# U.S. Supreme Court IEEPA decision unlocks potential tariff refund opportunities but not without uncertainty

## Potential refund scenarios and KPMG observations

February 26, 2026

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On February 20, 2026, the U.S. Supreme Court (SCOTUS) held that the president cannot use the International Emergency Economic Powers Act (IEEPA) to impose tariffs (also referred to as customs "duties").[1] The court ruled 6-3 that the statute, which authorizes the president to "regulate ... importation" of property to address an unusual or extraordinary threat, does not confer any tariff-setting authority (the "SCOTUS opinion"). Notably, the SCOTUS opinion did not identify whether or how refunds will be issued.

This decision will have far reaching impacts, most immediately to be felt by entities that imported covered commodities, and paid associated duties, following the issuance by the president of several executive orders imposing tariffs on the basis of IEEPA authority beginning in February 2025.

This article discusses the resulting potential IEEPA tariff refund process landscape, which as Justice Kavanaugh rightfully observed in his dissenting opinion, "is likely to be a mess." It also proposes solutions and a potential path forward to assist companies navigate the complexity.

# Procedural background

Under U.S. customs law, the "importer of record" is liable for the payment of any duties assessed on goods imported and entered into the commerce of the United States. The importation of goods is generally effectuated through the filing of "entry" documentation with U.S. Customs and Border Protection (CBP) containing the necessary information regarding the goods, such as the classification, value, and country of origin, to allow CBP to determine the appropriate rate of duty applicable at the time of importation.

Generally, an importer of record may file a "post-summary correction" within 300 days following the entry of goods to modify data provided at the time of original entry, including information relevant to the determination of the appropriate duties owed (or refund due) on imported goods. As a matter of administrative practice, CBP will "liquidate" a customs entry 314 days following the date of entry, reflecting CBP's formal and final computation and assessment of the duties owed. Following liquidation, importers may, within 180 days from the date of liquidation, file an administrative "protest" to contest CBP's liquidation and request CBP correct any decision(s) it made concerning the assessment of duties. Unless a protest is filed by an importer, an entry is considered finally liquidated after the expiration of the 180-day period.

If an importer wishes to challenge a CBP action during or following the entry process, an importer may commence a civil action at the U.S. Court of International Trade (CIT), which has exclusive jurisdiction over any civil action concerning tariff matters. There are several bases for jurisdiction at the CIT (pursuant to 28 U.S.C. §1581), and for each basis a distinct timeline is applicable. For instance, a civil action contesting the denial of a protest pursuant to subsection 1581(a) must be commenced within 180 days after the date of mailing of the notice of denial of a protest; whereas a civil action under the CIT's residual jurisdiction pursuant to subsection 1581(i) must be commenced within two years after the cause of action first accrues. Understanding these timelines is critical for importers seeking to validly preserve their potential refunds of the IEEPA tariffs.

In addition, the CIT has generally required litigants to exhaust any potentially available bases of direct jurisdiction (subsections 1581(a) through (h)) prior to seeking to claim jurisdiction on the basis of the CIT's residual jurisdiction under subsection 1581(i) for other cases and controversies appropriate for CIT consideration.[2] In other words, subsection 1581(i) generally may not be invoked when jurisdiction under another subsection of 1581 is or could have been available, unless the remedy provided under that subsection would be manifestly inadequate.

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[1] Learning Resources, Inc. v. Trump, No. 24-1287 (U.S. Feb. 20, 2026).

[2] See, e.g., Chemsol, LLC v. U.S., 755 F.3d 1345, 1349 (CAFC 2014) ("This court has repeatedly held that subsection (i) 'may not be invoked when jurisdiction under another subsection of 1581 is or could have been available, unless the remedy provided under that subsection would be manifestly inadequate." See also 28 U.S.C. 2637(d) (requiring exhaustion of administrative remedies).

