

CLIENT ALERT

DECEMBER 11, 2025

After Supreme Court Hears Argument in IEEP-based Tariffs Case, Major Importers File Protective Actions

The U.S. Supreme Court heard argument last month on the legality of the fentanyl and reciprocal tariffs imposed by President Trump under the International Emergency Economic Powers Act (IEEPA) in *V.O.S. Selections, Inc. v. Trump* and *Learning Resources, Inc. v. Trump*, and a ruling is expected soon. Companies who paid those tariffs may wish to take protective court action now to preserve their ability to obtain refunds if the Supreme Court were to conclude that the tariffs were unlawful.

A number of companies including global retailers such as Costco have already filed their own protective actions with the U.S. Court of International Trade (CIT). Considerations for doing so include:

- Risk of missing refunds due to upcoming liquidation deadlines: The first wave of IEEPA tariffs were imposed in February 2025 and the 314-day liquidation deadline is approaching (approximately mid-December 2025, e.g., December 15).
- Risk of prospective only ruling: At least one Supreme Court Justice questioned whether any relief should be prospective only. Filing a CIT action now creates a place “in line” should the timing of refunds depend on when the importer files a claim.
- Avoiding the administrative protest logjam: Typically, importers must file refunds with U.S. Customs and Border Protection (CBP) to obtain refunds and, if CBP denies the protest, the importer can sue. Under the circumstances, importers have a direct path to the CIT and can file an action seeking refunds now arguing that the same facts and law apply if the Supreme Court upholds the lower courts.
- Securing an injunction against liquidation of entries: The CIT granted an injunction against liquidation but that has been temporarily suspended until the Supreme Court decides the case. The CIT should be inclined to quickly grant injunctions in “me too” protective actions if the Supreme Court issues a favorable decision.

If you are interested in exploring a potential refund action, Curtis may be able to assist through its strategic alliance with Appleton Luff.

About Curtis

Curtis, Mallet-Prevost, Colt & Mosle LLP is a leading international law firm. Headquartered in New York, Curtis has 19 offices in the United States, Latin America,

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