CLIENT ALERTS & INSIGHTS

Tariff Refund Litigation: A Primer on Common Plaintiff's Theories of Recovery and Importer of Record Defenses

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Authors: Jonathan R. Todd, Mark S. Eisen, Olivia Sullivan, Megan K. MacCallum

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Key Takeaways:

- SCOTUS struck down Trump Administration tariffs and lower courts have struck down Section 122 surcharges, but planned replacement tariffs under Section 301 are expected to prolong trade and customs uncertainty.
- Retailers and other importers that passed on tariff costs may face increased litigation risk particularly as consumer class actions challenge whether refunds must be sought and returned to consumers.
- Companies can prepare by evaluating refund recovery strategies, reviewing point of sale and checkout worfklows as well as contract and pricing language, and strengthening contract terms including arbitration and class action protections to help mitigate exposure.

In February 2026, the U.S. Supreme Court ruled that President Trump did not have constitutional authority to impose tariffs under the International Emergency Economic Powers Act (IEEPA). The Trump Administration responded quickly, implementing a universal 10 percent surcharge under the authority of Section 122 of the U.S. Trade Act. The U.S. Court of International Trade (CIT) subsequently struck down those Section 122 actions as a similar overreach of authority. The Administration is now preparing to launch its replacement for the Section 122 actions under Section 301 authority. This now three-step process for launching and replacing IEEPA tariffs signals that these tariff changes, both imposition and withdrawal with the potential for refunds, are here to stay for the foreseeable future.

Additional articles on IEEPA can be found here:

- Section 122 - Supply Chain Reactions to CIT Decision
- Tariff Refund Q&A: What to Do Now and What Legal Issues Lie AheadNew 301 Tariffs Coming - Immediate Action Items for Supply Chains
- Tariff Refunds Update - IEEPA Recovery Process "Knowns" and "Unknowns"

- Tariff Refunds-Where to Begin for Possible IEEPA Recovery
- Section 122 Tariffs - A New Path Forward after SCOTUS Decision
- IEEPA Tariffs - Top Five Q&A for Supply Chains after U.S. Supreme Court Decision

Importers of record now have the ability to seek refunds from the federal government for the approximately $170 billion previously paid under the President's tariff regime through the new CAPE system established by CBP in its ACE platform. Refunds will be issued to the importer of record, which is the party with primary responsibility for customs compliance and duty payment. A number of recent consumer class actions have been filed as these issues develop since recovery of duties will not, in most cases, flow directly to end users of imported goods, even if prices paid were increased to accommodate higher landed cost.

This client alert outlines the key theories of those cases, potential defenses and applicable law. To date, these cases have primarily arisen in the business-to-consumer sector. Our clients in varying roles throughout business-to-business sectors have indicated strong interest in resolving any such questions on commercial terms.

Plaintiffs' Theories: Plaintiffs, in these newly filed lawsuits, argue that when the IEEPA tariffs were originally imposed on importers, those companies directly or indirectly passed the costs on to consumers by raising prices. Given this, Plaintiffs assert that companies should not be permitted to recover the same tariff payment twice, once from consumers through higher prices and again when they receive a tariff refund from the federal government. In each of these lawsuits, Plaintiffs assert similar claims, including breach of contract, violations of unfair and deceptive trade practices statutes, and unjust enrichment. Some of the lawsuits also seek declaratory relief, asking the court to establish which party is rightfully entitled to the refunds. Plaintiffs are essentially arguing that tariff refunds may amount to windfalls benefiting importers at consumer expense.

Potential Defenses: Although these cases are in their early stages and courts have not issued any decisions, importers of record may have several strong defenses available.

Standing and Ripeness: Many of these lawsuits only assert speculative harms because most companies have not yet issued refunds or taken a stance on whether they will provide refunds to consumers. Companies can argue that the alleged injury is not concrete or imminent and is based on hypothetical scenarios that are not ripe for adjudication. Additionally, the new CAPE system will only accept refund declarations for "Phase 1" claims, which are those for most recent customs entries. There is no mandatory legal requirement for any importer of record to seek refunds.

Contract Terms: The price of goods is often governed by a contract, which was made when the IEEPA tariffs were valid and enforceable. In many contracts, the importers of record may have the discretion to adjust pricing and recover things such as taxes or government charges, and missing from these contracts is any promise to provide refunds to consumers if the company makes a recovery.

Unjust Enrichment. If tariff charges or fees were properly disclosed and paid voluntarily, this could undercut unjust enrichment claims. Additionally, general theories of price inflation, without

identifying tariff-related line items, will make it difficult for plaintiffs to trace the alleged enrichment to specific class members.

Consumer Protection Defenses: If importers of record can demonstrate that tariff-related charges and pricing were truthfully described at the time of sale, then deceptive trade act claims will be difficult to make. The best facts in this case will of course be if those truthful terms did not expressly include sharing of tariff burdens. Alternatively, importers of record can also assert that typically, they do not have a duty to expressly address the unique and historic possibility that a President would impose a tariff under a novel authority and that the tariff would later be held unconstitutional.

Arbitration and Class Action Waivers: Many online terms and conditions that consumers consent to encompass arbitration provisions and class action waivers. Importers of record can combat the risk of large class actions by enforcing these provisions or establishing them now for implementation on a go-forward basis.

How Can Benesch Help: Benesch is a coast-to-coast full-service law firm. Its Transportation and Logistics Practice Group advises companies on supply chain management, customs duty impact, duty recovery, customs compliance and enforcement defense. Its Consumer Protection & Class Actions Group regularly represents companies defending against class action lawsuits. The Benesch team is uniquely positioned to help businesses navigate this complex import environment while managing litigation risk or filing necessary claims. The Benesch team is monitoring tariff developments closely while helping clients remain nimble and adaptive in this evolving environment. You can receive Benesch alerts and articles by signing up HERE.