Title: Tariff Recovery Litigation: The Focus Shifts to Downstream Claims and B2B Customers

Overview: Tariff-recovery litigation is moving downstream. As of July 31, 2026, the U.S. Customs and Border Protection (CBP) has reported more than $100 billion in refunds of International Economic Emergency Powers Act (IEEPA) tariffs – held unlawful by the Supreme Court earlier this year. IEEPA tariff claimants increasingly are asking not whether importers will recover, but who is entitled to the recovered money.

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Consumer suits face obstacles. While consumer suits are attracting attention in the press, they will need to overcome significant challenges, particularly where tariffs were not identified as a separate element of cost and were partially passed on and partially absorbed.

B2B customers of importer/distributors will likely have stronger claims. In commercial transactions, contracts, invoices and a course of dealing may more clearly identify tariffs as a discrete pass-through cost that is potentially subject to recoupment when the importer obtains a refund.

The government refund process is advancing – with claims for liquidated entries not yet resolved

CBP's refund program has made formidable progress. By July 31, 2026, CBP had paid approximately $100 billion of the roughly $166 billion in IEEPA duties collected and accepted another $28 billion through its CAPE portal.

There remains uncertainty about the process for recovery of finally liquidated entries, for which the ordinary protest period has expired and liquidation is final under 19 U.S.C. § 1514. The Court of International Trade directed CBP to include those entries in the refund process. The administration, however, claims that it lacks authority to provide refunds to liquidated entries in the absence of an individual court order to do so.

On August 6, 2026, the CIT held a hearing on a motion to certify a class including all holders of liquidated entries, which seeks an injunction requiring CBP to process their claims.

For now, CAPE functionality for finally liquidated entries remains delayed. That category represents an estimated $11.4 billion, or 6.9% of IEEPA tariffs. The CIT reportedly has entered reliquidation orders in thousands of individual cases. Importers with liquidated entries that have not filed individual claims should closely monitor the situation and give serious consideration to filing their own claims in the CIT.

Consumer litigation is testing the "double recovery" theory
The emerging consumer theory is straightforward: an importer raised prices to offset IEEPA duties, consumers bore the increase, and the importer now receives a government refund. Plaintiffs characterize retention of both the tariff-related price increase and the refund as an inequitable double recovery. Complaints have asserted claims for unjust enrichment, money had and received, and violations of state consumer-protection law.

Nintendo's motion to dismiss maps the principal defenses
The case of *Hoffert v. Nintendo of America Inc.*, a consumer class action suit in in the Western District of Washington seeking recovery of alleged tariff-based price increases that the plaintiffs claim represents a "double recovery" in light of Nintendo's collection of tariff refunds, has received considerable publicity. (W.D. Wash. 2:26-cv-01360).

On July 20, 2026, Nintendo moved to dismiss, in a brief that provides a blueprint of arguments that defendants are likely to raise in response to such claims:

- No entitlement to retroactive repricing. Consumers received the products they chose at the agreed price; a later change in the legal treatment of one input cost does not create a general duty to reopen completed sales.
- Unitary price and tracing. Nintendo says it did not impose a discrete tariff surcharge. Tariffs were one of many inputs—along with labor, shipping, memory, and market conditions—within a single price, making any tariff component difficult to isolate product by product.
- Voluntary payment and absence of unjust enrichment. Nintendo disclosed that tariffs were among the conditions informing pricing, and consumers voluntarily bought discretionary goods. In Nintendo's view, retention of the agreed purchase price is not inequitable merely because the company later obtains relief from the government.

***Campbell's* illustrates the broad sweep, but also the vulnerabilities, in plaintiffs' consumer-based claims**

On August 11, 2026, plaintiffs brought a putative class action against Campbell's, alleging that tariff costs were passed through in prices for products including Rao's sauces and Goldfish crackers and that Campbell's expects a refund benefit. *McCormick v. The Campbell's Company (*D.N.J. 1:26-cv-10134), The complaint alleges that Campbell's executives took "surgical" pricing actions in response to tariffs and were able to mitigate about 60% of the tariff impact, while raising prices corresponding to about 40% of tariffs, resulting in reduced sales. The complaint also alleges that Campbell's paid IEEPA tariffs on steel and aluminum it imported and passed those tariffs on to consumers.

The *Campbell's* allegations illustrate challenges that plaintiffs must overcome to be successful on these claims, including the need to isolate IEEPA tariff-related price increases, and to explain how the tariff refund situation differs from any other circumstance where a company announces a price increase in anticipation of a cost increase that does not materialize. Plaintiffs attempt to address these challenges by claiming that Campbell's violated state consumer protection law by failing to disclose that it might be entitled to tariff refunds and that it did not intend to reimburse them. It remains to be seen if a court will deem such allegations sufficient to survive a motion to dismiss.

