



News & Types: Client Advisories

# Practical Considerations if the Supreme Court Finds IEEPA-Based Tariffs Unlawful

1/26/2026

By: Koichiro Sato

Practices: Commercial, Competition & Trade

**UPDATE: On Feb. 20, the U.S. Supreme Court invalidated President Trump’s “reciprocal” and “fentanyl” tariffs imposed on all trading partners under the International Emergency Economic Powers Act (IEEPA).**

The U.S. Supreme Court currently is reviewing challenges to President Trump's use of the International Emergency Economic Powers Act (IEEPA) to impose widespread tariffs on imports. Lower courts already have determined that the IEEPA does not authorize the President to impose tariffs, and oral arguments at the Supreme Court suggested skepticism from both conservative and liberal justices regarding the administration's statutory interpretation. If the Supreme Court affirms these holdings and strikes down the IEEPA tariffs, businesses that paid these duties, and those that were contractually reimbursed for them, face significant practical and legal considerations. If the Supreme Court strikes down the IEEPA tariffs, importers will confront three immediate challenges: navigating a complex and deadline-driven refund process, managing contractual and commercial expectations with customers who bore tariff-driven price increases, and assessing broader legal and compliance risk around pricing and disclosures. These issues play out differently depending on whether a company absorbed the tariffs, passed them through entirely, or shared the burden along the supply chain, but all three will require coordinated responses from legal, finance, tax, and commercial teams.

## **THE REFUND PROCESS IS NOT AUTOMATIC**

A Supreme Court ruling invalidating the IEEPA tariffs would not automatically trigger refunds. Unlike some regulatory rollbacks, tariff refunds require affirmative action by importers through established U.S. Customs and Border Protection (CBP) procedures. The primary mechanisms include post-summary corrections for unliquidated entries, formal protests under 19 U.S.C. § 1514 for liquidated entries, or litigation in the U.S. Court of International Trade (CIT) under 28 U.S.C. § 1581(i).

The CIT has clarified that liquidation (the final accounting of duties owed) does not bar refunds if tariffs are struck down. In *AGS Company Automotive Solutions v. United States*, the CIT held that it retains authority to order reliquidation and refunds even for entries already liquidated, provided the importer has filed an action before the CIT. Crucially, the Department of Justice has acknowledged that CBP cannot oppose such court-

ordered reliquidation, and the doctrine of judicial estoppel prevents the government from later arguing otherwise. However, importers must act within the two-year statute of limitations under § 1581(i) to preserve their claims.

For importers relying on administrative protests alone, uncertainty remains. The CIT has suggested that because CBP's collection of IEEPA tariffs is purely ministerial, i.e., pursuant to executive orders without agency discretion, the protest mechanism may not apply. This creates a risk that importers who do not file protective litigation may find their administrative remedies inadequate.

**DOWNSTREAM CONTRACTUAL COMPLICATIONS**

The more complex issue involves businesses that contractually passed tariff costs to customers. Many supply agreements executed during the IEEPA tariff period included "tariff pass-through" provisions allowing price increases to reflect tariffs paid. If those tariffs are invalidated and/or refunded, the question becomes: who keeps the money?

Under customs law, only the importer of record, i.e., the party that paid duties to CBP, has standing to claim refunds from the government. However, commercial contracts may allocate tariff-related financial responsibilities differently. If an importer passed the full cost to downstream customers through contractual price adjustments or surcharges, receiving a government refund could result in a windfall: the importer recovers both the margin preserved through pass-through pricing and the cash return of duties paid.

This tension could implicate the equitable doctrine of unjust enrichment. In commercial contexts, courts may limit recovery where one party would be overcompensated while another party, who actually bore the economic burden, receives nothing. The challenge is that while legal injury accrues to importers (who paid CBP), economic harm may have been distributed throughout the supply chain to wholesalers, retailers, and ultimately consumers.

A related question is whether the importer of record is *required* to pursue a refund from CBP, even if this requires the claim to be litigated at the CIT with the resulting refund distributed to customers which paid or subsidized the tariff charges through price adjustments or surcharges.

**CONTRACTUAL ALLOCATION OF REFUND RIGHTS**

Resolution of downstream refund claims will depend heavily on contract language. Sophisticated supply agreements may include provisions specifying how tariff refunds should be allocated if duties are later invalidated. For example, contracts might require importers to pursue refunds diligently and remit recovered amounts to customers who bore the cost or establish shared recovery formulas.

However, many or most contracts (drafted before or after the IEEPA tariffs) lack such specificity. Where contracts are silent, parties must rely on general principles of contract interpretation, course of dealing, and good faith obligations. Key questions include whether the original tariff pass-through represented a temporary compliance adjustment or a permanent repricing; whether the contract contained price adjustment clauses

triggered by regulatory changes; and whether the importer retained any obligation to the customer once prices were adjusted to pursue potential refunds.

