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**MEMORANDUM**

December 5, 2025

**BY ELECTRONIC MAIL**

FROM: Olsson Frank Weeda Terman Matz PC

RE: Customs and Trade Update: Preserve Your Rights to Potential IEEPA-Based Tariff Refunds

Our team is closely monitoring ongoing challenges to the IEEPA-based tariffs and has been advising importers on how best to preserve potential refund rights. Please note that this client memorandum provides a high-level overview of the principal options available and is for informational purposes only and is not individualized legal advice, as each importer's situation must be evaluated on its own facts and merits.

In general, importers that have paid IEEPA-based tariffs should strongly consider both initiating an action at the U.S. Court of International Trade (CIT) and preparing to file protective protests with U.S. Customs and Border Protection (CBP) to safeguard their ability to recover duties if the Supreme Court (or other courts) ultimately invalidate these measures. For additional background on the pending Supreme Court case and recommended steps to position for potential refunds, please see our previous client memorandum. Please contact our team listed above for assistance.

**Background on IEEPA tariffs**

President Trump has invoked IEEPA to impose several waves of tariffs, including the

- "Reciprocal" tariffs on goods of all countries except Canada and Mexico
- "fentanyl" related tariffs on Chinese-, Canadian-, and Mexican-origin goods
- 40% tariffs on Brazil (imposed in addition to reciprocal tariffs)
- 25% "secondary" tariffs on Indian-origin goods (imposed in addition to reciprocal tariffs) stemming from India's continuing purchases of Russian oil.

Federal courts have already held that key IEEPA tariffs exceed the statute, and the Supreme Court has fast-tracked review of whether IEEPA authorizes these duties at all and, if so, whether that delegation is constitutional. If the Supreme Court agrees that these tariffs are unlawful, the government will almost certainly be required to stop collecting them, but there is no guarantee that refunds will be available for past entries.

**Why affirmative action is needed**

When a trade remedy is struck down, importers generally do not receive refunds *unless* they have preserved their rights through the mechanisms Congress set out in the customs laws or obtained their own judgments.

In the current IEEPA litigation, both government and private parties have acknowledged that, absent individual judgments or a legislated/agency refund program, CBP will likely invoke the finality of liquidation under 19 U.S.C. § 1514 to resist paying refunds on liquidated entries.

Recent high-profile cases, including Costco's new CIT action, underscore that large importers are not assuming an automatic refund will follow an adverse Supreme Court ruling for the government.

**Potential refund pathways**

If the Supreme Court ultimately strikes down one or more IEEPA-based tariff, there are three paths by which importers might recover duties paid:

- Administrative protests and post-summary corrections
- Individual lawsuits at the CIT ("me too" cases)
- A simplified refund program established by the courts or Congress

**Protests and PSCs**

For IEEPA tariff entries that have liquidated, the usual vehicle to preserve refund rights would be a timely protest under 19 U.S.C. § 1514, filed within 180 days of liquidation. For entries that have not yet liquidated, importers might be able to use post-summary corrections (PSCs) to flag and preserve their claims that the IEEPA duties are unlawful. However, it's likely CBP will deny the filing because until the Supreme Court rules there is no basis to correct the entry and file a new one without declaration and payment of IEEPA tariffs. We believe the best use of PSCs is to correct unliquidated entries once the Supreme Court decision.

As we discuss more fully below, however, we believe there is a substantial question as to whether the legality of the IEEPA tariffs (and their imposition upon any particular entry) is a matter which is subject to protest. Therefore, while we believe (again as discussed more fully below) that filing protests is an important part of a "belt and suspenders" approach to preserving rights to potential refunds, we do not recommend solely relying upon this method.

**"Me too" CIT lawsuits**

Separately, importers may file their own actions in the CIT challenging the assessment and collection of IEEPA tariffs on their entries and seeking both declaratory relief and refunds. These "me too" suits can track the core legal theories now before the Supreme Court—namely, that IEEPA is a sanctions statute that does not authorize tariffs, and that reading it to confer such sweeping tariff authority would raise serious nondelegation and "major questions" concerns.

Unless and until the courts rule otherwise, we believe that any relief granted by the Supreme Court most likely will be limited to the individual plaintiffs before it in that litigation, and that importers will therefore need to file individual suits at the CIT to obtain their own tariff refunds.