# Potential refund scenarios for IEEPA tariffs

The SCOTUS opinion was notably silent with respect to the issue of whether or how the invalidated IEEPA tariffs would be refunded to importers. Nonetheless, there are a few potential scenarios that can be modeled out.

**Scenario 1:** Importers that filed civil actions at the CIT prior to the SCOTUS opinion seeking to preserve tariff refund opportunity pursuant to subsection 1581(i).

- By late 2025, following initial court rulings invalidating IEEPA-based tariffs at the CIT and affirming such result at the U.S. Court of Appeals for the Federal Circuit, hundreds of importers filed civil actions at the CIT seeking to preserve their opportunity to obtain refunds of duties paid. The timing of such claims related to the fact that certain entries of goods dating to the days and weeks following the initial imposition of IEEPA-based tariffs pursuant to Executive Order 14257 (the so-called "reciprocal tariffs") and several other executive orders were expected to be liquidated by CBP beginning on or around December 15, 2025.

- On December 15, 2025, the CIT announced it had consolidated the pending civil matters and issued an opinion denying a request for a preliminary injunction staying liquidation and confirming that the CIT has the authority to order reliquidation should the IEEPA tariffs be determined to be unlawful.[3] The government also stipulated that it will not oppose the Court's authority to order reliquidation of plaintiffs' entries for the purpose of issuing refunds, including for other "similarly situated plaintiffs."[4]

> **KPMG observation**
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> It is expected that the CIT will order CBP reliquidation for plaintiffs' impacted entries under this scenario. On February 24th, 2026, one of the lead plaintiffs in the IEEPA litigation filed motions before the CIT and Court of Appeals for the Federal Circuit requesting the courts issue an immediate mandate providing the necessary administrative orders and relief to plaintiffs, including refunds of all tariffs paid, with interest, under IEEPA. Claims filed after the SCOTUS opinion, however, may potentially be handled differently, as discussed in Scenario 4 below.

**Scenario 2:** Importers who file protests after the SCOTUS opinion on eligible entries that are still within the 180-day protest window.[5]

- Importers with entries that are still within the 180-day protest period may seek to contest the assessment of the IEEPA tariffs via a protest to CBP, requesting a refund consistent with the SCOTUS opinion that tariffs issued pursuant to IEEPA were unlawful.

- In the event the protest is denied by CBP, the importer arguably may file a civil action with the CIT within 180 days pursuant to subsection 1581(a). If, however, CBP declines to act in response to a protest, including on the grounds that CBP was operating in a ministerial capacity at the time of liquidation,

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[3] See AGS Company Automotive Solutions v. U.S. Customs and Border Protection, Slip Op. 25-154, (December 15, 2025). The CIT determined that judicial estoppel would prevent the Government from taking an inconsistent approach after a final result in the IEEPA tariff litigation.
[4] See AGS Company Automotive Solutions v. U.S. Customs and Border Protection, *Defendant's Response to Court's January 8, 20206 Letter*, Consol. Court no. 25-00255, (January 8, 2026).
[5] In instances where an entry has not yet liquidated, the importer can potentially first file a Post-Summary Correction ("PSC") to exclude IEEPA tariffs. If CBP rejects the PSC, this potentially creates a protestable action but may be subject to litigation to ascertain.

arguably an importer may then have a basis to assert a claim under subsection 1581(i) as the matter would be within the two-year window for CIT residual jurisdiction.[6]

### KPMG observation

It is uncertain how CBP will respond to protests under this scenario because arguably CBP has not made a decision or taken an action that is protestable.[7] CBP may take the position that the tariffs became due and the entry was liquidated whilst CBP was still operating in a ministerial capacity. If protests described herein are denied or not acted upon by CBP, importers may face prolonged litigation at the CIT in order to obtain refunds.

**Scenario 3:** After the SCOTUS opinion, importers who file a civil complaint directly with the CIT seeking refunds, bypassing the protest mechanism (i.e., where the 180-day protest period has not yet lapsed on eligible entries at the time of filing the civil complaint).

