Post-Decision Strategy: Why Patience May Be the Smartest Move for Importers

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The Supreme Court's recent decision in *Learning Resources, Inc. v. Trump* held that International Emergency Economic Powers Act (IEEPA) does not authorize tariffs, but the decision left the issue of refunds to the lower courts. Uncertainty over whether there is an administrative or judicial path to a refund means a wait and see approach could be the best way to avoid wasted costs.

I. Uncertainty Over Administrative Procedures

It is currently unclear whether importers can obtain refunds through administrative procedures. Existing administrative procedures, Post Summary Corrections (PSCs) for unliquidated entries and protests for liquidated entries could provide a path to refunds. A recent decision by the U.S. Court of International Trade (CIT), however, makes this less likely. It is also possible that the government will announce new administrative procedures, but so far, the government has not announced any refund procedure.

A recent decision by a CIT three-judge panel suggests that existing administrative procedures may not provide a path to a refund. *AGS Co. Auto. Sols. v. U.S. Customs & Border Prot.*, No. 25-00255, 2025 WL 3634261 (Ct. Int'l Trade Dec. 15, 2025). Previously, conventional wisdom suggested that importers should file protests with U.S. Customs and Border Protection (CBP) under 19 U.S.C. § 1514 and, if CBP denied the protest, file suit at the CIT under 28 U.S.C. § 1581(a). But the CIT ruled in *AGS* that protests are not available to challenge IEEPA tariffs, because § 1514 only allows protests of decisions by CBP. Id. at *4. Because CBP merely applies the IEEPA tariffs as ordered by the President, the CIT held that importers cannot challenge IEEPA tariffs by protesting to CBP. *Id*. Likewise, the CIT held that it lacks jurisdiction under § 1581(a) to hear challenges to IEEPA tariffs based on a denied protest. Id. Instead, the CIT held that importers must sue under the CIT's residual jurisdiction, 28 U.S.C. § 1581(i).

In short, the CIT's decision in *AGS* suggests that existing administrative procedures may not provide a path to a refund, and the government has not announced any new administrative procedures. Pursuing administrative procedures now therefore may risk wasting resources.

II. Uncertainty Over a Judicial Remedy

Although the CIT's decision in *AGS* suggests that a lawsuit under § 1581(i) could lead to refunds, that is not settled yet. First, it is possible that the Federal Circuit or Supreme Court could find that a protest, potentially followed by a suit under § 1581(a), is the appropriate way to pursue a refund. It is also possible that the Federal Circuit or Supreme Court could find that there is no judicial remedy at all because the CIT lacks authority to order reliquidation.

If importers cannot obtain a refund through administrative procedures and the CIT lacks jurisdiction under § 1581(a), the only path to a refund would be through the CIT ordering reliquidation following a § 1581(i) challenge. The CIT held in *AGS* (and in previous cases) that it has the authority to order

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reliquidation. *AGS*, 2025 WL 3634261 at *3–4. The CIT also held that the government is judicially estopped from challenging the CIT's reliquidation authority in future IEEPA cases after representing in court that the CIT has reliquidation authority. Id. However, the Federal Circuit has long been reluctant to hold that the CIT has reliquidation authority. *See In re Section 301 Cases*, 524 F. Supp. 3d 1355, 1362–66 (Ct. Int'l Trade 2021) (collecting cases). It is thus unlikely, but not impossible, that there is no judicial remedy allowing an IEEPA refund.

III. The Case for a Wait-and-See Approach

Given the current uncertainty, importers pursuing administrative procedures with CBP or a lawsuit at the CIT may risk wasting resources on a path that later turns out to be fruitless. Importers may therefore be best off adopting a wait-and-see approach until the correct path becomes clear.

Importers have two years from liquidation to file a suit under § 1581(i), so there is no immediate risk of the statute of limitations running on a § 1581(i) claim. Importers have 180 days after liquidation to protest, so importers who wish to preserve their right to a protest and later § 1581(a) case must file protests by that deadline. Importers should continue to work with their customs broker to preserve all documents necessary for a later protest or lawsuit.

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