**Possible simplified refund procedure**

A third possibility is that, in response to a Supreme Court ruling, Congress and/or the courts will create a simplified refund program, similar to what occurred after the Supreme Court invalidated Harbor Maintenance Fees on exports in the 1990s. Under that model, a uniform refund process was developed so that exporters did not need to litigate entry-by-entry to obtain relief. At present, however, no such mechanism has been announced or authorized for IEEPA tariffs; importers therefore cannot rely on this option and should pursue existing protest and litigation procedures.

**Why both protests and a CIT suit are advisable**

There is a threshold legal question as to whether the President's decision to impose tariffs under IEEPA is a "decision of Customs" that is protestable under § 1514 or whether it lies outside protest jurisdiction because the decision was made by the President, not CBP

Some commentators question whether a protest can validly raise ultra vires or constitutional challenges to presidential tariff authority, which traditionally are addressed through direct judicial review rather than administrative protest. At the same time, the penalty for failing to file a protest on matters which actually are protestable is severe: the courts have held that importers cannot obtain judicial relief on matters which were protestable, and CBP and the Department of Justice routinely argue that importers should have filed protests to challenge duty assessments.

In light of this uncertainty, importers that have meaningful IEEPA-tariff exposure are best positioned if they "cover all bases" by:

- Filing protective protests (and PSCs for unliquidated entries) wherever arguably available, and
- Filing their own CIT suit to assert that the IEEPA-based tariffs are unlawful and to seek entry-specific relief.

**Timing and immediate action items**

Timing for both remedies is critical.

**Protests**

Protests must be filed within 180 days of the date of liquidation. For the earliest entries subject to the IEEPA-based tariffs (the China fentanyl tariffs), entries should begin liquidating under CBP's ordinary 314-day liquidation cycle within the next few weeks; entries subject to other IEEPA-based tariffs (Mexico and Canada fentanyl tariffs and reciprocal tariffs) should begin liquidating in early 2026. There are reports, however, that CBP has been liquidating IEEPA-tariff entries earlier than the standard 314-day cycle, which means the 180 day protest period may have already begun to run for certain entries.

Importers should immediately ascertain the liquidation status of all entries on which they have paid IEEPA-based tariffs and prepare to file protests of all liquidated entries. As part of this process, importers should prepare a standard set of documents to support each protest package, tailored to the issue (e.g., IEEPA-based tariffs versus classification or valuation disputes):

- Track Entry Liquidation Dates Using CBP's Automated Commercial Environment (ACE) Portal. Use it as a tracking list or internal log capturing entry numbers, liquidation dates, protest filing deadlines, and confirmation of submission and receipt.
- Entry summary (CBP Form 7501) for each entry, showing the assessment of the challenged duties.
- Proof of duty payments (e.g., broker statements, duty reconciliation statements, or accounting records) demonstrating the amount at issue was actually paid.
- Entry/line-level commercial documents: commercial invoices, packing lists, bills of lading/air waybills, and any prior determination or CBP communication relevant to the decision.
- Any classification, valuation, origin, or other supporting analyses or rulings (e.g., prior CBP rulings, Headquarter rulings, internal advice response

**CIT "Me Too" Lawsuits**

Unlike the protest route, importers do not need to wait for their entries to liquidate to file "me too" lawsuits before the CIT. While the deadline for filing such lawsuits will not expire for some time, importers should give serious consideration to filing individual lawsuits asap to address a potential gray area regarding recovery of refunds for entries which have liquidated.

Specifically, if CBP's collection of IEEPA tariffs is in fact a non-protestable matter, the sole route to recovery (absent a specific refund process mandated by the courts and/or Congress) will be through filing individual lawsuits at the CIT. However, neither the Court of Appeals for the Federal Circuit nor the Supreme Court have directly addressed the issue of whether the CIT has the authority to order CBP to provide refunds of entries which have liquidated but which were not able to be protested. While we believe the better view is that the CIT has the authority to order such refunds, there is currently no binding precedent on this issue.

A number of importers have requested CBP to extend liquidation of their entries to manage this potential issue; however, to our knowledge CBP has denied all such requests. Therefore, a

variety of importers have filed "me too" IEEPA suits at the CIT to (among other purposes) serve as a vehicle for a request to the CIT to enjoin CBP from liquidating their entries on which they have paid IEEPA-based tariffs. We believe that this was one of the primary factors driving the filing and timing of the Costco CIT "me too" lawsuit.

