2026

<https://budgetlab.yale.edu/research/tracking-economic-effects-tariffs/>; Erica York and Alex Durante, "Trump Tariffs: Tracking the Economic Impact of the Trump Trade War," Tax Foundation, February 6, 2026

<https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/>; Julian Hinz, Aaron Lohmann, Hendrik Mahlkow, and Anna Vorwig, "America's Own Goal: Who Pays the Tariffs?,"

Kiel Policy Brief, Kiel Institute for the World Economy January 2026

https://www.kielinstitut.de/fileadmin/Dateiverwaltung/IfW-Publications/fis-import/92fb3f30-07b8-4dcf-b2bc-fbfb831f1a1-KPB201_EN.pdf; Alberto Cavallo, Paola Llamas, and Franco M. Vazquez, "Tracking the Short-Run Price Impact of U.S. Tariffs," National Bureau of Economic Research Working Paper 34496, November 2025

<http://www.nber.org/papers/w34496>. It is unsurprising that most studies find that the bulk of economic incidence of the Trump tariffs is on Americans. In a highly competitive international market, producer margins are not high and the Trump tariffs were high. Prices paid by Americans must generally go up because producers cannot absorb the tariffs without selling at a loss. This effect can be attenuated for consumer goods (as opposed to industrial goods such as metals or equipment components) because wholesalers and retailers can absorb some of the tariff for some period if their margins are substantial. The standard economic incidence analysis shows that some of the burden of a tax is almost always borne by the buyer and some by the seller and that the allocation of the economic incidence of the tax depends on the elasticities of supply and demand. See, for example, Stephen J. Entin, "Tax Incidence, Tax Burden, and Tax Shifting: Who Really Pays the Tax?," Heritage Foundation Center for Data Analysis Report No. 04-12, November 5, 2004,

<http://static.heritage.org/2004/pdf/cda04-12.pdf>; John Creedy, "The Excess Burden of Taxation and Why it (Approximately) Quadruples When the Tax Rate Doubles," New Zealand Treasury Working Paper 03/29,

December, 2003 <https://www.treasury.govt.nz/sites/default/files/2007-10/twp03-29.pdf>; N. Gregory Mankiw, *Principles of Economics*, 4th ed., chapter 8 (Boston: Cengage Learning, 2007), or many other textbooks on price theory, microeconomics, or principles of economics.

⁵⁰ Restatement of the Law, Third, Agency (St. Paul, MN: American Law Institute, 2006), § 8.01 ("An agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected to the agency relationship.")

⁵¹ To wit, does the customs broker get to keep the money if their client folded.

⁵² Hadriana Lowenkron, "Tariff Refunds Should Go to US Workers as Bonuses, Greer Says," *Bloomberg*, March 13, 2026 <https://www.bloomberg.com/news/articles/2026-03-13/tariff-refunds-should-go-to-us-workers-as-bonuses-greer-says> ("If I were these companies, and somehow they get this windfall, the most important thing and the smartest thing they should do is give it as bonuses to their workers.")

⁵³ Motion for Immediate Issuance of the Mandate,

<https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rziNlnCR4D4w/v0>.

⁵⁴ Opposition to Motion for Immediate Issuance of the Mandate and Cross-Motion to Stay the Mandate

https://storage.courtlistener.com/recap/gov.uscourts.cafc.23105/gov.uscourts.cafc.23105.171.0_1.pdf.

⁵⁵ Order, U.S. Court of Appeals for the Federal Circuit, March 2, 2026

https://www.cafc.uscourts.gov/opinions-orders/25-1812.ORDER.3-2-2026_2654743.pdf; Mandate,

U.S. Court of Appeals for the Federal Circuit, March 2, 2026

https://storage.courtlistener.com/recap/gov.uscourts.cafc.23105/gov.uscourts.cafc.23105.174.0_1.pdf.

⁵⁶ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Order, March 4, 2026 (Court No. 26-01259) https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.21.0_1.pdf. ("Finally, the Chief Judge has indicated that I am the only judge who will hear cases pertaining to the refund of IEEPA duties. So there is no danger that another Judge, even one in this Court, will reach any contrary conclusions. To find otherwise would be to thwart the efficient administration of justice and to deny those importers who have filed suit the efficient resolution of their claims, and to deny entirely importers who have not filed suit the benefit of the *Learning Resources* decision."). The Docket is available at

<https://www.courtlistener.com/docket/72339861/atmus-filtration-inc-v-united-states/> or via Public Access to



Court Electronic Records (PACER) which requires registration and often the payment of fees <https://pacer.uscourts.gov/>.

⁵⁷ "In Re: Procedures for Entering a Stay in New Section 301 Cases," United States Court of International Trade, Administrative Order 21-02, April 28, 2021 https://www.cit.uscourts.gov/sites/cit/files/Admin_Order_21-02.pdf. This consolidated about 3,500 cases. See also HMTX Industries LLC v. United States, 156 F.4th 1236 (2025).

⁵⁸ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Order, March 12, 2026 https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.40.0_1.pdf.