- The importer would file a complaint seeking refunds under subsection 1581(i) as it would be within the two-year window for residual jurisdiction. Jurisdiction under subsection 1581(a) is not sought by the importer because a protest was not filed.

### KPMG observation

If a court determines that there is in fact an actionable protest available to the importer after the SCOTUS opinion, there is the potential that the CIT may reject the claims in this scenario on jurisdictional grounds. Arguably, if the importer did in fact retain a valid right to protest liquidation once the SCOTUS opinion was issued, but declined to do so, the CIT may determine that jurisdiction should have been attained under subsection 1581(a), however the importer failed to exhaust the pre-requisite administrative remedies by not filing a protest.[8] CIT jurisdiction under subsection 1581(i) generally may be invoked only when another subsection of Section 1581 is unavailable. In this scenario it is possible that jurisdiction under subsection 1581(a) was available but for the importer's own failure to exhaust the administrative protest remedy. Given the different timelines available for potential claims under subsection 1581(a) [180 days following denial of protest] and subsection 1581(i) [two years after the cause of action first accrues], the importer could potentially end up losing a potential avenue for refund.

**Scenario 4:** The importer files a civil complaint directly with the CIT seeking refunds because the 180-day protest period lapsed prior to the SCOTUS opinion.

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[6] While the CIT generally requires that plaintiffs exhaust administrative remedies prior to seeking judicial relief, the federal courts have recognized exceptions to this requirement. For example, in Totes-Isotoner Corp. v. U.S., 32 CIT 1172 (2008), the court explained that case law generally exempts, from otherwise required administrative exhaustion, constitutional challenges to the statutory provisions from which CBP has no discretion to deviate. As a result, in that instance, a protest would be an exercise in futility and thus, jurisdiction was appropriate under section 1581(i) rather than section 1581(a).

[7] An importer may also request accelerated disposition of a protest. This may be warranted in order to obviate risks associated with applicable timelines. If the relevant CBP Center director fails to allow or deny a protest which is the subject of a request for accelerated disposition within 30 days from the date of mailing of such request, the protest shall be deemed to have been denied at the close of the 30th day following such date of mailing. Such deemed denial could potentially form the basis for an assertion of jurisdiction for review by the CIT pursuant to subsection 1581(a).

[8] The CIT generally requires that plaintiffs exhaust their administrative remedies prior to seeking judicial relief. The exhaustion doctrine essentially provides that "no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *See generally* Consol. Bearings Co. v. U.S., 348 F.3d 997 (Fed. Cir. 2003); Totes-Isotoner Corp. The CIT generally requires the exhaustion of administrative remedies pursuant to 28 U.S.C. §2637, recognizing that if a party fails to exhaust these remedies, judicial review of a federal agency's actions may be inappropriate. This requirement allows administrative agencies to apply their expertise, develop a factual record, and correct their own errors before a matter proceeds to the courts.

- In a circumstance in which the protest period expired prior to the SCOTUS opinion (February 20, 2026) but the customs entry is still within the CIT's two-year residual jurisdiction, an importer may file a refund claim at the CIT pursuant to section 1581(i)(1)(B). The CIT has held that pursuant to such provision it has the explicit power to order reliquidation and refunds where the government has unlawfully exacted duties.[9]

> **KPMG observation**
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> It is possible that the CIT may order CBP to reliquidate plaintiffs' impacted entries and issue refunds under this scenario, similar to Scenario 1. Generally, courts have favored remedies that make impacted parties whole, to include retroactive refunds or other appropriate compensation or credit.[10] However, there is the potential that the government may contest whether Plaintiffs in this scenario are in fact "similarly situated plaintiffs" to those described by Scenario 1. Although the government has stipulated that it will not oppose the court's authority to order reliquidation for other "similarly situated plaintiffs" it has reserved the right to "challenge, as appropriate, whether a particular *future* party is 'similarly situated' or otherwise entitled to relief..."[11] If the government challenges such future plaintiffs, including those under this scenario, this may result in prolonged litigation to resolve refunds for these importers.

