

Client Alert: Government and Court Disagree on IEEPA Refunds

<p>Customs and Import Regulation</p> <p>Export Controls and Sanctions</p> <p>BJ Shannon bjshannon@bcrlaw.com (202) 293-1074 (advisory author)</p> <p>David Baron Perry Bechky Dale Eppler Daniel Fisher-Owens Ray Gold Babak Hoghooghi Clemens Kochinke Jason McClurg Michelle Roberts John Sandage Bruce Zagaris</p>	<p><i>June 2, 2026</i></p> <p>In recent good news for importers, U.S. Customs and Border Protection’s (CBP’s) Consolidated Administration and Processing of Entries (CAPE) system is up and running, and the government has refunded (or is processing refunds for) half of the \$166 billion in International Emergency Economic Powers Act (IEEPA) tariffs collected between February 2025 and February 2026. The government also told U.S. Court of International Trade (CIT) Senior Judge Richard Eaton that it will issue additional refunds in the coming weeks.¹</p> <p>The debate over how to refund the remaining IEEPA revenue, however, is likely headed into the appeals process in the coming days. This alert describes the status of the IEEPA refund litigation and explains how importers can seek refunds now and preserve rights to seek refunds in the future. Notably, despite these latest litigation challenges, the key steps for preserving refund rights remain the same.</p> <p>Status of Refund Litigation</p> <p>While the <i>V.O.S. Selections</i> litigation was stayed, Judge Eaton required biweekly updates in the <i>Atmus Filtration</i> and <i>Euro-Notions Florida</i> cases on the government’s progress toward refunding unlawfully collected IEEPA duties.² The government rolled out Phase 1 of CAPE within the requested timeframe, and importers have successfully uploaded lists of entries, run reports to track processing of their requests, and started to receive refunds via the government’s Automated Clearinghouse (ACH) system.</p> <p>CAPE Phase 1 has important limitations, because it will accept only entries that are unliquidated or have not been liquidated for more than 80 days, and it will not accept entries flagged for reconciliation, entries subject to a pending protest, or other specified entry types. CBP alluded to future phases of CAPE, including recent mention of upcoming capability for processing entries subject to reconciliation. The government maintains that more time is needed to create this additional CAPE functionality.</p> <p>Importers have hoped that future CAPE phases would also accept finally liquidated entries. The government has now clarified that this was never its plan, arguing that it “has no authority to reliquidate or refund money without a court order” after entries are finally liquidated. Furthermore, the</p>
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¹ Defendants’ Motion to Amend Order, *V.O.S. Selections, Inc., et al. v. Trump, et al.*, Court No. 25-00066, Ct. Int’l Trade (May 29, 2026).

² See periodic declarations from CBP and court orders in *Atmus Filtration, Inc. v. United States*, Court No 26-01259, Ct. Int’l Trade, and *Euro-Notions Florida, Inc. v. U.S. Customs and Border Protection, et al.*, Court No 25-00595, Ct. Int’l Trade.

government argues that the court has not issued the “importer-specific orders” that could give CBP this power.³

Judge Eaton disagrees. He reminded that the court has already “directed that all unlawfully collected IEEPA duties should be refunded to the importers that had made deposits.”⁴ Apparently running out of patience, he has now ordered the government to show cause as to why he should not remove his suspension of the “immediate compliance” requirement in his earlier refund orders, thus requiring immediate refund of all IEEPA duties, regardless the liquidation status of the underlying entries.⁵ The government asked the court to amend the order, and Judge Eaton immediately denied the request.⁶

Briefing is scheduled for June 4, and a hearing is scheduled for June 9, although the government said it plans to appeal the CIT’s universal issuance of universal injunctive relief (which should occur by June 6), thus teeing up the question of how importers will be able to obtain refunds for entries liquidated more than 80 days.