Without clear contractual language, disputes may turn to negotiation or litigation under state contract law. Some importers may face demands from customers for refund sharing, while others may proactively offer partial rebates to maintain commercial relationships. Importers also will need to consider the cost of litigation before the CIT, if CBP does not “voluntarily” provided tariff refunds.

**CONSUMER PROTECTION CONSIDERATIONS**

Beyond contractual obligations, importers that publicly attributed price increases to IEEPA tariffs face potential exposure under state and federal consumer protection laws. If a company represented that price increases were necessitated by tariffs, whether in marketing materials, public statements, or customer communications, and those tariffs are later refunded, allegations of unfair or deceptive trade practices could arise. State attorneys general and the Federal Trade Commission have broad authority to investigate pricing practices that may constitute price-gouging or misleading representations.

The risk is heightened for businesses that itemized tariff surcharges on invoices or receipts. Transparent disclosure of tariff costs, while generally advisable for compliance purposes, creates a documentary record that downstream parties can use to establish that specific price increases were tariff-driven. Companies should review their public statements and customer communications to assess exposure, particularly if they retained refunds without corresponding price reductions or customer rebates.

Of course, all of this may assume that tariff refunds are readily available to the importer, or that a refund of the full tariff amount is readily available, which may not be the case in all instances.

**STATUTE OF LIMITATIONS AND TIMING PRESSURES**

Importers face competing time pressures. For unliquidated entries, post-summary corrections must be filed before liquidation (typically 314 days after entry, though CBP may liquidate earlier following audits or compliance actions). For liquidated entries, protests must be filed within 180 days of liquidation. For judicial claims under § 1581(i), the two-year statute of limitations begins when the cause of action accrues, arguably upon payment of the challenged tariff.

Given these overlapping deadlines and the uncertainty surrounding administrative remedies, many importers are filing protective actions in the CIT to preserve refund rights. As of early 2026, over 700 companies have initiated such litigation. The CIT has issued Administrative Order 25-02, which automatically stays unassigned cases pending a final Supreme Court decision, but filing preserves claims within the limitations period.

**ADMINISTRATIVE BURDEN AND PRACTICAL REALITIES**

Even if the Supreme Court strikes down the tariffs, the refund process will be administratively complex. CBP is said to have collected approximately \$130 billion in IEEPA tariff revenues through August 2025. Processing

refunds at that scale requires extensive documentation, including entry summaries, proof of payment, and supporting records maintained for each affected entry.

CBP has announced that beginning February 6, 2026, all refunds will be issued electronically through its Automated Clearing House (ACH) program. Importers must enroll in ACH refunds through the Automated Commercial Environment (ACE) system to receive electronic payments; otherwise, the process may be delayed or complicated. The Department of Justice has acknowledged that issuing refunds would be "resource-intensive," suggesting that even with a favorable Supreme Court ruling, importers should expect delays measured in months or years.

## **ALTERNATIVE TARIFF AUTHORITIES AND FUTURE EXPOSURE**

Importantly, a Supreme Court ruling against IEEPA does not eliminate the administration's tariff authority. President Trump has indicated that alternative statutory provisions, including Section 122 of the Trade Act of 1974 (authorizing up to 15% tariffs to address balance-of-payments deficits), Section 301 (addressing unfair foreign trade practices) and Section 232 (national security-based tariffs) could be used to reimpose duties. These authorities carry procedural requirements and substantive limitations absent from IEEPA, but they remain viable tools for trade policy.

This means that businesses receiving IEEPA tariff refunds may subsequently face new tariffs under different legal authorities. Those new tariffs should apply prospectively only, but the net effect could be continued cost pressure without meaningful relief. Businesses should monitor not only Supreme Court developments but also administrative actions by the Office of the U.S. Trade Representative and the Department of Commerce signaling new tariff proceedings.

## **CONCLUSION**

While a Supreme Court decision invalidating IEEPA tariffs would be legally significant, the practical path to recovery for affected businesses is neither simple nor guaranteed. Importers must navigate complex administrative procedures, meet strict deadlines, and potentially litigate to secure refunds. Those who passed tariff costs to customers face additional considerations around contractual obligations, unjust enrichment, consumer protection compliance and potentially sensitive relationship concerns. The enforcement of refund rights often requires not only favorable legal rulings but also diligent follow-through, precise documentation, and, in many cases, cooperation or resolution of disputes with commercial counterparties.

**Koichiro Sato is a member of the Litigation Practice Group and Commercial, Competition & Trade Practice Group, and would be happy to answer any questions you have, in English or Japanese. He can be reached at [ksato@masudafunai.com](mailto:ksato@masudafunai.com).**

*Follow us on LinkedIn for additional Legal Updates.*



*Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.*