

On November 5, 2025, the Supreme Court heard oral argument in *Learning Resources v. Trump* and *Trump v. V.O.S. Selections* on President Trump’s International Emergency Economic Powers Act (IEEPA) tariffs, and we expect the court will issue a decision by the end of the year. Several justices appeared skeptical that IEEPA allows the President to impose tariffs. Importers should prepare to preserve their rights to obtain refunds if the court’s majority overturns the tariffs.

What Happens if the Supreme Court Strikes Down the IEEPA Tariffs

If the Supreme Court invalidates the tariffs, it may order relief, or remand the case to the lower court for further litigation on the potential relief for the plaintiffs. Generally, when the Supreme Court invalidates a tax or fee, that outcome applies retroactively, as in *Harper v. Virginia Department of Taxation*, but it recently ordered only prospective relief in *United States Trustee v. John Q. Hammons Fall 2006, LLC*, a bankruptcy fee case that was discussed at oral argument. Regardless, if the Supreme Court or a lower court orders relief for the plaintiffs in the IEEPA case, this relief will not automatically apply to the thousands of other importers and hundreds of billions of dollars of tariffs paid to date by non-litigants.

What Importers Must Do to Preserve Their Right to Refunds

Importers are understandably focused on the availability of refunds and would like the simplest and most expedient way of obtaining whatever refunds may become available. Following oral argument, some importers have filed actions mirroring the IEEPA litigation. Given most subject entries have not yet liquidated (entries typically liquidate 314 days after entry), these lawsuits likely do not, on their own, preserve importers’ rights to recover duties, and they will not provide relief to non-party importers. If the court strikes down the IEEPA tariffs, the simplest and most expedient way to preserve the right to obtain refunds for deposited IEEPA tariffs is through the US Customs and Border Protection’s (CBP’s) administrative process. For unliquidated entries, importers can file post-summary corrections (PSC) with CBP seeking to remove the IEEPA tariffs from the entries prior to liquidation.

For liquidated entries, within 180 days of liquidation, importers should file protests with CBP challenging assessment of the IEEPA tariffs based on the Supreme Court’s decision. If CBP denies the protests, importers must file a case in the US Court of International Trade within 180 days of denial.

What the Administration May Do to Maintain Tariffs

If the Supreme Court invalidates the IEEPA tariffs, we expect that the administration will quickly issue new orders invoking other tariff authorities, such as Section 122 of the Trade Act of 1974 and Section 338 of the Tariff Act of 1930. These authorities can be quickly applied because they do not require reports or any specific administrative action like Section 301 of the 1974 Trade Act and Section 232 of the Trade Expansion Act of 1962. If the administration seeks to continue IEEPA-like tariffs even after a loss at the Supreme Court, it could, in theory, impose similar tariffs on unliquidated or recently liquidated entries using different statutory tariff authorities.

What Importers Should Do to Prepare for Any Outcome

The situation is dynamic and difficult to predict, and the administration appears committed to implementing tariffs even if the Supreme Court strikes down the IEEPA tariffs. Before the Supreme Court issues its decision, importers should focus on practical steps to preserve their rights in any eventuality. (Even if the administration seeks to reimpose new tariffs, the rates will likely vary and importers may still qualify for partial refunds.) At a minimum, regardless of the Supreme Court’s decision, importers should maintain entry documentation establishing the following:

- CF 7501 Entry Summary
- Commercial invoices
- Packing slips
- Bills of lading
- Entry number
- Entry date
- Country of origin
- Tariff classification and description of merchandise
- Type and amount of duties paid
- Projected liquidation date

These records are required no matter whether importers file PSCs, protests or an action in court. What happens next is a US\$200 billion question, but importers can take steps now that will allow them to quickly take the best course of action under the circumstances.

The lawyers in our firm's International Trade & Foreign Investment Practice Group have extensive experience helping clients navigate issues before CBP, and with protest litigation before the US Court of International Trade. Please contact the following individuals if you would like to discuss further.

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