The Federal Circuit previously questioned the CIT’s ability to issue universal refund relief (remanding on that question in the initial *V.O.S. Selections* litigation).⁷ The government argues that *Trump v. CASA* limitations prohibit it from disturbing finally liquidated entries to issue refunds.⁸ Judge Eaton, in contrast, ruled that *Trump v. CASA*’s limitations apply to courts formed under the Judiciary Act of 1789, while the CIT was established almost 200 years later, specifically to exercise national geographic jurisdiction and to provide uniformity in resolution of import matters.⁹

This is a novel question in the first significant trade refund litigation since the *Trump v. CASA* decision in 2025, and it will impact not only avenues for IEEPA refunds, but also those for Section 122 duties if they are finally deemed unlawful, and it will affect future litigation on other tariff issues.

Preserving Refund Rights

In the meantime, importers face uncertainty about how CBP will eventually be required to approach remaining refunds, but importers can continue to take steps to preserve rights.

1. **Establish an ACE portal account and enroll in ACH:** CBP’s ACE portal contains all CAPE filing functionality and allows importers to run reports to monitor entry and refund status. The government will only issue refunds via ACH, so this is foundational to receiving refunds via CAPE or any other request mechanism.

³ Defendants’ Motion to Amend Order, *V.O.S. Selections*.

⁴ Order, *V.O.S. Selections*, Court No. 25-00066, Ct. Int’l Trade (May 29, 2026).

⁵ Order, *V.O.S. Selections*, Court No. 25-00066, Ct. Int’l Trade (May 27, 2026).

⁶ May 29 Order, *V.O.S. Selections*.

⁷ *V.O.S. Selections*, Court No. 25-250, Fed. Cir. (decided Aug. 29, 2025).

⁸ Defendants’ Motion to Amend order, *V.O.S. Selections* (citing *Trump v. CASA, Inc.*, 606 U.S. 831, 839 (2025)).

⁹ Order, *Atmus Filtration*, Court No. 26-01269 (March 4, 2026).

2. **Identify CAPE-eligible entries and request refunds:** CAPE will only accept entries that are unliquidated or have been liquidated for 80 or fewer days. Many formal entries filed in May 2025 or later have this liquidation status, and importers can continue to seek these refunds in CAPE. Earlier filed entries, informal (lower value) entries, and entries affected by importer corrections or CBP reviews may have liquidated too quickly to be CAPE-eligible. Some entries are also ineligible for CAPE regardless of their liquidation status:
 - a. Entries flagged for reconciliation
 - b. Reconciliation entries
 - c. Entries on a drawback claim
 - d. Entries with a pending protest
 - e. Entries not filed in ACE/without a liquidation status in ACE
 - f. AD/CVD entries for which liquidation is pendingEntries not eligible for CAPE require monitoring and may eventually require protests or litigation.
3. **Review CAPE refund calculations:** CBP is reversing IEEPA duties but is frequently offsetting refund amounts with assessment of additional duty under Sections 232 and 301 and for other reasons. Importers can challenge incorrect assessment of additional duties.
4. **Monitor liquidation status of CAPE-ineligible entries:** Entries flagged for reconciliation may soon be accepted in CAPE, but only if they are unliquidated/liquidated 80 or fewer days, meaning some flagged entries could become ineligible for CAPE before the new functionality is available. Other entries are already too old for CAPE.
5. **File protests to keep liquidations from becoming final:** The government refers to entries liquidated for more than 90 days as “finally” liquidated, but the government’s position disregards CBP’s ability to reliquidate timely protested entries. While CBP’s voluntary reliquidation window is only 90 days, importers’ statutory protest window is still 180 days, and protests can preserve liquidation status and may offer a future avenue for refunds (CBP hasn’t officially addressed this question yet).
6. **Consider CIT litigation and timing:** The government argues that each importer needs its own court order for entries liquidated for more than 90 days, but this posture is actively being tested in litigation. Even if the courts ultimately limit universal relief, importers still have time to file court cases under the applicable two-year statute of limitations, but the decision of whether and when to file a CIT claim is an individual one.

There is still a pathway for universal tariff relief and for IEEPA refunds for all entries by all importers, regardless of entry type or liquidation status and regardless of whether each individual importer files a CIT case, but this outcome is far from certain. We continue to work with importers to navigate this evolving process, based on each importer’s unique circumstances. Case-

	specific counsel is therefore important, and we encourage you to reach out to BJ Shannon at bjshannon@bcrlaw.com with questions.
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