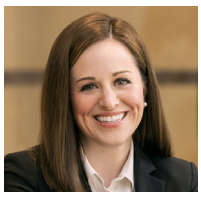
IEEPA Tariff Refund Uncertainty After Supreme Court Decision: Retailers Face Disclosure and Litigation Risks

A Practical Guidance® Article by Casey Weaver, Raechel Keay Anglin, Katelyn M. Hilferty, and Carl A. Valenstein, Morgan, Lewis & Bockius LLP

Casey Weaver
Morgan, Lewis & Bockius LLP

Raechel Keay Anglin
Morgan, Lewis & Bockius LLP



Katelyn M. Hilferty
Morgan, Lewis & Bockius LLP

Carl A. Valenstein
Morgan, Lewis & Bockius LLP

The U.S. Supreme Court's recent invalidation of emergency-based tariffs under the International Emergency Economic Powers Act (IEEPA) has created significant legal and business uncertainty. Since the February 20, 2026 ruling, emerging orders from the Court of International Trade (CIT) and government claims of administrative impossibility have further complicated these refund efforts.

Many retailers now find themselves facing emerging litigation risk from customers and consumer class action plaintiffs alleging that tariff costs were passed through and should now be returned. Retailers may find themselves targeted for consumer class actions, given the consumer-facing focus of their businesses. Public statements regarding refund strategies, especially those directed to customers or investors, may create unintended exposure. Retailers can work to navigate this rapidly changing environment by keeping in mind key risk areas and certain practical considerations.

The Evolving Refund Landscape: Increasingly Likely But Procedurally Uncertain

While the Court's ruling clarified that IEEPA does not authorize the imposition of tariffs, it did not automatically translate into immediate or universal refunds for importers. The Supreme Court's holding left many questions unresolved, including those related to procedural mechanisms, treatment of liquidated versus unliquidated entries, timeline for refunds, payment with interest, and scope of eligibility.

On March 4, 2026, CIT Judge Richard Eaton issued a sweeping order directing Customs and Border Protection (CBP) to begin paying refunds immediately. This directive extended relief to all affected importers, regardless of whether they had joined the pending litigation. However,

following a closed-door hearing on March 6, the court suspended the "immediate compliance" portion of that order.

The pause comes in response to a CBP declaration warning that the current Automated Commercial Environment (ACE) system cannot handle the "unprecedented volume" of refunds to over 53 million entries. According to the government, manual processing would be "extraordinarily difficult" and would divert critical staff from other security and trade duties.

To resolve this bottleneck, CBP is developing a new, dedicated ACE functionality called the Consolidated Administration and Processing of Entries (CAPE), designed specifically for IEEPA refunds, with a target launch in approximately 45 days. The agency claims this new process will require minimal importer submissions, ensure accuracy through automated system validations, and include a review period to resolve discrepancies and confirm that no other debts are owed to the government. While this 45-day window offers a clearer timeline, it also signals that immediate liquidity from these refunds remains out of reach for at least the next several weeks.

Though CBP efforts to remedy the ACE administrative issues are promising, the conflicting judicial signals from CIT leave the landscape ambiguous. This lack of clarity compounds the existing confusion and fails to resolve the procedural questions left unanswered by the Supreme Court's February 20 ruling. As a result, importers still have little understanding of the specific mechanics or timing for their recovery.

Emerging Consumer Class Action Risk

While the legal path to IEEPA tariff refunds remains fraught with administrative hurdles and judicial ambiguity, customer litigation risk poses an additional threat in this space.

Plaintiffs' firms have already begun filing or threatening consumer class actions against importers, alleging tariff costs were passed through to consumers after companies publicly represented that price increases were tariff-driven. Plaintiffs have asserted that they, as customers, are entitled to reimbursement from any refunds an importer obtains.

As class actions and other customer litigation efforts gain traction, companies must be diligent and careful in their representations. Plaintiffs' counsel have already begun citing public earnings call statements, press releases, and website FAQs in demand letters and pleadings. Even well-intentioned or preliminary statements about refund intentions may later be characterized as commitments or admissions. Companies that publicly signal an intent to pursue refunds, especially those suggesting refunds might be "returned to customers," may unintentionally invite follow-on litigation if recovery is delayed, partial, or ultimately not shared.