**Scenario 5:** The CIT may have authority to fashion a broader equitable remedy to direct refunds, as the CIT previously did in the *U.S. Shoe Corp. v. United States*, No. 94-11—00668 (CIT), applying a refund procedure for all analogous refund suits with respect to the Harbor Maintenance Fee which was declared unconstitutional by SCOTUS as applied to exportations.[12] Nonetheless, it is difficult to anticipate the breadth of any such relief or any court-mandated alternative administrative process.

**Scenario 6:** Congress can authorize IEEPA refunds for importers. For instance, it has been recently reported that Reps. Steven Horsford (D-Nev.) and Janelle Bynum (D-Ore.) will introduce the *Restoring Economic Lifelines for Independent Enterprises and Family Businesses (RELIEF) Act*, which would require CBP to refund tariffs and customs duties collected under IEEPA since January 1, 2025, within 90 days. The precise details of any final legislation may be difficult to anticipate.

# Conclusion

While significant uncertainty remains for each of the scenarios outlined above, importers should take steps to protect their refund claims in any eventuality. While retroactive refunds of unlawful exactions are generally favored by the courts in circumstances similar to this, a prudent path might require covering all bases and making use of one or more available administrative options. For instance, to minimize the risk that refund opportunities "fall off the table," an importer may seek to pursue a comprehensive path that exhausts administrative remedies first (post-summary correction (PSC) and/or protests), and then seeking to file a complaint at the CIT if necessary, as these actions can potentially be accomplished within the administrative and judicial deadlines if undertaken properly. This may also potentially result in speedier

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[9] See In re Section 301 Cases, 524 F. Supp. 3d 1355 (Ct. Int'l Trade 2021), at 1363.
[10] See, e.g., McKesson Corp. v. Div. of Alcoholic Bevs. & Tobacco, 496 U.S. 18, at 22 (State government obligated to provide meaningful backward-looking relief to rectify deprivation resultant from unconstitutional taxation); See also United States Shoe Corp. v. United States, 19 C.I.T. 1284, at 1304 (citing McKesson).
[11] See AGS Company Automotive Solutions v. U.S. Customs and Border Protection, *Defendant's Response to Court's January 8, 20206 Letter*, Consol. Court no. 25-00255, (January 8, 2026). In its response, the government provides that "similarly situated plaintiffs are those who challenge IEEPA tariffs in a manner and on grounds that substantially overlap with IEEPA tariff cases presently before the court."
[12] *Amended Procedure for Refunds of Harbor Maintenance Fees Paid on Exports of Merchandise*, Fed. Reg. 16,854, 16,854 (Mar. 28, 2001) (citing *U.S. Shoe Corp.* and describing refund procedures). 66 Fed. Reg. 16,854 (Mar. 28, 2001).

recovery of refunds if CBP starts to grant refunds, by court order or otherwise, for PSCs and/or protests filed by importers.

Importers would be advised to weigh the pros and cons of various options outlined herein, but in all circumstances, we recommend taking at least the following steps: (1) compile your company's import data from the CBP ACE portal, (2) identify the amount of IEEPA tariffs incurred, and (3) note the specific entries impacted as well as the liquidation dates for those entries. Refund availability and successful claims may benefit from a data-driven approach that can support strategic decision making, which could involve each of the tools and methods described above, including PSCs, protests, and potentially litigation.

Our Trade & Customs team can help importers evaluate the various options and pursue next steps.

For additional details on KPMG's data-driven tariff recovery approach and PSC filing support and for protests, refer to the following resources:

- **Tariff refund and post-summary correction filing**
- **Data-driven tariff recovery services**

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