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MEMORANDUM

March 25, 2026

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: IEEPA Tariff Refunds – Recent Developments

Please be advised that we continue to actively file refund lawsuits at the CIT and protest entries on behalf of clients who have elected to proceed now, rather than waiting for CAPE (CBP's proposed ACE refund functionality) to be fully implemented. The Government has stated in multiple CIT cases that litigation is currently required to secure refunds, and Judge Eaton's order directing CBP to provide refunds to all importers carries a high likelihood of appellate scrutiny. We will explain further below.

First, during a March 4, 2026 CIT hearing, the Government stated: "It is not our position that every single entry and every importer will get a refund. Our position is that you have to file a claim in this court which is why over 2,000 companies have filed claims." While Judge Eaton nevertheless ordered refunds for all importers (and then suspended the "immediate effect" of his order to allow CBP to build the CAPE functionality to provide refunds), CBP has emphasized the administrative and logistical challenges of issuing IEEPA tariff refunds, citing the volume of affected entries and system limitations. Moreover, Judge Eaton's order covers only IEEPA tariff entries that are unliquidated or where the liquidation has not yet become final (are still within the 90 day period following liquidation during which CBP can voluntarily reliquidate them) and does not at this time cover other entries. Judge Eaton's order may very well not be the final word on the subject of refunds, as the Government has the right until early May to appeal it.

In parallel, while CBP's reported CAPE progress to date has been deemed "satisfactory" by Judge Eaton, his March 20 order reinforces that importers must continue monitoring IEEPA liquidations and filing 180-day protests under 19 U.S.C. § 1514, as it states that "no resolution was reached" with CBP to date on the CAPE treatment or eligibility of entries as to which liquidation has become final.

Although the CIT statute of limitations extends to February 2027, credible jurisdictional risks make prompt filing prudent; CBP's CAPE work continues but substantial mass processing and consolidation phases remain, driving the CIT docket past 3,000 cases.

In sum, because substantial uncertainty as to the route to refunds still remains, the safest strategy remains "belt and suspenders": file CIT suits now and protest liquidated IEEPA entries nearing deadlines.

What Importers Should Do Now

In light of the Supreme Court decision, CBP's evolving CAPE implementation, and the Government's litigation posture, we recommend that importers take the following immediate actions:

1. **File suit in the CIT**
   We encourage all importers impacted by the IEEPA tariffs to consider filing a court challenge in the CIT as soon as possible, especially if your company has entries that:
   1. Are beyond the 90 day period for CBP voluntary reliquidation;
   2. Are beyond the 180 day protest period;
   3. Are subject to AD/CVD, drawback, or reconciliation programs, which are excluded from CAPE Phase 1 and will require special handling.

   Filing suit also aligns with DOJ's stated view that importers must "file a claim in this court" to recover refunds and positions your company alongside the more than 2,000 importers that have already filed cases.

2. **Preserve rights through protests where appropriate**
   Last week, on March 20, Judge Eaton issued a significant new order in the Atmus Filtration IEEPA tariff refunds case, clarifying that importers should continue monitoring IEEPA entry liquidations and filing protests on liquidated entries approaching the 180-day deadline under 19 U.S.C. § 1514 since "no resolution was reached" in last week's closed-door hearing with CBP regarding reliquidation of final entries. The Order also amended his prior refund directives to explicitly *include* the 40% Brazil tariffs and 25% Russian Oil tariffs on India imports, resolving prior uncertainty about CAPE coverage for these programs.

   For liquidated IEEPA entries that are approaching the end of the 180-day protest period, we are assisting importers to timely file protests in addition to CIT lawsuits. This parallel approach ensures that rights are preserved under both the CIT litigation track and CBP's administrative protest framework, particularly for entries that may fall outside the initial CAPE phases or that raise unique factual or legal issues.

3. **Create an ACE account immediately**
   ACE is the primary system for the international trade community to submit import and export data to CBP and other government agencies, and it is the platform CBP will use to roll out the CAPE claim portal and to process IEEPA refunds. ACE is also the only way for importers to access the ACH application, which must be completed to receive refunds from CBP. Importers that do not already have ACE access should initiate account creation promptly, as internal approvals and setup can take time.

   We are assisting importers to create ACE accounts, train on how to generate and analyze reports, and validate ACH is operating.

4. **Set up your U.S. bank account in ACE to receive ACH refunds**
   As of February 6, 2026, CBP no longer issues any refunds by paper check, unless a waiver has been approved; all standard refunds are made electronically via ACH. At present, CBP has indicated that approximately 330,566 importers have paid IEEPA duties or deposits, but only about 21,423 entities have completed the set-up process to receive refunds electronically, creating a substantial risk that many importers will not be ready when CAPE refunds begin to flow. Instructions for ACH setup are available here: https://ofwlaw.com/cbp-electronic-refunds-interim-rule-what-importers-must-do-by-feb-6/

Information Needed to File Suit

If you wish to engage us to represent your company in recovering IEEPA duties it has paid, please contact our team and provide the following information to expedite filing your lawsuit in the CIT:

1. **Importer of Record (IOR) information** (as listed on CBP Form 7501)
   - Legal name of the company.
   - Address.
   - FEIN number.
   - Phone number and email address for primary company contact.
   - One or more sample entry summaries (CBP Form 7501) where IEEPA duties were paid.
2. **Type of Imported goods**
3. **Questions for CIT corporate disclosure and related forms**
   - Does the IOR have a parent corporation?
   - If yes, identity of the parent corporation (even if not publicly owned).
   - Identification of:
     - All publicly owned companies owned by the IOR;
     - Any publicly held company with a 10% or greater ownership interest in the IOR;
     - Any publicly owned affiliate of the IOR and the relationship between the IOR and each such company.
   - Whether any third party is paying for the litigation.
4. **Estimate of expected refunds**

- A preliminary estimate (even if approximate) of total IEEPA duties and duty deposits paid, to assist with case scoping and strategy.

5. **Information for the engagement letter**
   - Company name, address, telephone, and fax number.
   - Name, title, address, telephone, fax, and email address of the company officer who will sign the engagement letter.
   - Name, mailing and email address, and phone number of the person responsible for processing invoices.

We will continue to monitor this situation closely, including further developments in the CIT, CBP's CAPE implementation, and any appeals, and we will report all significant developments. In the meantime, please do not hesitate to reach out to us with questions or requests for additional information, or for assistance in preserving your company's right to duty refunds.

Please send the requested information to both Denise Calle (dcalle@ofwlaw.com) and Jessica Rifkin (jrifkin@ofwlaw.com).

OFW:jrr/dc