Heightened Sensitivity for Earnings Calls and Investor Communications

Proper care with customer or public-facing communications is particularly urgent for publicly traded companies. CEOs and CFOs should be carefully prepared for upcoming earnings calls. Analysts are likely to seek clarity on several fronts, including the company's intent to pursue refunds and the estimated magnitude of any potential recovery. Executives should also expect questions on whether the company plans to pass these funds to customers or use them to bolster margins and earnings guidance. Finally, leadership will be expected to address how they account for these potential refunds within their current financial statements.

Executives should take care not to make premature specific statements, which may create disclosure risk under securities laws, particularly where recovery is uncertain or contingent. At the same time, overly optimistic statements may expose companies to shareholder litigation if expectations are not met.

Careful coordination among legal, finance, investor relations, and communications teams is essential to protect against further litigation.

Accounting and Financial Reporting Considerations

Companies should also evaluate how to treat potential refunds for accounting purposes. For instance, companies must evaluate whether recording a receivable is appropriate given the current recovery uncertainties. This evaluation includes reviewing disclosure obligations for contingent assets and examining how refund strategies intersect with pricing decisions. Above all, firms must ensure complete consistency between their active litigation strategy and their public financial reporting.

There is a growing market for the sale of refund claims. If a company has sold all or a portion of its refund claims in this market, special consideration should be given to accounting for these transactions. These transactions could also complicate the public messaging around how refunds will be applied or shared with customers.

The decision to pursue recovery from the government is necessarily related to determining whether and how any recovered funds would be shared with customers. This interconnectedness means decisions in one domain may materially affect litigation posture in the other, and it is important that importers consult with their legal teams to determine the proper strategy.

Brand and Reputational Implications

Beyond litigation and securities exposure, retailers face brand risk. Public narratives that framed prior price increases as "tariff-driven" may resurface in media coverage or social media campaigns if refunds are pursued but not distributed to customers. Companies should anticipate coordinated campaigns by consumer advocates and plaintiffs' firms seeking to leverage public sentiment.

While CIT works to offer clear directives to CBP, and consequently to importers, about the status of IEEPA refunds, companies are facing investor and customer questions now. Public communications must be calibrated to reflect the substantial uncertainty that remains. CBP's promise of a more efficient system in 45 days is encouraging, but companies must remain cautious in their public posture to avoid inviting opportunistic litigation.

How We Can Help

Our global international trade team and commercial litigators are closely monitoring tariff developments and can assist clients with the following practical steps:

- **Conducting a Privileged Risk Assessment:** Evaluating refund eligibility, potential exposure to consumer claims, and securities risk in a coordinated and privileged setting
- **Preparing Earnings Call Messaging in Advance:** Developing carefully vetted language addressing refund uncertainty without overcommitting
- **Auditing Prior Public Statements:** Reviewing prior earnings calls, investor presentations, customer communications, and marketing materials referencing tariffs or price increases
- **Aligning Legal and Accounting Positions:** Ensuring consistency between refund strategy, accounting treatment, and public disclosures
- **Advising on Consumer Class Action and Shareholder Securities Litigation Activity:** Track emerging filings and demand letters to assess litigation trends and theories

For more information, please refer to our prior LawFlashes US Supreme Court Limits Presidential Tariff Powers and US-India Trade Deal Cuts Tariffs, Eases Tensions.

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Cases

- Atmus Filtration, Inc. v. United States, No. 26-01259, 2026 LX 112097 (Ct. Int'l Trade Mar. 5, 2026)
- Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026)

State Law Surveys & Regulatory Trackers

- Trump Administration Tariffs Tracker

Casey Weaver, Partner, Morgan, Lewis & Bockius LLP

Casey Weaver focuses her practice on international trade compliance, supply chain integrity, government and internal investigations, and government contracts. Her experience with and knowledge of a breadth of compliance obligations allow her to help clients efficiently navigate a complex regulatory landscape.

