



ST&R Trade Report: Consider Filing a Lawsuit Now to Secure IEEPA Tariff Refunds on Liquidated Entries

The following analysis regarding IEEPA tariff refunds on liquidated entries is provided to our Customs Broker Members and their Importer Clients by NCBFAA Customs Counsel and Legislative Advisor of Sandler, Travis & Rosenberg, P.A.

Filing a lawsuit now before the U.S. Court of International Trade (CIT) now appears to be the surest, quickest way to obtain IEEPA tariff refunds on finally liquidated entries, which are currently ineligible for processing under the CAPE refund system. Customs brokers are advised to encourage their importer clients to contact legal counsel to consider filing on their behalf and assist with other options to preserve their right to these refunds.

U.S. Customs and Border Protection (CBP) intends to provide IEEPA tariff refunds for entries that are liquidated more than 80 days through CAPE Phase Three, which is scheduled to deploy later this month. To take advantage of this pending functionality, CBP has said that importers must:

- (1) file suit at the CIT;
- (2) obtain an importer-specific court order requiring reliquidation; and then
- (3) submit a refund request through CAPE.

CIT Action: On July 15, the CIT started issuing such orders in approximately 3,700 individual lawsuits seeking IEEPA tariff refunds. These orders require the plaintiffs to submit certain information to CBP, through specific instructions issued to each plaintiff's counsel. Once those instructions are followed, a CAPE declaration may be submitted.

These CIT orders confirm that importers of record with entries liquidated beyond 80 days **should file a lawsuit now** to take advantage of CAPE Phase Three at this time. Doing so should result in a quicker refund of IEEPA tariffs.

Importers can follow this process even for entries covered by a protest. Once an importer receives a reliquidation order from the CIT and confirms its CAPE Phase Three eligibility, protests can easily be withdrawn so the CAPE declaration may proceed.

Other Considerations: While filing a lawsuit is still not yet legally required (there is a two-year window) and administrative protests may remain a viable option for receiving refunds, clearly the CIT's actions and CBP's stated commitment to roll out CAPE Phase 3 by the end of July, starting with court plaintiffs, provide importers with a more immediate path to expedite refunds on entries liquidated beyond 80 days.

Even though the CIT continues to discuss with CBP a future CAPE phase covering protested entries, and class-action certification motions remain pending at the CIT that, if granted and upheld on appeal, may obviate the need for importers to file individual lawsuits, importers should strongly consider court action to receive IEEPA refunds now through CAPE Phase 3.

What to Do Now: Importers with entries liquidated beyond 80 days that were ineligible for CAPE Phase 1 or Phase 2 should consider acting now to file a lawsuit to expedite the IEEPA duty refund process.