

# Now & Next

Government Investigations & White Collar Alert

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## Next steps for businesses seeking tariff refunds

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Businesses face uncertainty on potential tariff refunds. Learn what steps companies should take now to protect their interests and explore recovery options.



### What's the impact?

- The path to tariff refunds remains unclear, but filing a protective lawsuit is the most viable way to protect financial interests in tariff refunds. Eligibility will depend on specific circumstances and position in the supply chain.
- Even if a company is not the Importer of Record, they could have an avenue for receiving any tariff refunds through contractual claims.

After the United States [Supreme Court ruled](#) that President Trump did not have the authority to impose costly and unpredictable tariffs based on the International Emergency Economic Powers Act (IEEPA), many businesses around the world have started to ask the question, "How can I get back the money I paid for these tariffs?" The Court did not outline a process for processing possible refunds. Importers and other businesses should seek legal advice on their position with regard to tariff payments and how they can possibly recoup any funds due.

A couple of items to consider:

## **US Court of International Trade**

If President Trump does not authorize a system to proactively refund the money—and it does not appear that he will do so—then the court that will determine if and how these funds will be returned is the US Court of International Trade (CIT). A big question is who is eligible to receive refunds. A narrow view would be that only the parties litigating in the Supreme Court will have the ability to force repayments because the Government promised to refund those parties as a concession in litigation. However, companies have filed thousands of additional lawsuits with the CIT to stake their claims for refunds. Companies with significant financial interests at stake may find that filing a suit to protect their interests is the most appropriate action no matter the eventual remedy.

## **Protests**

Another potential option is for companies to file administrative requests (protests and or post-summary corrections) with US Customs and Border Protection (CBP) seeking refunds. It is unclear whether CBP will authorize refunds in response to these filings.

## **Follow the money**

The Importer of Record paid these tariffs, which the Supreme Court has now said were unauthorized. Therefore, it is Importers of Record who have a direct claim to the refunds. Most often, the Importer of Record is a US company. Sometimes that company may be a subsidiary of a non-US parent company or the Importer of Record may be a non-US company.

## **I paid more!**

Many businesses that did not pay the tariffs directly to the government—but who had all or some of the tariff costs passed on to them—may wonder whether they would be eligible to receive a portion of the refunds. It is unlikely that any government process would provide a remedy for businesses downstream in the supply chain. However, businesses should consider their contractual position with their suppliers and customers. Businesses that agreed to pay a surcharge should determine whether those agreements included language regarding the disposition of those payments if the tariffs were found to be unauthorized.

## **Prepare for potential tariff refund opportunities**

There remains a significant amount of uncertainty regarding the path to refunds for businesses. The steps that a company will want to take to protect their interests in any refund arrangement will depend on their individual circumstances (such as the amount of money at stake, who paid

the tariff, the timing of their past imports, etc.). Companies should discuss their options with legal counsel now.

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