

IEEPA Tariff Refund Litigation: Deciding Next Steps for CAPE Phase III

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Key Takeaways

- CBP's launch of CAPE Phase III finally opens a path for recovery of the earliest IEEPA tariffs paid since February 2025. Access currently remains tied to litigation before the U.S. Court of International Trade.
- Importers that have relied exclusively on the administrative refund process can now reevaluate their strategies. Filing suit and then participating in Phase III is now a path to maximizing potential tariff recovery although other avenues could also open.
- The two-year statute of limitations is approaching for the earliest IEEPA duties, leaving a narrowing window to preserve existing recovery options.

The long-awaited launch of Phase III in the administrative process for IEEPA tariff recovery has arrived. U.S. Customs and Border Protection ("CBP") announced on October 6 that Phase III successfully went live in ACE's Consolidated Administration and Processing of Entries ("CAPE") function. This is good news coming after months of delay. Two days later, on October 8, class certification was granted in the lead case seeking IEEPA refunds.

Importers of record ("IORs") can now recover tariff refunds on even the earliest of IEEPA duties going back to February 2025. The prior launch of Phase I and Phase II permit administrative recovery of IEEPA duties paid more recently subject to certain special circumstances. To date, the vast majority of IORs have chosen to use the CAPE system exclusively rather than filing lawsuits. A purely administrative remedy for all refunds would have been easy, expedient, cost-effective and would minimize publicity. It has been a relatively simple process for most who have established ACE accounts, ACH set-up for receiving wire transfers and submitted declarations listing entries with those IEEPA tariffs that are within scope. Already, significant sums of IEEPA duties have been recovered through this process.

Here's the Catch for Phase III. Right now, IORs must file a lawsuit in order to receive CAPE Phase III access. CBP has maintained its position that lawsuits before the U.S. Court of International Trade ("CIT") are strictly required to trigger Phase III availability. CBP will issue additional instructions to IORs for use of Phase III on a rolling basis after suits are filed.

Deciding on CIT Litigation. Many clients have expressed hesitation over filing suit before the CIT. Most were reasonably optimistic that the CAPE administrative process will allow for refunds just as had been the case in Phase I and Phase II. Some have raised concerns about the publicity of filing a lawsuit and potential unintended consequences of doing so. The range of those unintended consequences are often expressed as possible negative publicity, demands from customers regarding refund pass-throughs or even concerns about government relations. Still, a small minority of IORs have indeed chosen to file suit. For many of those, refunds will now be available covering the entire IEEPA period. That number of litigants will certainly grow.

Other Potential Options. The recent class certification granted by Judge Eaton in *Freestyle World v. U.S. Customs and Border Protection* creates a potential for recovery by those IORs who have not filed lawsuits and do not intend to do so. If this becomes a viable option then it is expected to most greatly benefit those smaller IORs that perceive the filing of suit as administratively burdensome. This and other potential options may continue to develop although the exact timing and outcome is not known. Availability of CAPE Phase III for those IORs who have filed or will file before the CIT is the clearest path forward for maximum recovery at this time, particularly for those who have already found success with Phase I and II.

Important Timing Considerations. The number one reason to consider filing suit, beyond a technical obstacle to Phase III, is that the statute of limitations on tariff recovery claims will soon close. The earliest of IEEPA tariffs went into force for U.S. imports in February 2025. The relevant statute of limitations is understood as two years. Therefore, the window for recovering as much as is possible will close in early 2027. The potential for greatest recovery short of filing suit is diminishing. CBP's announcement of Phase III availability in October 2026 means little over a calendar quarter may remain for non-litigants to decide on recovering those earliest of IEEPA duties.

Benesch is available to counsel clients on managing current tariff recovery options, supplier and customer demands, and litigation risks, as well as ongoing tariff compliance and government enforcement. You may receive our client alerts on tariffs and related supply chain issues by signing up [HERE](#).

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