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Client Alert: Importer or Plaintiff?
What it Means for IEEPA Refund Availability

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BJ Shannon
bjshannon@bcrlaw.com
(202) 293-1074
(advisory author)

David Baron
Perry Bechky
Dale Eppler
Daniel Fisher-Owens
Ray Gold
Babak Hoghooghi
Clemens Kochinke
Jason McClurg
Michelle Roberts
John Sandage
Bruce Zagaris

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On August 4, U.S. Customs and Border Protection ("CBP") reported to the U.S. Court of International Trade ("CIT") that CBP's Consolidated Administration and Processing of Entries ("CAPE") system had accepted 25.1 million entries for processing of refunds of International Emergency Economic Powers Act ("IEEPA") tariffs, which the U.S. Supreme Court has ruled were unauthorized by the statute. CBP said that the government has issued $100 billion in refunds and has $28.68 billion more accepted for processing.

This is great news, unless you happen to be an importer who paid some portion of the remaining $38 billion in IEEPA tariffs,[1] and you can't request refunds in CAPE, because your entries liquidated more than 80 days ago. Some of these importers (approaching 4,000 of them) filed complaints in the CIT, and most have received their own court orders, instructing CBP to issue refunds (although they have not received the refunds). Many other importers who paid IEEPA tariffs are evaluating whether they, too, should file a CIT complaint.

The two-year statute of limitations under 28 U.S.C. 1581(i) means that importers might choose to continue to wait (IEEPA tariffs were first imposed only 18 months ago). Importers may indeed be able to seek these refunds without litigation, but the recent CIT orders mean that companies might now have the opportunity to seek refunds *sooner* if they pursue the litigation option. (See section III, below.)

I. Opportunities for refunds via CAPE

CAPE will currently accept refund claims for many entries, including those subject other trade remedy tariffs (such an antidumping duty) or those flagged for reconciliation, as long as there's no open protest and as long as the entry is unliquidated or has been liquidated for 80 or fewer days.

A CAPE filing requires that an importer or its customs broker have an Automated Commercial Environment ("ACE") portal account and that the importer be enrolled in CBP's Automated Clearinghouse ("ACH") payment system. Customs has published guidance on using CAPE (https://www.cbp.gov/trade/programs-administration/trade-remedies/ieepa-duty-refunds), and we are available to answer questions.

Unfortunately, CAPE still will not accept entries that have been liquidated more than 80 days (also called "finally liquidated entries" by CBP).

[1] Based on CBP's reports that importers paid a total of $166 billion in IEEPA tariffs.

II. Ongoing Refund Litigation

At least three questions pending in ongoing litigation could lead to availability of refunds for finally liquidated entries.

First, in *V.O.S. Selections v. Trump* (Federal Circuit Docket No. 2026-1895, appealed from CIT Case No. 1:25-cv-00066-RKE), the government is challenging CIT Judge Eaton's "universal" order that CBP refund all IEEPA tariffs paid by all importers, including on finally liquidated entries. The government will file its opening brief this week, likely arguing that the U.S. Supreme Court's 2025 decision in *Trump v. CASA* (606 U.S. 831) restricted the CIT's ability to issue universal injunctions. V.O.S. Selections will likely respond, as Judge Eaton has already stated, that the CIT should not be subject to the *Trump v. CASA* decision, because the CIT has different statutory authority than other federal district courts, and because the CIT was created specifically to facilitate nationwide consistency in application of international trade laws. If the importers eventually prevail and Judge Eaton's order is upheld, CBP would be required to refund duties on finally liquidated entries. This order would apply to all importers, not only to plaintiffs.

Second, plaintiffs in the underlying *V.O.S. Selections* CIT case also filed a motion for class certification. Judge Eaton held oral argument on August 6. While attempts at class certification in tariff cases do not have a successful track record, Judge Eaton's questions at oral argument suggested he is skeptical of the government's opposition to the request. Like the appeal of the universal order, class certification offers a pathway to tariff relief for importers that do not have their own court cases.

CBP has reported that about 330,000 importers paid IEEPA tariffs, and we know that over 300,000 of those importers do not have their own court cases. Some importers may have obtained full tariff relief through CAPE (because they were able to file claims before any entries were finally liquidated), but there are probably many more importers who are not plaintiffs and who would benefit from these pathways to relief.

Both the universal relief and class certification questions could wind their ways through the appeals process to an eventual request for U.S. Supreme Court review. Thus, any final decision could be several months away.

Third, therefore, Judge Eaton continues to require regular updates from CBP on implementation of CAPE and processing of refunds. Currently, conferences are occurring in *Freestyle World, Inc. v. United States* (1:26-cv-01088:RKE). CBP's most recent update was on August 4, and the next update is due August 25. CBP has not, however, announced implementation of CAPE functionality for refunds of finally liquidated entries.

III. Potential Benefit of Being a Plaintiff Now

Until recently, all the other individual cases remained stayed. Given the two-year statute of limitations period, many importers reasonably decided to wait to decide whether to file their own cases. On July 17, however, Judge Eaton issued in order, which he placed *in every pending IEEPA refund case*, stating:

> At various points and in various proceedings, the Government has represented that it will refund estimated IEEPA duty deposits to Plaintiffs that challenge the duties in court. To date, it has been the Government's position that a court order directing the reliquidation of entries, whose liquidation has become final, would be necessary to provide the Government with the authority to reliquidate these finally liquidated entries and thus to provide complete relief to Plaintiffs in the cases. This order provides the Government with that legal authority.

Judge Eaton has also issued this order in a number of new cases filed after his July 17 order. The order states that CBP should provide instructions to the counsel for all these plaintiffs about how to seek refunds in CAPE for finally liquidated entries.

This development does not change the applicable statute of limitations for other importers to file cases, meaning a continued wait-and-see approach remains an option. It is still possible that ongoing litigation in *V.O.S. Selections* could result in a universal refund order or in certification of class, such that individual importers would never need their own court orders.

The timing calculus has changed though. According to Judge Eaton's recent order, *plaintiffs* – those who file CIT cases and obtain importer-specific refund orders – should soon be able to seek refunds on finally liquidated entries, while non-plaintiff importers will not (yet) be able to do the same. For this reason, importers who have not yet done so may want to consider filing a complaint in the CIT.

That decision is still a case-specific one for every importer. If you have questions about the costs and benefits for your company, we encourage you to reach out to BJ Shannon at bjshannon@bcrlaw.com.

1101 17th Street NW, Suite 1100, Washington, DC 20036
+1-202-293-5555 www.bcrlaw.com