

Publications

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CIT Denies Preliminary Injunction in IEEPA Tariff Litigation, Reaffirming its Authority to Order Reliquidation

Key Takeaways

- **U.S. Court of International Trade (CIT) denies request for a preliminary injunction to suspend liquidation of entries subject to International Emergency Economic Powers Act (IEEPA) tariffs.** The court denied plaintiffs' injunction request, finding no "irreparable harm" based on the Government's representation that it will not oppose court-ordered reliquidation and refunds if the Supreme Court finds those tariffs unlawful.
- **The court reaffirms its authority to order reliquidation.** The court confirmed that constitutional challenges to IEEPA duties fall within its residual jurisdiction under 28 U.S.C. § 1581(i) and reaffirmed its authority to order reliquidation and refunds where duties have been unlawfully exacted.
- **Importers should still act to preserve IEEPA refund rights.** Unless reversed on appeal, the decision and the Government's litigation posture indicate that importers generally should not need to file suit at the CIT before liquidation solely to preserve their rights to IEEPA tariff refunds. But, as recommended in our prior e-alert, importers should continue to:
 - maintain detailed entry lists for all IEEPA-duty entries;
 - request extensions of liquidation from U.S. Customs and Border Protection where appropriate;
 - discuss with counsel filing protests within 180 days of liquidation, in the event of appeal of this decision; and
 - consider protective CIT actions for liquidated entries to ensure a judicial remedy if refunds are not made available to non-litigants.

Earlier this week, a three-judge panel of the U.S. Court of International Trade (CIT) issued an order in consolidated case *AGS Co. Auto. Sols. v. U.S. Customs and Border Protection*, Consol. Ct. No. 25-0025, impacting the steps required of importers to preserve rights to refunds of duties imposed under the International Emergency Economic Powers Act (IEEPA).

Related People

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Related Capabilities

- Trade Law Remedies
- International Trade
- Customs
- International
- Export Controls, Economic Sanctions & Compliance
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No Irreparable Harm Where Government Has Represented that It Will

Not Oppose Reliquidation

Plaintiffs in the action had requested a preliminary injunction to suspend liquidation of certain entries subject to the IEEPA tariffs, on the basis that liquidation could prevent refunds later. In denying the request for injunction, the CIT held that plaintiffs failed to establish “irreparable harm,” a necessary element in obtaining preliminary injunctive relief. Applying the doctrine of judicial estoppel, the court relied on the Government’s position in this and related litigation – that the U.S. would not oppose the court ordering reliquidation on plaintiffs’ entries subject to the challenged IEEPA duties, should those duties ultimately be found unlawful by the Supreme Court. Because that position would preclude the Government from taking an inconsistent stance, the court concluded that plaintiffs will not suffer irreparable harm as a result of liquidation. As the CIT stated, the Government’s representation “alone is sufficient to deny plaintiffs’ request for injunctive relief.”

CIT Confirms It Has Power to Order Reliquidation

The CIT also addressed plaintiffs’ concerns regarding the court’s authority to order reliquidation in the first instance. The court emphasized that constitutional challenges to duties cannot be pursued through the ordinary administrative protest process given Customs’ inability “to perform any active role in the determination of the constitutionality of the assessment” and the resulting “utter futility” of that route. On that basis, the court held that it has jurisdiction under 28 U.S.C. § 1581(i), the CIT’s residual jurisdictional provision. Under § 1581(i), the court reaffirmed that it has “the explicit power to order reliquidation and refunds where the government has unlawfully exacted duties.”

Plaintiffs may appeal the decision to the U.S. Court of Appeals for the Federal Circuit (CAFC).

Practical Impact: No Need to Sue Before Liquidation, But Importers Should Still Take These Steps

Unless the CAFC hears an appeal and disagrees with the CIT’s reasoning, the CIT’s opinion and the Government’s statements that it will not challenge reliquidation of entries if the IEEPA duties are held unlawful suggest no benefit to importers filing a CIT case *before liquidation* to preserve their right to IEEPA tariff refunds. However, there may still be benefits to keeping entries unliquidated, including potential speedier refunds for open entries. It remains unclear what process U.S. Customs and Border Protection will use to implement any IEEPA refunds if the tariffs are ultimately invalidated, and whether importers may still need to seek court relief to obtain refunds on liquidated entries. Until the courts and the agencies provide more clarity, importers should continue to take the following steps to help preserve the ability to obtain full refunds:

- Create a comprehensive entry list. Pull a list of all entries for which IEEPA duties were paid for each entry, including:
 - entry date
 - entry number
 - port of entry
 - type and amount of duties paid
 - projected liquidation date
- For unliquidated entries – request extensions of liquidations from CBP.
- For liquidated entries – reach out to your Polsinelli contact to discuss options to preserve refund rights. In particular, businesses should consider the timing of filing protests, typically due within 180 days of liquidation, to preserve avenues for refunds pending any opinion from the appellate court affirming that the application of these duties is not protestable. Further, businesses may still need to file a protective suit in

the CIT to preserve a judicial remedy in the event refunds are not made available to non-litigants.

If your business needs strategic legal guidance or anticipates potential impacts resulting from these announcements, contact Deanna Okun, Lydia Pardini, Dominic Bianchi, Polsinelli's Executive Action Working Group or your Polsinelli contact.