⁵⁹ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Order, March 27, 2026 https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.50.0_1.pdf.

⁶⁰ *Stockov v. Costco Wholesale Corporation*, 1:26-cv-02734, (N.D. Ill.) complaint filed March 11, 2026 https://storage.courtlistener.com/recap/gov.uscourts.ilnd.496864/gov.uscourts.ilnd.496864.1.0_1.pdf. See also Sarah Nassauer, "Costco Sued by Customer Over Tariff Refund," *Wall Street Journal*, March 11, 2026 <https://www.wsj.com/business/retail/costco-sued-by-customer-over-tariff-refund-42e7c3c4>; Tonya Garcia, "Costco Sued the Government Over Tariffs. Now a Customer Is Suing Costco," *Bloomberg*, March 13, 2026 <https://www.bloomberg.com/news/newsletters/2026-03-13/costco-sued-as-customers-seek-tariff-refunds>.

⁶¹ Isabel Gottlieb and Shweta Watwe, "FedEx, Costco, UPS Are Main Targets for Consumer Tariff Refunds," *Bloomberg Law*, March 25, 2026 [news.bloomberglaw.com/in-house-counsel/fedex-costco-ups-are-main-targets-for-consumer-tariff-refunds](https://www.bloomberglaw.com/in-house-counsel/fedex-costco-ups-are-main-targets-for-consumer-tariff-refunds).

⁶² *Ibid.*

⁶³ This is much more difficult than it sounds since prices are determined by many factors including costs, the competitive environment, demand and so forth.

⁶⁴ Berhan Bayeh, Isaiah Nardone, Shaun O'Brien, and Hailey Phelps, "2025 Findings from the Diary of Consumer Payment Choice," Federal Reserve <https://www.frb-services.org/news/research/2025-findings-from-the-diary-of-consumer-payment-choice>.

⁶⁵ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Declaration of Brandon Lord, March 6, 2026, Paragraph 21 (Court No. 26-01259) https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.31.0_2.pdf.

⁶⁶ "Electronic Refunds," Interim Final Rule; Request for Comments. U.S. Customs and Border Protection, Department of Homeland Security, *Federal Register*, Vol. 91, No. 1, January 2, 2026, pp. 21-36 <https://www.govinfo.gov/content/pkg/FR-2026-01-02/pdf/2025-24171.pdf>.

⁶⁷ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Declaration of Brandon Lord, March 6, 2026, Paragraph 22 (Court No. 26-01259) https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.31.0_2.pdf.

⁶⁸ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Declaration of Brandon Lord Responding to March 6, 2026 Court Order, March 12, 2026, paragraph 2 <https://assets.bwbx.io/documents/users/iqjWHBFdfxU/ryEaiSoXzRDU/v0>.

⁶⁹ *Ibid.*, paragraph 3. <https://assets.bwbx.io/documents/users/iqjWHBFdfxU/ryEaiSoXzRDU/v0>.

⁷⁰ *Ibid.*, paragraph 4.

⁷¹ *Ibid.*, paragraph 6.

⁷² *Ibid.*, paragraph 8.

⁷³ *Ibid.*, paragraph 10.

⁷⁴ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Declaration of Brandon Lord Responding to March 12, 2026 Court Order, March 19, 2026 https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.47.0_2.pdf.

⁷⁵ *Atmus Filtration, Inc. v. U.S.*, United States Court of International Trade, Declaration of Brandon Lord, March 6, 2026, Paragraph 24 (Court No. 26-01259) https://storage.courtlistener.com/recap/gov.uscourts.cit.19346/gov.uscourts.cit.19346.31.0_2.pdf.

⁷⁶ Tariff Refund Act of 2026, S.3905, 119th Congress, February 24, 2026 [Sen. Wyden (D-OR)] <https://www.congress.gov/bill/119th-congress/senate-bill/3905/text>.

⁷⁷ The Restoring Economic Lifelines for Independent Enterprises and Family Businesses (RELIEF) Act, H.R. 7736, 119th Congress, February 26, 2026 [Rep. Horsford (D-NV)] <https://www.congress.gov/bill/119th-congress/house-bill/7736/text>.

⁷⁸ The Tariff Relief for Consumers Act, H.R. 7822, 119th Congress, March 5, 2026 <https://www.congress.gov/bill/119th-congress/house-bill/7822/text>.

⁷⁹ Sec. 3(g)(2) of the bill defines the term "essential consumer goods" to mean — (A) infant formula and infant and toddler food goods; (B) diapers and essential infant clothing and safety products; (C) hygiene and health care products; (D) foodstuffs eligible to be purchased with supplemental nutrition assistance program benefits, as identified by the Secretary of Agriculture; (E) basic clothing items,



including shoes; (F) children's toys and sporting goods with a manufacturer's suggested retail price of less than \$50; and (G) such other consumer goods as the Secretary of the Treasury determines appropriate.

⁸⁰ The Payback Act, H.R. 7646, 119th Congress, February 23, 2026 [Rep. Crockett (D-TX)]

<https://www.congress.gov/bill/119th-congress/house-bill/7646/text>.

