

Alert | International Trade/Mergers & Acquisitions



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Update on M&A Considerations Following Supreme Court Invalidation of IEEPA Tariffs

On Feb. 20 2026, in the consolidated case *Trump v. V.O.S. Selections and Learning Resources, Inc. v. Trump*, the U.S. Supreme Court struck down President Donald Trump’s administration’s tariffs under the International Emergency Economic Powers Act (IEEPA), which include the “reciprocal” and “fentanyl” duties imposed on imports from most countries. In a 6-3 decision, the Court sided with the lower courts, holding that the Trump administration exceeded its authority under IEEPA.

In the opinion, Chief Justice John Roberts stated that “IEEPA contains no reference to tariffs or duties. The Government points to no statute in which Congress used the word ‘regulate’ to authorize taxation. And until now no President has read IEEPA to confer such power.”

The decision may open the door to billions in refunds. Pursuant to 28 U.S.C. § 1581(i), the CIT can order U.S. Customs and Border Protection (CBP) to reliquidate entries and provide refunds.

Refund Rights in M&A Transactions

As identified in [our prior GT Alert](#), parties negotiating purchase agreements may wish to expressly address which party is entitled to any refunds of tariffs attributable to pre-closing periods (including any other possible refunds that may arise from new tariffs imposed based on other statutory authority, to the extent such tariffs are subsequently ruled invalid). Given the uniqueness of the circumstances and the potential size of refunds for certain importers, instead of relying on standard post-closing tax covenant provisions typically negotiated in purchase agreements, M&A parties and their advisors may consider

developing standalone provisions to address these particular refunds with specificity. In addition to addressing which party is entitled to the refunds, these provisions might also specify which party has the obligation to collect the refunds, what level of efforts the obligated party must apply (e.g., commercially reasonable efforts, reasonable best efforts, etc.), how long such party must pursue the refunds, and whether, and the extent to which, the collection costs may be set off against such refunds.

Preparing for the Refund Process: Considerations for Importers

- CBP may issue an administrative notice outlining a streamlined process for refunds.
- To be best positioned to quickly pursue any applicable refunds, importers may wish to:
 - Download relevant data from CBP’s Automated Commercial Environment portal for entries made under IEEPA tariff codes. Relevant information includes entry numbers, dates, and the specific amounts of IEEPA duties paid;
 - File an action in the CIT covering all entries where IEEPA duties have been paid; and
 - File protective protests with CBP within the 180-day protest period for entries that have been finalized or “liquidated.”

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