

## Reminder: An Importer Must File a Protest to Preserve Its Right to a Refund of IEEPA Tariffs

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PRACTICES Mexico, Canada, China, International

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The U.S. Court of International Trade and subsequently the U.S. Court of Appeals for the Federal Circuit have found that President Trump’s “reciprocal” tariffs imposed under the authority of the International Emergency Economic Powers Act (IEEPA) are not legal as they exceed the authority delegated by Congress under IEEPA to the President to “regulate” foreign trade in the event of a national emergency. The *en banc* Federal Circuit split 7-4, and the matter is now heading to the U.S. Supreme Court on an expedited basis with an uncertain outcome. The Secretary of the Treasury has stated that if the Supreme Court finds that the tariffs are indeed not legally supportable, reciprocal tariff payments will be eligible for refunds.

Importers who have paid IEEPA-based tariffs, however, must act to preserve their right to a refund. Taking action is especially important because importers who were not part of the original lawsuits challenging the tariffs are not automatically guaranteed a refund. The way for importers to protect their right to a refund is by filing a protest with U.S. Customs and Border Protection (CBP). A protest is a standard customs procedure. It is a time-sensitive administrative step that is required for each relevant import entry, and it must be filed after – but only within 180 days after – the underlying import entry has been liquidated (finalized and assessed). Liquidation generally occurs about 11 months after entry, so time for a protest should still be available for virtually all relevant entries. In fact, the window for filing will not have even opened for the vast majority. **Failure to file a timely protest can be used by CBP as an absolute bar to a refund.**<sup>1</sup>

As a first step, importers should coordinate with their customs brokers to maintain records of liquidation dates so as not to miss the 180-day window for filing a protest. Customs brokers can obtain liquidation information from CBP’s Automated Commercial Environment (ACE) system, and importers can work with their brokers, who probably will have developed standard protest forms for IEEPA entries, to see to it that appropriate protests are filed. We have filed numerous protests at CBP covering a wide array of issues and are available to assist as needed.

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<sup>1</sup>See, e.g., *Juice Farms, Inc. v. United States*, 68 F.3d 1344 (Fed. Cir. 1995).