Tariff Refunds and Pass-through Litigation: Where We Are Now and What Comes Next

The Supreme Court's February 2026 ruling that the Trump administration lacked authority to impose sweeping tariffs under the International Emergency Economic Powers Act ("IEEPA") has set in motion legal developments that demand attention from every importer and their customers. The federal refund process is getting underway, with the Customs and Border Protection ("CBP") moving toward returning an estimated $175 billion in tariff payments to some 330,000 importers. At the same time downstream customers are increasingly filing lawsuits to recover tariff costs that importers allegedly passed on to them. Whether a company is an importer weighing whether to pursue a refund and facing litigation risk from downstream customers, or a business that paid tariff surcharges to a supplier, understanding the current landscape is essential to evaluating the risks and opportunities that the tariff refund process presents.

The Tariff Refund Process

The federal tariff refund process is now gearing up, though it remains subject to legal and administrative uncertainty. In February 2025, the Trump administration imposed sweeping import tariffs, invoking emergency authority under IEEPA. Under this authority, the CBP collected tariffs amounting to some $175 billion paid by 330,000 importers on more than 53 million import entries.

On February 20, 2026, the Supreme Court held, in *Learning Resources, Inc. v. Trump*, 607 U.S. ___ (2026), that IEEPA did not confer the power to impose these tariffs on the President. Collection of IEEPA tariffs ceased on February 24, 2026. The decision opened the door to refunds of all IEEPA duties collected from February 4, 2025 through February 24, 2026, but provided no guidance about how the refund process would take place.

The Court of International Trade moved quickly to fill that gap. On March 4, 2026, on remand, the court directed the CBP to remove IEEPA tariffs from all affected entries and issue refunds to all importers of record — regardless of whether they had individually filed suit. That order was stayed on March 6, 2026, to give the CBP time to address the logistics of compliance.

The CBP has since reported significant progress. On March 31, 2026, it reported to the court that it was nearing completion of its logistical build-out, called the Consolidated Administration Process of Entries, or CAPE system, and anticipated it could begin processing a first phase of refunds by mid-April. The first phase will cover duty payments that have not yet been "liquidated," or finalized (or for which a 90-day voluntary reliquidation period has not expired).

Tariffs will be removed from importers' liabilities as part of the reconciliation process on duties owed. The CBP estimates that 63% of IEEPA duties will be covered in this first phase. A subsequent phase will address refunds for entries that have already been liquidated, for which the CBP intends to provide a special opportunity to seek reimbursement.

As of March 26, 2026, 26,664 importers of record representing $120 billion in tariff payments or 78% of IEEPA duties paid, had already completed the process to receive electronic refunds. Significant uncertainties remain. The orders of the Court of International Trade are subject to appeal, and the Administration may issue orders or directives affecting repayment. More than 2,000 importers have filed individual claims before the Court of International Trade, though the court's March 4 order and the CBP's own guidance suggest that filing suit is not necessary to obtain reimbursement. Some importers may also be hesitating to seek refunds out of concern that doing so will expose them to claims from downstream customers who were charged for the tariffs. Importers who have not yet acted will want to weigh their options, and all parties entitled to receive refunds – whether or not they pursue them – should consider the risks of pass-through litigation.

Pass-Through Theories of Recovery

Litigation against importers is already underway, driven by the theory that customers — not importers — were the real economic victims of the tariffs, and are therefore entitled to at least a share of any refunds. Three principal legal theories have emerged.

Unjust enrichment. Plaintiffs have alleged that importers will be unjustly enriched if they are permitted to retain tariff refunds for costs that they had already recovered by passing the tariffs on to their customers.

Breach of contract. Some downstream plaintiffs contend that their contracts only authorize pass-through of *lawful* duties. These plaintiffs have pointed to the fact that certain importers who brought cases before the Court of International Trade took the position that the tariffs imposed on them were illegal — a position that, plaintiffs argue, the importer cannot now disavow when it comes to retaining refunds.

State consumer protection statutes. Plaintiffs are bringing claims under state unfair and deceptive trade practices acts, alleging that importers failed to disclose to consumers that the tariff charges on their bills were illegal, or that any refunds received would not be passed on to purchasers.

A recurring distinction in these cases is whether tariffs were passed on as itemized surcharges — separately listed line items on customer invoices — or as embedded price increases, where a company raised its prices without specifically identifying the tariff as the cause. This distinction may prove significant to the strength of various claims. Some importers have already announced that they will pass on any reimbursement they receive to their customers. Others have not.

Cases Filed to Date: Itemized Surcharges

The earliest pass-through cases were filed against companies that added explicit tariff line items to their invoices. On February 20, 2026 — the day of the Supreme Court's decision — multiple class actions were filed against FedEx and UPS. The complaints allege that both companies billed customers with explicitly itemized IEEPA duty charges, plus ancillary brokerage and clearance fees, that would not have been incurred but for the now-void tariffs. The complaints

assert both contract claims — that the defendants' shipping agreements authorize collection and pass-through only of "lawful duties" — and equitable claims for restitution.

FedEx has posted on its website that "if refunds are issued to FedEx, we will issue refunds to the shippers and consumers who originally bore those charges." UPS has made no such declaration, a point that plaintiffs have noted in their complaints. Additional class actions based on similar itemized-surcharge theories have followed.

Cases Filed to Date: Embedded Price Increases

Cases have also been filed against companies that raised prices in response to tariffs without breaking out specific tariff charges — a theory, which may face higher legal hurdles based on the facts of the case.

On February 26, 2026, a putative class action was filed against EssilorLuxottica, owner of the Ray-Ban brand. The complaint alleges that Ray-Ban prices were stable until March 2025 and then rose sharply following the announcement of U.S. tariffs. The complaint cites statements by the company's CEO in an earnings call, which allegedly indicated that prices were being increased due to tariffs.

On March 11, 2026, a putative class action was filed against Costco, alleging that Costco's retention of any tariff reimbursements it receives would constitute unjust enrichment and violate state consumer protection statutes.

On March 27, 2026, a putative class action was filed against Lululemon, seeking reimbursement of approximately $240 million in refunds that Lululemon is seeking to recover from the CBP. The complaint cited statements by Lululemon's CEO regarding the potential impact of tariffs on the company's profits.

All cases filed to date, whether based on itemized surcharges or embedded price increases, have been class actions. There is also the potential for business-to-business claims between importers and their commercial customers, who may believe they are entitled to recover any tariff payments for which their importer-suppliers are reimbursed.

What Lies Ahead

Importers face a set of consequential decisions, and the right path will depend on individual circumstances. The uncertainty surrounding the refund process is real: reimbursements could be delayed or stayed if the Administration or appellate courts intervene. But waiting carries its own risks.

Assuming that the refund process continues under the procedures being developed by the CBP, importers eligible for reimbursement should seriously consider asserting their claims. An importer that does not pursue reimbursements to which it may be entitled could face not only customer suits — on the theory that it should have sought and passed through the refund — but also derivative claims. Importers need to consider whether pursuing the refund and managing

the downstream exposure is preferable to forgoing the refund in an attempt to avoid litigation that may come regardless.

The current wave of class action complaints reflects a predictable first response to a perceived litigation opportunity. We expect these cases to be vigorously contested and expect that many will be dismissed. Business-to-business claims, grounded in specific contract terms between trading partners, may prove more durable and will require case-by-case analysis. The viability of any claim or defense will depend heavily on the particular facts and contract language involved. These complex and novel issues merit careful consideration and the advice of counsel for any company with meaningful refund opportunities, substantial exposure to downstream claims, or legitimate claims to reimbursement of refunds obtained by others.