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Insights

Import Tariffs and Protective Litigation: Considerations for Importers

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Many importers are filing protective lawsuits in the U.S. Court of International Trade ("CIT") to preserve potential refund rights relating to tariffs imposed by the Trump Administration under the International Emergency Economic Powers Act ("IEEPA"). This group includes several large, well-known importers—such as Costco Wholesale Corporation and other nationally recognized retailers and manufacturers—whose publicly reported filings began accelerating in mid-to-late 2025 as the financial stakes and timing risks became clearer.

These actions are driven by the convergence of three developments and ongoing concerns for importers:

(1) the Supreme Court's pending review of the IEEPA tariff challenges (currently before the Court in the consolidated IEEPA tariffs cases[1] following oral argument on November 5);

(2) the rule under U.S. customs law that import duties become final once the government formally closes out an import transaction (the "liquidation" phase), and;

(3) growing uncertainty over whether traditional administrative refund mechanisms will be available or effective if the tariffs are ultimately held unlawful.

Background

Historically, the authority to impose tariffs has rested with Congress, which for much of the nation's history set tariff rates directly as a core exercise of its taxing and commerce powers.[2] Over time, Congress enacted statutes delegating limited and purpose-specific tariff authority to the executive branch—most commonly in response to unfair trade practices or national security concerns—while maintaining statutory guardrails, procedural requirements, and oversight mechanisms.[3] The Trump Administration's reliance on the IEEPA to impose broad-based import tariffs represents a marked departure from this established framework.

Enacted in 1977, the IEEPA was designed to equip the President with tools to address extraordinary foreign threats through targeted economic measures, such as sanctions, asset freezes, and controls on financial transactions, rather than as a general instrument of trade regulation.[4] Its use as a basis for imposing wide-ranging import tariffs tied to trade imbalances and foreign economic practices has therefore raised novel legal and constitutional questions regarding the scope of presidential emergency powers and the limits of congressional delegation. These IEEPA-based tariffs, imposed by the Trump administration, are premised on asserted national emergencies tied to trade imbalances and foreign economic practices[5] are implemented by U.S. Customs and Border Protection ("CBP") in a largely ministerial role, raising novel separation-of-powers questions regarding the scope of presidential authority absent clear congressional authorization.

The legality of the Trump administration's imposition of tariffs under the IEEPA is now before the Supreme Court of the United States. The legal challengers assert (among other positions) the IEEPA does not authorize across-the-board import duties of this nature and that such action impermissibly intrudes on Congress's constitutional role.[6] Oral argument occurred on November 5, and a decision is expected in early 2026.[7] Against this backdrop, importers face the practical risk that affected import transactions may be finalized before the courts resolve whether the tariffs were lawfully imposed.

Preserving Refund Claims Under the Law

Under U.S. customs law, the ability to recover duties that are later determined to have been unlawfully imposed depends heavily on timing and procedural posture.[8] In judicial challenges to tariffs, refunds and related relief are often limited to parties that have properly preserved their claims, and favorable court decisions do not necessarily extend automatically to all affected importers.[9] As a result, the availability of refunds may turn on whether an importer has taken affirmative steps to protect its rights while litigation is pending.[10]

A central consideration is the doctrine of liquidation finality. Liquidation is the administrative act by which U.S. Customs and Border Protection ("CBP") issues a final accounting of duties owed on an import transaction, after which the duty assessment is generally treated as final and conclusive. Once liquidation occurs, opportunities to challenge the assessment or obtain a refund narrow significantly and, in some cases, may be foreclosed altogether. Some administrative remedies prior to liquidation may exist in limited circumstances, such as a post-summary correction ("PSC") request. However, uncertainty exists as to whether duties collected pursuant to the IEEPA are subject to traditional protest procedures, given CBP's largely ministerial role in implementing presidential directives. Commentators expect the Trump administration will take the position that PSC's related to the IEEPA tariffs must be denied because CBP has no discretion in their implementation. Against this backdrop, importers evaluating their exposure must consider whether judicial action prior to liquidation is necessary to preserve potential refund rights should the tariffs ultimately be invalidated.

These considerations have led many importers to file suit in the Court of International Trade prior to liquidation, to preserve their rights should the IEEPA tariffs be struck down by the Supreme Court.

