Title: Five U.S. Court Decisions of Note for Japanese Companies and Their Counsel: May-July 2026

May, June, and July have produced U.S. court decisions with significant consequences for Japanese companies doing business in or trading with the United States, from the unwinding of the IEEPA tariff regime to a nine-figure antitrust verdict against a major Japanese pharmaceutical company. We summarize five developments that could prompt a call from your clients.

1. IEEPA Tariff Refunds: The U.S. Continues to Contest Refund of Liquidated Entries

***V.O.S. Selections, Inc. v. United States*, No. 25-00066 (Ct. Int'l Trade) — appeal pending, Fed. Cir. (notice of appeal filed May 29, 2026).**

Following the Supreme Court's February 2026 decision in *Learning Resources, Inc. v. Trump* invalidating the administration's IEEPA tariffs, the Court of International Trade (CIT) ordered U.S. Customs and Border Protection (CBP) to refund IEEPA duties to all importers of record — not only those who had filed suit. CBP's Consolidated Administration and Processing of Entries (CAPE) refund system has since disbursed close to 100 billion dollars in Phase 1 and 2 refunds, with Phase 3 (covering "finally liquidated" entries) still to be implemented. On May 29, 2026, the Department of Justice filed a notice of appeal to the Federal Circuit, arguing that the CIT cannot refund liquidated entries without going through the process of adjudicating each claim. This issue remains to be resolved.

Why it matters: Japanese manufacturers and trading companies that paid IEEPA duties in 2025 and 2026 should file in the CAPE claim process; most will likely have done so. But the uncertainty over recovering liquidated entries counsels that claimants should consider a protective CIT filing under 28 U.S.C. § 1581(i) concerning their liquidated claims.

2. IEEPA Tariff Refunds: "Pass Through" Litigation Gathers Pace

***Hoffert, et al. v. Nintendo of America Inc.*, No. 2:26-cv-01360 (W.D. WA 2026).**

With over $100 billion in IEEPA tariffs flowing back to U.S. importers, questions have arisen about which parties are ultimately entitled to this bounty. Numerous U.S. consumer class action suits have been filed in the U.S. against importers – such as an April 21, 2026, complaint against Nintendo's

U.S. subsidiary – alleging that importers passed on the cost of IEEPA tariffs in increased prices, and that U.S. consumers are therefore entitled to recover “tariff-related overcharges” from the importer. In some cases, importers like FedEx have acknowledged that they passed on IEEPA tariffs to purchasers and have committed to refund any reimbursement they receive to their purchasers.

Why it matters: U.S. consumer-based class actions against consumer-oriented companies seeking tariff refunds have gathered pace. Any Japanese company (or its U.S. subsidiary) that imported a substantial volume of consumer goods to the U.S. should be considering the risk of suit and develop a strategy to respond. While there has yet been no reported litigation in a business-to-business (B2B) context, we anticipate that B2B litigation is likely to emerge where the U.S. importer is a distributor that sells to U.S. companies. Many markets are characterized by this importer/distributor structure. U.S. subsidiaries of Japanese companies may be on both sides of these markets. U.S. purchasers of significant volumes of imported goods from a distributor that is entitled to IEEPA refunds will be considering their legal entitlement to those refunds. The legal obligation of an importer to refund any IEEPA tariff refund it receives (or to pursue such refunds) will depend on the particular relationship between importer and customer.

3. Takeda Hit with $885 Million Pay-for-Delay Antitrust Verdict

In re Amitiza Antitrust Litigation, **No. 21-11057-MJJ (D. Mass. May 18, 2026).**

A Boston federal jury found Takeda Pharmaceutical Company Limited liable for an unlawful reverse-payment (“pay-for-delay”) settlement with generic manufacturer Par Pharmaceutical over Takeda’s constipation drug Amitiza, awarding $884.9 million in single damages to wholesaler and retailer classes — an amount subject to automatic trebling under federal antitrust law to roughly $2.4–2.6 billion once judgment is entered. It is the first time a jury has found a branded manufacturer liable on a pay-for-delay theory at trial rather than through settlement. Takeda will pursue post-trial motions and an appeal.

Why it matters: The verdict serves as a warning of the risks imposed by current U.S. law regarding the legality of settlements of patent disputes between generic and pharmaceutical companies. There may be challenges in convincing a jury that a settlement’s value transfer is a litigation compromise on the merits rather than a payment for delayed competition. The case is also a reminder of the statutory damages risk in U.S. antitrust litigation. $885 million is a large number; if the verdict stands, plaintiffs will be entitled to treble damages, a number in the billions.

4. U.S. CIT Recognizes Adverse Inference Against Nippon Steel Despite Illegality of Disclosure Under Japanese Law

Toyo Kohan Co., Ltd. v. United States, **Consol. Ct. No. 24-00261 (Ct. Int'l Trade, May 22, 2026).**

On April 8, 2026, the CIT agreed with the U.S. Department of Commerce that an adverse inference should be drawn against Nippon Steel in a 232/301 antidumping review about key relevant facts after Nippon Steel argued that Japanese antitrust law prevented it from obtaining downstream sales data from a Japanese affiliate.

Why it matters: Expansive U.S. discovery requirements continue to collide with data-sharing regimes of other countries, including constraints on disclosure of data held by Japanese companies and their affiliates. Japanese companies cannot assume that U.S. courts will be sympathetic to constraints on discovery even where they are legally compelled by Japanese law. The consequences of an adverse inference can be outcome-determinative.

5. Federal Circuit Affirms Preliminary Injunction, But Requires Posting Bond

Otsuka America Pharmaceutical, Inc. v. Hetero Labs Ltd., Case **No. 25-2016 (Fed. Cir. July 1, 2026) (Bryson, Stoll, JJ.; Dyk, J., dissenting in part).**

The Federal Circuit affirmed a preliminary injunction obtained by the branded drug blocking a generic drug, upholding a claim construction that measured the drugs' weight ratio using their administered salt forms rather than the free-base "active moiety" urged by the generic maker. However, the panel vacated the district court's waiver of the Rule 65(c) injunction bond, holding that a bond waiver is exceptional and inappropriate where the enjoined party's launch is plainly commercial activity with quantifiable lost-sales exposure.

Why it matters: While this is a favorable outcome for a Japanese patent holder on infringement, it is a useful reminder of the risks even where a party succeeds on a TRO or a preliminary injunction in U.S. court. Under U.S. Rule of

Civil Procedure 65(c), “the court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined.” Where security is required, this typically involves posting a cash bond. District courts asked to waive Rule 65(c) security altogether in patent litigation may now be less inclined to do so where the enjoined competitor’s harm is commercial rather than speculative. The obligation to post a bond is also a significant and often-overlooked risk of an appeal of a U.S. trial court decision.

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