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IEEPA Litigation: Frequently Asked Questions and How to Prepare for Potential Tariff Refunds

What are the IEEPA Tariffs?

President Trump has imposed several tariff regimes in 2025 under the International Emergency Economic Powers Act (IEEPA), which provides the President authority to regulate importation in response to any unusual and extraordinary threat to the national security, foreign policy, or economy of the U.S.:

- **February 2025:** Fentanyl Tariffs (Canada/Mexico/China): 10% to 35%
- **April 2025:** Reciprocal Tariffs (most other countries): 10% to 40%
- **August 2025:** Russian Oil Tariffs (India): 25%
- **August 2025:** Brazil Government Actions Tariffs (Brazil): 40%

Which IEEPA Tariffs are being Litigated before the Supreme Court?

The fentanyl tariffs and reciprocal tariffs imposed under IEEPA are the subject of the current litigation. This litigation does not impact the tariffs imposed under Section 232 of the Trade Expansion Act of 1962 or Section 301 of the Trade Act of 1974.

Will All IEEPA Tariffs be Eligible for Refunds?

Possibly. The Supreme Court may hold that some, all, or none of the IEEPA tariffs are unlawful, which would determine which IEEPA tariffs are eligible for refunds. If the Supreme Court affirms the lower courts' rulings that the IEEPA tariffs are unlawful, the U.S. government may be required to refund duties already collected. However, it is likely that businesses will need to request refunds, so it is essential to prepare now.

What is the issue in the IEEPA Litigation?

Plaintiffs challenged the President's authority to impose tariffs under IEEPA, arguing that the language of the statute "regulate ... importation" does not include the power to impose tariffs because that is a power granted to the Congress by Article I of the U.S. Constitution that was not explicitly delegated to the President in the statute.

How Should My Company Prepare for Potential IEEPA Tariff Refunds?

1. Maintain good records.

Work with your customs broker to ensure that you have accurate and up-to-date records of all entries on which you paid tariffs.

Ask your broker to provide a comprehensive spreadsheet or report that includes the following information for each entry:

- Entry date
- Entry number
- Port of entry
- Type and amount of duties paid; and
- Projected liquidation date.

2. Preserve your right to a refund.

Businesses should track the liquidation dates for all entries on which they paid tariffs. Entries typically liquidate 314 days after the date of entry.

Your options to preserve your right to request a refund depend on whether an entry has been liquidated:

- **Unliquidated Entries: Request Extension of Liquidation.** If an entry's liquidation date is approaching, consider requesting that CBP extend liquidation to keep the entry "open" pending the outcome of the litigation. Extension is at CBP's discretion and may be denied, as CBP historically has not seen ongoing litigation as a basis for extension. But, if extension is granted, you may be eligible for a refund more quickly than pursuing a refund via a protest.
- **Liquidated Entries: File a Protest.** If an entry has liquidated, U.S. law requires that importers file a timely protest — typically within 180 days of liquidation — to be eligible to receive a refund on duties paid. Filing a protest allows importers to preserve their right to a refund of IEEPA tariffs on liquidated entries while the litigation is pending.

3. Ensure you set up electronic refunds in ACE.

U.S. Customs and Border Protection (CBP) recently updated the Automated Commercial Environment Secure Data Portal (ACE Portal) to support electronic refund transactions. This functionality allows importers to provide U.S. bank information in the ACE portal to facilitate electronic refunds from CBP via Automated Clearing House (ACH). Work with your customs broker to ensure that your company is prepared to take advantage of this faster and more efficient refund mechanism.

4. Work with reputable brokers and legal counsel.

Remember, if it sounds too good to be true, it probably is. Exercise caution and work with known customs brokers and trade counsel to ensure you receive timely and accurate information that is specific to your company's situation and to avoid scams. Working with experienced advisors is especially important if your company engages in a large volume of imports or utilizes a bonded warehouse, foreign trade zone (FTZ), duty drawback, duty deferral, or other specialized trade programs.

Special Considerations for Imports from Canada or Mexico

Many goods frequently traded within the U.S., Canada, and Mexico are subject to overlapping tariff regimes, including the IEEPA fentanyl tariffs and section 232 tariffs on steel, aluminum, and automobiles. Importers should be mindful of the following special considerations when importing goods from Canada or Mexico:

- Currently, the following priority order applies to tariffs on goods from Canada and Mexico: (1) 232 Auto/Auto Parts; (2) 232 Aluminum; (3) 232 Steel; (4) IEEPA Canada; and (5) IEEPA Mexico.
- Goods that originate within a USMCA country are exempt from the IEEPA fentanyl tariffs if importers provide USMCA Certificates of Origin and supporting documents for all qualifying goods.

If your company paid duties under multiple tariff regimes on goods imported from Canada or Mexico, those tariffs may be eligible for refunds now. Failure to act promptly could result in missing refund deadlines and losing potential savings. Contact your customs broker and trade counsel today to identify refund-eligible shipments and request refunds.