Recommendations

Importers should promptly conduct an internal inventory of their 2025 entries that may be affected by the IEEPA tariffs, with particular attention to entry numbers, dates of entry, applicable Harmonized Tariff Schedule (HTS) classifications, duty amounts paid, and projected liquidation dates.[11] This review is critical to identifying which entries are approaching liquidation and therefore present the most immediate risk of becoming final before the courts resolve the legality of the tariffs. In many cases, liquidation timing—not the ultimate merits of the Supreme Court case—will drive whether action must be taken in the near term.

Based on that inventory, importers should evaluate whether a protective filing in the Court of International Trade should be made to preserve potential refund rights. From a legal perspective, importers will typically focus on whether filing is necessary to preserve claims and avoid procedural bars that could foreclose relief, while from a financial perspective, the cost of litigation must be weighed against the magnitude and likelihood of potential duty recoveries. For larger importers with substantial duty exposure across numerous entries, the incremental cost of a protective filing may be relatively modest compared to the refunds at stake. For mid-market importers, a more selective approach targeting higher-value or imminently liquidating entries may be more appropriate. Protective actions are often narrowly tailored to specific entries or time periods and would likely include requests for preliminary injunctive relief to suspend liquidation while litigation proceeds. Importers should also recognize that delaying action until after liquidation may significantly limit available remedies or foreclose recovery altogether, regardless of the outcome of the underlying constitutional challenge.

Because liquidation timing, duty exposure, and litigation costs vary significantly by importer and entry profile, the appropriate strategy and scope of any filing must be evaluated on a case-by-case basis.

Krieg DeVault's attorneys will continue to monitor developments in the pending Supreme Court litigation, related proceedings in the U.S. Court of International Trade, and guidance from U.S. Customs and Border Protection regarding liquidation, refunds, and administrative remedies. Clients with questions regarding their exposure to the IEEPA tariffs, timing considerations, or potential litigation strategies are encouraged to contact Kendall Schnurpel, Alex Wimmer, or their regular Krieg DeVault attorney.

[1] *Trump v. V.O.S. Selections, Inc.,* 222 L. Ed. 2d 1231 (Sept. 9, 2025).

[2] *See* U.S. Const. art. I, § 8, cl. 1 (providing Congress with the power to "lay and collect Taxes, Duties, Imposts and Excises"). *See Field v. Clark,* 143 U.S. 649, 692 (1892).

[3] *See J.W. Hampton, Jr. & Co. v. United States,* 276 U.S. 394, 409 (1928). *See also* Trade Expansion Act of 1962 § 232, 19 U.S.C. § 1862. (describing IEEPA as authorizing economic sanctions, asset controls, and financial restrictions in response to extraordinary foreign threats).

[4] *See* International Emergency Economic Powers Act, Pub. L. No. 95-223, § 101, 91 Stat. 1626, 1626–27 (1977) (codified at 50 U.S.C. §§ 1701–1702); *see also* H.R. Rep. No. 95-459, at 10–11 (1977) (describing IEEPA as authorizing economic sanctions, asset controls, and financial restrictions in response to extraordinary foreign threats).

[5] *See* Proclamation No. 10,173, 90 Fed. Reg. 55,921 (July 10, 2025) (declaring a national emergency based on persistent trade imbalances and unfair foreign economic practices and directing the imposition of tariffs pursuant to the International Emergency Economic Powers Act).

[6] *See generally V.O.S. Selections, Inc. v. Trump,* 149 F.4th 1312, 1330 (Fed. Cir. 2025), *cert. granted,* No. 25-250, 2025 WL 2601020 (Sept. 9, 2025).

[7] *See id.*; *see also* Questions Presented, *Trump v. V.O.S. Selections, Inc.,* 2025 WL 2601020 (Sept. 6, 2025) (No. 25-250), https://www.supremecourt.gov/qp/25-00250qp.pdf (reflecting expedited consideration, with a decision anticipated in early 2026).

[8] 19 U.S.C. § 1514(a); *Shinyei Corp. of Am. v. United States*, 355 F.3d 1297, 1304–05 (Fed. Cir. 2004).

[9] *Uniroyal, Inc. v. United States*, 687 F.2d 467, 471–72 (C.C.P.A. 1982).

[10] *SKF USA Inc. v. United States*, 512 F.3d 1326, 1330–31 (Fed. Cir. 2008).

[11] *See* Harmonized Tariff Schedule of the United States (2025), https://hts.usitc.gov/ (establishing the HTSUS as the legal basis for tariff classification of imported goods).