The more consequential claims may come from B2B customers

Consumer cases attract attention, but direct commercial purchasers may have better claims. In industries dominated by a small number of importers or master distributors, such as specialty chemicals, electronic components, industrial components, polymers and resins, among others, customers often buy repeatedly under negotiated agreements and receive invoices that identify freight, duties, tariff surcharges, or other add-ons separately.

Those features can address several weaknesses *Nintendo* identifies in consumer cases. A direct customer can more readily establish payment to the refund recipient, identify a specific surcharge, and connect that charge to an express or implied contractual allocation of tariff risk.

The strongest claims are likely to arise where:

- A contract provides that the buyer will reimburse duties actually incurred, or permits a surcharge only while the duty remains payable;
- The invoice identifies an IEEPA tariff, duty, or tariff-related surcharge as a separate line item or applies a stated percentage mechanically;
- Sales communications describe the charge as a pass-through rather than a general price increase;
- The seller promised credits, reconciliation, or refund-sharing if duties were reduced, invalidated, or returned; or
- A consistent course of performance shows that tariff charges were adjusted separately from the base price.

Depending on governing law and contract language, possible theories may include breach of contract, breach of the implied covenant, declaratory relief, accounting, restitution, money had and received, and unjust enrichment. Commercial plaintiffs may also avoid some consumer-case obstacles: they may have privity, transaction-level records, negotiated allocation terms, and substantial damages that justify individual litigation or arbitration without class certification. At the same time, B2B purchasers should be less subject to claims from their own customers, as it will in most cases be challenging to identify cost increases for final products that are attributable to tariffs on components, additives or capital goods in the absence of tariff-based price increases.

Practical steps for B2B purchasers from importers/distributors

<u>Determine the potential ROI</u>.

- Check with your purchasing team: did you pay invoices from importer/distributors that expressly reflected IEEPA tariff payments?

- Do certain importers show up repeatedly, such that it would be worthwhile pursuing a claim against them?
- In the absence of express payment of a tariff surcharge, did you purchase substantial quantities of foreign goods from an importer that would have entered the US between 2/4/25 and 2/24/26?
- The minimum IEEPA tariff that is now subject to refunding was 10% in almost all cases (with the notable exception of duty-free USMCA imports from Canada and Mexico).
- In many cases, refundable IEEPA tariffs were much higher (*e.g.*, Vietnam: 20%; China: generally 20%-30%, but 145% for 4/9/25-5/11/25); Mexico non-USMCA: 25%). *See [Presidential 2025 Tariff Actions: Timeline and Status | Congress.gov | Library of Congress](#).*
- Note that non-IEEPA tariffs – *e.g.,* China-specific Section 301 tariffs, industry-specific Section 232 tariffs – are generally non-refundable.
- Would a potential recovery of 10%-20% of such imports be worth pursuing?
- Is there evidence to support that tariffs imposed on these goods were passed on to you by your importer through increased prices? (Collect, review and preserve relevant information. Be wary of creating new documents discussing potential claims. Legal analysis should be limited to privileged communications involving counsel).

Engage with your importer.

- Ask your importer about their intentions: have they recovered an IEEPA tariff refund? Do they plan to seek one? Will they commit to passing on to you any refunds they obtain relating to goods they sold you? How will they allocate refunds they receive?
- Any communications should be documented in writing and carefully prepared, preferably with the assistance of counsel.
- If the importer's answer is unsatisfactory and the potential recovery material, it is time to engage counsel
- Any approach to a particular importer should consider all business relationships and potential follow-on effects, as well as the strength of claims for recoupment of a particular tariff. A customer may rely on its importer to distribute the customer's own products, or it may be an importer and distributor itself, potentially exposing itself to reciprocal demands if it makes a demand for repayment from its importer. The importance of a distributor relationship may suggest a non-confrontational approach. The appropriate action in every case will depend on the particular circumstances of the relevant business relationships.

Remain vigilant.

- Even importers that have promised to refund tariff surcharges are reportedly slow-walking refunds in some cases.

Check the details.

- Some importers took the opportunity presented by IEEPA tariffs to add additional "surcharges," "processing fees," "logistics fees," and the like. If these are material and lack a proper basis, they should be refunded along with tariff pass-throughs.

Preserve the record.

- If your importer/distributor is not cooperating, you may be headed into litigation.
- Retain all relevant documents and consult counsel.

Outlook

The process for recovering refunds on litigated entries continues to evolve and requires close attention. District courts will soon begin weighing in on consumers' claims seeking restitution for alleged tariff-related price increases in the pending class actions. Adverse rulings could slow those cases to a trickle. In contrast, B2B litigation between companies and their importer/distributors has yet to emerge; when it does, it may prove a more viable path to recovery.