

OPINION

What Importers Should Know if US Tariffs Are Overturned

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Since President Donald Trump took office for his second term, the tariff landscape has changed dramatically. Trump is the first US president to exercise his authority under the International Emergency Economic Powers Act (IEEPA) to impose tariffs on foreign nations in response to a national emergency. This action has not come without scrutiny, however.

On May 28, the US Court of International Trade (CIT) invalidated the IEEPA tariffs, determining that Trump's tariff actions went beyond the bounds of the limited grant of authority in IEEPA for the president to "regulate ... importation" and instead found the tariff actions to be an inappropriate exercise of "unlimited tariff authority" not granted under IEEPA. The CIT vacated the IEEPA tariffs and permanently enjoined the tariff collection. However, only a day after the CIT's decision, the US Court of Appeals for the Federal Circuit (Federal Circuit) temporarily stayed the CIT's order, allowing collection of the IEEPA tariffs while the government's appeal is pending.

Oral arguments on the merits of the case at the Federal Circuit are expected to occur by Jul. 31. Regardless of the Federal Circuit's decision, there will likely be further appeals to the Supreme Court. Additionally, a federal judge in the District of Columbia determined that Trump acted outside of his authority under IEEPA and issued a preliminary injunction blocking the government from collecting tariffs from the plaintiffs in that case. The case is currently on appeal to the DC Circuit, only furthering the uncertainty around the fate of the IEEPA tariffs.

The reciprocal tariffs imposed under IEEPA have been under a 90-day freeze, which were set to expire on Jul. 9, 2025. On Jul. 6, the Trump administration said it was extending the tariff pause to Aug. 1 (and that on Aug. 1, the tariff rates, absent a trade deal, would revert to Apr. 2 rates). With the revised Aug. 1 deadline rapidly approaching, countries are in talks with the Trump administration to mitigate potential fallout related to the tariffs. Unless they can reach trade deals with the Trump administration, some countries will face substantially increased tariffs on a wide variety of goods. Indeed, on Jul. 7, the Trump administration notified several countries, including South Korea and Japan, that they faced 25% tariffs. The administration further announced that any nations aligning themselves with the Brics group, which includes Brazil, India, China and Russia, would face an additional 10% tariff with "no exceptions."

As a result of the Federal Circuit's decision, importers would be required to pay those tariffs even while the Federal Circuit considers the case. Doing so would give rise to potential overpayment of duties depending on the fate of the tariffs at the appellate court level. Given the uncertainty, it is vital that importers understand the tariff liquidation process and avenues for recourse in the event of overpayment.

The Liquidation Process

Customs liquidation is the final determination of duties owed on imported goods or drawback entries. Liquidation generally occurs in the last phase of the import process and finalizes the amount owed to US Customs and Border Protection (CBP) based on the declared value and applicable duty rates. The duties initially paid upon entry of goods into the US are considered an estimate until liquidated. CBP liquidates an entry within one year after submission (unless otherwise extended) and makes a determination as to whether the estimated amount paid by the importer upon entry was accurate. Upon completion of the liquidation, if the final amount owed is lower than what was paid in the estimate, CBP will issue a duty refund or advancement.

Once an entry has been liquidated by CBP, the entry process is considered final. At that point, the only available remedy for an importer is to file a protest. If an importer chooses to file a protest, it must be filed within 180 days of the liquidation date. Once a protest has been filed with CBP, the port director (or an official from CBP headquarters if an application for further review is made and accepted) has up to two years to allow or deny, in whole or in part, the protest. If the protest is allowed, CBP will refund any duties or tariffs collected in excess. If the protest is denied, the director will issue written notice of denial explaining the reasons for denial. The importer can contest the denial by filing a civil action in the CIT within 180 days after the date the denial was sent.

Key Takeaways

The courts may prescribe an approach that preserves the right for importers to recover overpayment of duties if the president's exercise of tariff authority under IEEPA is ultimately deemed invalid. Additionally, CBP might be required to suspend liquidation pending final resolution of the case. Alternatively, importers can make a request that liquidation be extended if they can establish that "good cause" exists. While it is unknown whether CBP will treat the pendency of the IEEPA litigation as "good cause" for an extension of liquidation, the agency has historically treated the existence of pending judicial and administrative determinations as meeting the "good cause" criteria.

That said, unless and until there is certainty on how potential overpayment in connection with the IEEPA tariffs will be addressed, in order to ensure that an importer's claim is preserved, importers may want to consider filing a protest after any liquidation decision related to goods subject to the IEEPA tariffs in order to ensure that their claims are protected. Additionally, given that recovery of potentially overpaid duties might not occur until an uncertain date potentially far in the future, parties to contractual agreements should carefully consider cost-sharing mechanisms for tariffs, allocation of funds in the event of a refund, and responsibilities for legal costs associated with protests and potential tariff recovery efforts. It is also important to remember that while the IEEPA tariffs might be in flux, additional tariffs (e.g., tariffs on steel and aluminum) were imposed pursuant to other authorities and presently remain intact.

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