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Insights

IMPORTERS WHO PAID IEEPA TARIFFS THAT WERE LATER RULED UNLAWFUL SEEK REFUNDS

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Markets plunged earlier this year upon President Trump's announcement of steep tariffs on imports to the U.S. from its trading partners, at rates varying from 10% to 125% depending on the country of the imported goods' origin. The administration announced these "reciprocal tariffs" in Executive Orders 14257, 14266, 14193, 14194, and 14195, citing the International Emergency Economic Powers Act ("IEEPA") as the source of the Administration's asserted authority to issue them. By some estimates, importers to the U.S. paid in excess of $16 billion this spring, on tariffs that are unprecedented in scale in modern times and are, some onlookers say, illegal.

COURT OF INTERNATIONAL TRADE DECLARES TARIFFS ILLEGAL

On May 28, 2025, the U.S. Court of International Trade ("CIT"), an Article III court with nationwide jurisdiction over trade issues that is based in New York, declared these tariffs unlawful because they "exceed any authority granted to the President by the IEPPA to regulate importation by means of tariffs" and do not reflect a policy rationally tailored to "deal with the threats set forth in" the executive orders. *V.O.S. Selections, Inc. v. United States* SLIP OP. 2025-66 1, 48 (C.I.T. 2025). The CIT reasoned that circumscribing the President's authority under IEEPA to preclude the challenged tariffs was necessary because "whether the court views the President's actions through the nondelegation doctrine, through the major questions doctrine, or simply with separation of powers in mind, any interpretation of IEEPA that delegates unlimited tariff authority is unconstitutional." *Id.* at 28. The CIT's decision concluded that "[t]he challenged Tariff Orders will be vacated and their operation permanently enjoined." *Id.* at 48.

The government appealed the CIT's decision on May 28, 2025, to the U.S. Court of Appeals for the Federal Circuit, which has exclusive jurisdiction over CIT decisions, and on May 29, the appellate court issued an administrative stay of the injunction pending fuller briefing on whether the CIT decision should be stayed pending appeal. The Federal Circuit ordered, on June 10, that the stay would continue through merits briefing. The government's merits brief is due by July 28, 2025, with oral argument to follow. Any subsequent review by the Supreme Court of the United States could follow a decision from the Federal Circuit in the appeal that is currently underway.

Because the CIT's May 28 decision vacated and enjoined future application of the tariffs on importers, if the decision is affirmed, the tariffs, in their current form, likely will come to an end. But the decision did not address whether or how importers who have paid the tariffs since they began to take effect in April, or who are forced to pay them between now and the ultimate resolution of the ongoing appeals, may recover those payments if the CIT's decision is upheld.

IMPORTERS SEEK RECOUPMENT OF TARIFFS NOW DEEMED ILLEGAL

Importers have already commenced litigation to recover payments under the tariffs at issue. In the *V.O.S. Selections* case itself, the named plaintiff (a wine importing company) sought (among other relief) monetary damages in the amount of the company's tariff payments. The CIT has statutory authority to grant monetary damages under 28 U.S.C. §§ 1581, 1582, and 2643, pursuant to its exclusive jurisdiction to review the legality of tariffs, although the order enjoining the tariffs did not address that relief.

The class action bar lost no time in seeking tariff recoupment too. On May 29—the day after the CIT's order in *V.O.S.*—the law firm of Gerstein Harrow filed a class action complaint on behalf of a proposed class defined as "All people who paid or will pay tariffs under IEEPA imposed by the Challenged Tariff Orders." Chapter1 Compl. ¶ 38. The named plaintiff and proposed class representative, Chapter1 LLC, is a Nevada-based skincare product start-up that was forced to pay the challenged import tariffs on manufacturing equipment that the company ordered from China in April.

HISTORY SUGGESTS DIFFERENT COURSES TODAY'S TARIFF RECOUPMENT LITIGATION MAY TAKE

There is precedent for these efforts to recoup monetary damages over tariffs paid that are ultimately deemed unconstitutional or in excess of executive-branch statutory authority. In the 1995 *U.S. Shoe* decision, the CIT invalidated the Harbor Maintenance Tax to the extent it was assessed on a plaintiff who exported goods, finding it violated the Export Clause of the Constitution. The CIT further ordered, as a remedy, that the exporter was entitled to a monetary judgment constituting a refund of tariffs it paid going back two years from the filing of its complaint. *U.S. Shoe Corp. v. United States*, 907 F. Supp. 408, 421 (Ct. Int'l Trade 1995), *aff'd*, 114 F.3d 1564 (Fed. Cir. 1997), *aff'd*, 523 U.S. 360 (1998).

Just as tariff-payors have filed a class action in the current round of tariff litigation, during the pendency of an appeal from the *U.S. Shoe* decision, attorneys filed a class action seeking refunds for a class of exporters subject to the Harbor Maintenance Tax. In that case, *Baxter Heathcare*, the CIT analyzed Rule 23 class certification standards applied to a proposed class of tariff-paying entities in a litigation seeking refunds on tariffs deemed unlawful. The court held that the Rule 23(a) prerequisites to class certification were met, but that as a discretionary matter, it would decline to certify the class under Rule 23(b)(3) because it deemed the mass-claim test-case procedure the CIT

had adopted for individualized claims superior to class adjudication. *See Baxter Healthcare Corp. v. United States*, 925 F. Supp. 794, 800 (Ct. Int'l Trade 1996).

It remains to be seen whether *Baxter*'s reasoning—which relied on case-specific facts and procedural context to deny certification under a discretionary prong of Rule 23—will guide the CIT today, or if today's court will be more amenable to class adjudication on a request for tariff refunds. And as that class action question works its way through the CIT's adjudicatory process, individualized claims of litigants like V.O.S., or of other entities that may choose to opt out of the class to pursue their claims directly, may become bellwethers of what direction the courts will take on tariff-payors' rights to refunds or other relief and remedies for tariffs that were unlawfully assessed on them.

As litigation over the constitutionality and statutory validity of the Administration's tariffs progresses, importers may also seek refunds via administrative remedies under the regulations and administrative procedures of the U.S. Customs and Border Protection ("CBP"). For example, companies can file a protest under 19 U.S.C. § 1514. Companies may sue in the CIT under 28 U.S.C. § 1581(a) if CBP rejects the protest. It is unknown at this time what position the Administration and CBP will take regarding the refund-ability of tariffs paid this year, if appellate courts uphold the CIT's decision vacating them.

BCLP attorneys are closely watching tariff litigation as it progresses this year and stand ready to advise clients as to the latest developments and what it means for their business interests. For more information, contact Dan Mach or any of the contributors listed below.

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