As noted above, under CBP's customary 314-day liquidation cycle, the earliest entries subject to China fentanyl tariffs should begin liquidating shortly (most likely, on or after December 15, 2025, although some entries may have been liquidated earlier if CBP liquidated them "out of turn"). While we note that extending the liquidation of entries comes with potential downsides (including, for example, potential issues with importers' customs bonds and the potential for CBP to impose additional duties if, for example, those entries subsequently become subject to AD/CVD duties), importers should give strong consideration to filing CIT suits as soon as possible.

The previous memoranda sent discussing presidential actions regarding these fast-moving trade developments are:

1. American First Trade Policy, Jan. 20, 2025
2. U.S. Imposes Tariffs on Mexico, Canada, and China, Feb. 2, 2025
3. Update: U.S. Imposes Tariffs on Mexico, Canada, and China, Feb. 3, 2025 (Canadian/Mexican tariffs suspended; Effective date of 10% tariff on products of China and Hong Kong)
4. Update on Trade War, Feb. 5, 2025(China's Response to New U.S. Tariffs, Impacted Industries, Potential Forthcoming U.S. Trade Activity, and Tariff Mitigation for Machinery and Parts of Machinery for Agricultural and Horticultural Use)
5. Update on Trade War: U.S. Imposes Tariffs on Steel and Aluminum, Response from Targeted Countries, and China Imposes Retaliatory Tariffs, Feb. 12, 2025
6. Update on Trade War: U.S. Releases Lists of Additional Derivative Articles of Steel and Aluminum Which Will be Subject to Section 232 Tariffs, and Issues a Presidential Memorandum on Reciprocal Trade and Tariffs, Feb. 17, 2025
7. Update on Trade War: U.S. to Move Forward with 25% Tariffs on Mexico and Canada Products and Double Tariff on Chinese-Origin Products to 20%; Section 232 Investigation on Copper Imports; USTR Requests Comments, Feb. 28, 2028.
8. Trade War Update, U.S. Tariffs on Canadian and Mexican Origin Goods; Increase in U.S. Tariffs on China; New Section 232 Tariffs on Derivative Articles of Steel and Aluminum Go into Effect; Tariff Investigations on Timber, Mar. 4, 2025.
9. Trade War Update: New Section 232 Tariffs on Derivative Articles of Steel and Aluminum Go into Effect Today – March 12, 2025.
10. Trade War Update: U.S. Imposes Automotive Tariffs; "Secondary Tariffs" on Countries Importing Oil or Gas from Venezuela; CBP Issues FAQs on Steel and Aluminum Derivatives; April 2 Reciprocal Tariff Actions; and Anticipated Sectoral Tariffs on Pharmaceuticals and Lumber, March 29, 2025.
11. Reciprocal Tariffs and other tariff actions taken on Tariff Liberation Day, April 3, 2025.
12. Section 232 on Pharmaceuticals, Semiconductors, Critical Minerals, Electronic goods, FAQ; April 17, 2025.

13. Stacking Tariffs, De Minimis Changes, Auto Tariff Adjustments, Section 232 Inclusion Process, CBP's IEEPA FAQ Update, CBP Summit, and Potential 100% Tariff on Films May 7, 2025.
14. 90-Day Pause for 125% IEEPA China Tariff UK-US Fair Trade Deal, and Trade Negotiations with other Nations, May 12, 2025.
15. OFW Memo - Trade War Update CIT Ruling On IEEPA Tariffs and Subsequent Actions, June 2, 2025.
16. Section 232 Tariffs on Steel and Aluminum and their Derivatives Double to 50% Effective June 4, June 5, 2025.
17. Trade War Update: Terms of the U.S.-U.K. Deal and other Trade Updates, June 19, 2025.
18. US Trade Deals Announced with Indonesia Japan Philippines_July 25 2025.
19. Trade Update: October 15, 2025-November 5, 2025, November 5, 2025.
20. OFW Memo - Customs and Trade Update_SCOTUS IEEPA Oral Argument and Potential Refunds Options _Nov 6, 2025

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We will continue to monitor this situation closely and will report all significant developments. In the interim, please do not hesitate to reach out to us with questions or requests for additional information at Jessica Rifkin (jrifkin@ofwlaw.com) or Denise Calle (dcalle@ofwlaw.com).