Casey offers creative strategies for tariff mitigation under US Customs and Border Protection (CBP) laws and regulations, including through tariff engineering, operational adjustments, and valuation assessments. Companies turn to Casey for guidance on import enforcement actions, including risk assessments, audits, investigations, detentions, pre-penalty and penalty notices, and allegations of customs fraud and tariff evasion. She further works with clients to draft ruling requests, prepare voluntary disclosures, respond to CBP outreach, and protest CBP action.

Casey advises companies on compliance with supply chain integrity laws and regulations, including the Uyghur Forced Labor Prevention Act (UFLPA) and CBP withhold release orders (WROs). She has successfully challenged and secured the release of merchandise detained by CBP. She also works with clients to conduct internal supply chain risk assessments, negotiate contractual provisions related to border detentions and delays, and create supplier codes of conduct and compliance policies regarding supply chain integrity.

Raechel Keay Anglin, Partner, Morgan, Lewis & Bockius LLP

Raechel Anglin focuses her practice on complex commercial and class action litigation and high-stakes governmental and internal investigations. Raechel has argued as lead counsel in the US Court of Appeals for the Third, Seventh, Ninth, Eleventh, and DC Circuits, and served as lead counsel in bid protest litigation in the US Court of Federal Claims and in multiple jury trials. Raechel has defended against congressional and other governmental investigations into technology firms, the music industry, consumer products companies, and major financial institutions.

Raechel regularly prepares senior executives to testify in depositions, at trial, and before Congress. She has deposed the head of a federal agency. She assists clients in strategic planning and the resolution of significant disputes before they go to litigation. Raechel also conducts confidential internal investigations for major institutions.

Raechel represents technology and mobility companies, retail and ecommerce companies, energy companies, and companies in the construction industry in high-exposure lawsuits involving contract and fraud claims, regulatory challenges, privacy claims, high-value tax issues, bankruptcy, copyright infringement, and white collar matters.

Katelyn M. Hilferty, Partner, Morgan, Lewis & Bockius LLP

Katelyn M. Hilferty is the leader of the firm's international trade and national security practice. She advises clients on a wide range of international compliance and enforcement issues, including import matters before US Customs and Border Protection (CBP), export controls under the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR), economic sanctions and embargoes administered by the Office of Foreign Assets Control (OFAC), and foreign investment reviews before the Committee on Foreign Investment in the United States (CFIUS). Katelyn provides counseling to a diverse client base, including companies in the nuclear, technology, life sciences, and financial industries.

Katelyn regularly assists clients with export control and sanctions compliance matters, including performing ITAR and EAR classification analyses; preparing license applications to the US Department of Commerce, US Department of State, and OFAC; conducting internal investigations of apparent violations and resolving related enforcement actions; writing and implementing compliance policies; and assisting with remediation measures, including leading company-wide compliance training.

Additionally, Katelyn supports clients with US customs matters. She has experience submitting ruling requests, prior disclosures, and protests to CBP, as well as petitioning for the release of seized goods. She frequently provides advice to US importers on import classification, origin determinations and marking, free trade agreements, compliance with forced labor prohibitions, and trade remedy matters. As a related matter, Katelyn often helps government contractors and subcontractors ensure compliance with country-of-origin requirements under the Buy American Act (BAA) and Trade Agreements Act (TAA).

Carl A. Valenstein, Partner, Morgan, Lewis & Bockius LLP

Carl Valenstein focuses his practice on domestic and international corporate and securities matters, mergers and acquisitions, project development, and transactional finance. He works extensively in a variety of industries, including the life sciences, telecom/electronics, renewable energy, and maritime industries, and has worked broadly in Latin America, the Caribbean, Europe, Africa, Asia, and the Middle East.

Carl co-chairs the firm's Cuba initiative. He is the former leader of the Boston office corporate and business transactions practice, former co-chair of the firm's ESG and sustainability advisory practice, and previously served as co-chair of the International Section of the Boston Bar Association.

Carl was named to *Foreign Investment Watch*'s Top Advisors list for 2025, which recognizes leading legal, financial, compliance, and communications professionals who provide advice concerning national security review of foreign investments in the United States and overseas.