

Managing the Aftermath of the U.S. Supreme Court's Historic IEEPA Tariff Decision

PART I: Understanding the New Tariff
Regime and Protecting Your Company's
Rights to IEEPA Tariff Refunds



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Hillary conducts domestic and cross-border investigations resulting from internal reporting or in connection with enforcement actions by the U.S. Department of Justice and other state and federal agencies. She advises clients on numerous matters, including SEC/DOJ securities issues, the False Claims Act, State enforcement actions, and more.

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- Understanding the Supreme Court's Historic IEEPA Tariff Ruling
- What Companies Should Do Now
 - What's Next for IEEPA Tariff Refunds?
 - What Protective Steps Should Importers Consider?
 - Filing §1581(i) Actions
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The Decision: 6–3 Invalidating IEEPA Tariffs

- In a **6–3 decision**, the U.S. Supreme Court held that the President lacked statutory authority under the International Emergency Economic Powers Act (IEEPA) to impose the broad-based tariffs.
- **Immediate Operational Impact**
 - The IEEPA tariff program was invalidated
 - Global, Reciprocal, Fentanyl, Miscellaneous tariffs — all revoked by Executive Order to comply with the Court’s rulings
 - Customs and Border Protection (CBP) ceased collecting IEEPA tariffs as of **February 24, 2026**
 - Approximately **\$160 billion** in duties are now potentially subject to refund litigation



Why the Court Struck Down the Tariffs

- Six Justices agreed IEEPA does **not** authorize broad tariff programs
 - Affirming Court of Appeals for the Federal Circuit’s August 2025 ruling
- **Core Opinion:** Chief Justice Roberts, joined in part by Sotomayor, Kagan, Jackson, Gorsuch, and Barrett, concluded:
 - IEEPA does not reference tariffs — let alone expressly authorize tariffs
 - “Regulate” means to control or govern, not raise revenue
 - Historically, no president has used IEEPA to impose tariffs
- **Additional Reasoning**
- Chief Justice Roberts, joined by Gorsuch and Barrett, emphasized the “major questions” issue (i.e., delegation of major authority requires clear congressional authorization)
- Justices Kagan, Sotomayor, and Jackson relied on conventional statutory interpretation (plain text and context)



The Dissenting Justices

- Three Justices would have upheld the tariffs:
 - Justice Kavanaugh (joined by Thomas and Alito)
 - Justice Thomas (separate dissent)
- Their reasoning:
 - IEEPA’s emergency powers are intended to be broad
 - “Regulate” can include tariff mechanisms
 - Courts should defer to the Executive in foreign economic emergencies



What the Court Did *Not* Decide: Refunds

- The issue of whether IEEPA allows tariffs is concluded, but the issues of how refunds will be handled or the timing of refunds is still completely open
- Only the dissent mentioned refunds: “[The Government] may be required to refund billions of dollars to importers who paid the IEEPA tariffs, even though some importers may have already passed on costs to consumers or others.”
- The Court did **not** determine:
 - Whether importers are entitled to refunds
 - Whether relief applies universally or only to plaintiffs
 - Whether administrative exhaustion is required
 - The mechanism for repayment
- The refund issue was instead remanded to the Court of International Trade (CIT)

Side Notes

- Treasury Secretary Scott Bessent stated the Administration “will follow the court’s direction” regarding refunds
- Various legislation proposed to require refunds, often starting with small businesses



Will the Government Fight Back Against Refunds?

- Before the CIT, the Department of Justice (DOJ) was willing to stipulate that it would not oppose refunds, following a final and unappealable order, to reliquidate entries
- Although this statement seems broad, it actually leaves a lot of wiggle room for the Government and open questions
 - Not the same as stipulating that it will refund all IEEPA tariffs
 - Leaves open how the vast majority of importers who have not individually filed tariff actions will be treated
 - Leaves open whether there will be an administrative refund mechanism and, if so, whether it will be on an opt-in basis
 - Leaves open whether protests against liquidation will be filed
 - Does not address timing



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The Refund Window Is Open — But Uncertain

- The Supreme Court invalidated the IEEPA tariffs — but it did **not** establish a refund mechanism
 - Approximately **\$160 billion** in duties are at stake.
 - A large number of entries (informal entries, etc.) have liquidated
- **Key Unknowns:**
 - Will refunds be automatic?
 - Is a nationwide injunction or nationwide relief permissible?
 - Will relief be limited to plaintiffs?
 - Will administrative exhaustion be required? Will protests be required?
 - Will the Court retain an active oversight role?
 - How will CBP process claims?
 - How long will repayment take?
- The litigation now moves to the CIT to answer these questions



Three Strategic Paths for Importers

- Importers currently face four options:
 1. File a protective action at the CIT under 28 U.S.C. §1581(i)
 2. Pursue administrative remedies through CBP
 - Post Summary Corrections (PSCs) for unliquidated entries
 - Protests for liquidated entries
 3. Wait for government guidance; administrative solution
 4. Consider selling claims

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Implement your own compliance magic by using Post-Summary Corrections to make errors disappear within 300 days of entry.

File a Protective Action Under § 1581(i)

- **Our Recommendation:** Larger importers should consider filing a protective action at the CIT under §1581(i)
- Why?
 - Independent oversight before Article III judge
 - Creates alternative route to recovery
 - Is a simpler avenue to relief
 - Likely creates faster route to recovery
 - Avoids potential issues with continuous entry bond
 - Creates greater certainty



Administrative Remedies: PSCs & Protests

- We have some clients who are either testing the waters or are taking a “belts and suspenders” approach
 - Filing **Post Summary Corrections (PSCs)** for unliquidated entries
 - Filing **Protests** for liquidated entries
- These steps may be prudent — but they are not risk-free
- Uncertainties include:
 - Whether CBP will grant PSCs
 - Whether protests will be denied pending litigation
 - Whether exhaustion will be deemed mandatory
 - Potential impact on continuous entry bond
- Still Possible: Administrative may set up its own procedures, similar to HMF process



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Other Steps to Prepare for Potential Refunds

- Steps for Importers Who Have Paid IEEPA Tariffs
 - **Step 1:** Identify the full universe of IEEPA tariffs paid
 - Identify all importers of record
 - Mine ACE Data (e.g., 9903.01/9903.02 series)
 - Create centralized entry tracker
 - **Step 2:** Track liquidation and protest deadlines
 - **Step 3:** Track refund developments and steps to secure refunds
 - Sign up for CSMS alerts
 - Follow Federal Register and EO announcements
 - **Step 4:** Ensure you are Customs compliant and audit ready
 - **Step 5:** Set yourself up to validate complete and accurate payment of IEEPA tariff refunds

Strategic Takeaways

- To date, refunds are not automatic
- The CIT will determine scope and mechanics
- Filing under §1581(i) provides the strongest procedural protection
- Administrative filings should be used at a minimum to preserve rights for non-filers
- Market monetization options exist — but require careful diligence
- The companies best positioned will be those that act early



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Filing a Protective Action: What Is Required

- To file a protective action under 28 U.S.C. §1581(i), importers must demonstrate:
 - The claim arises from federal laws governing tariffs or Customs administration
 - No other jurisdictional avenue is adequate
 - The importer suffered financial injury (i.e., paid IEEPA duties)
 - The action is timely
- The case will be filed in the Court of International Trade
 - The Supreme Court’s remand on refund issues — as well as continued acceptance of filings by the CIT — strengthens the argument that jurisdiction remains appropriate under § 1581(i)



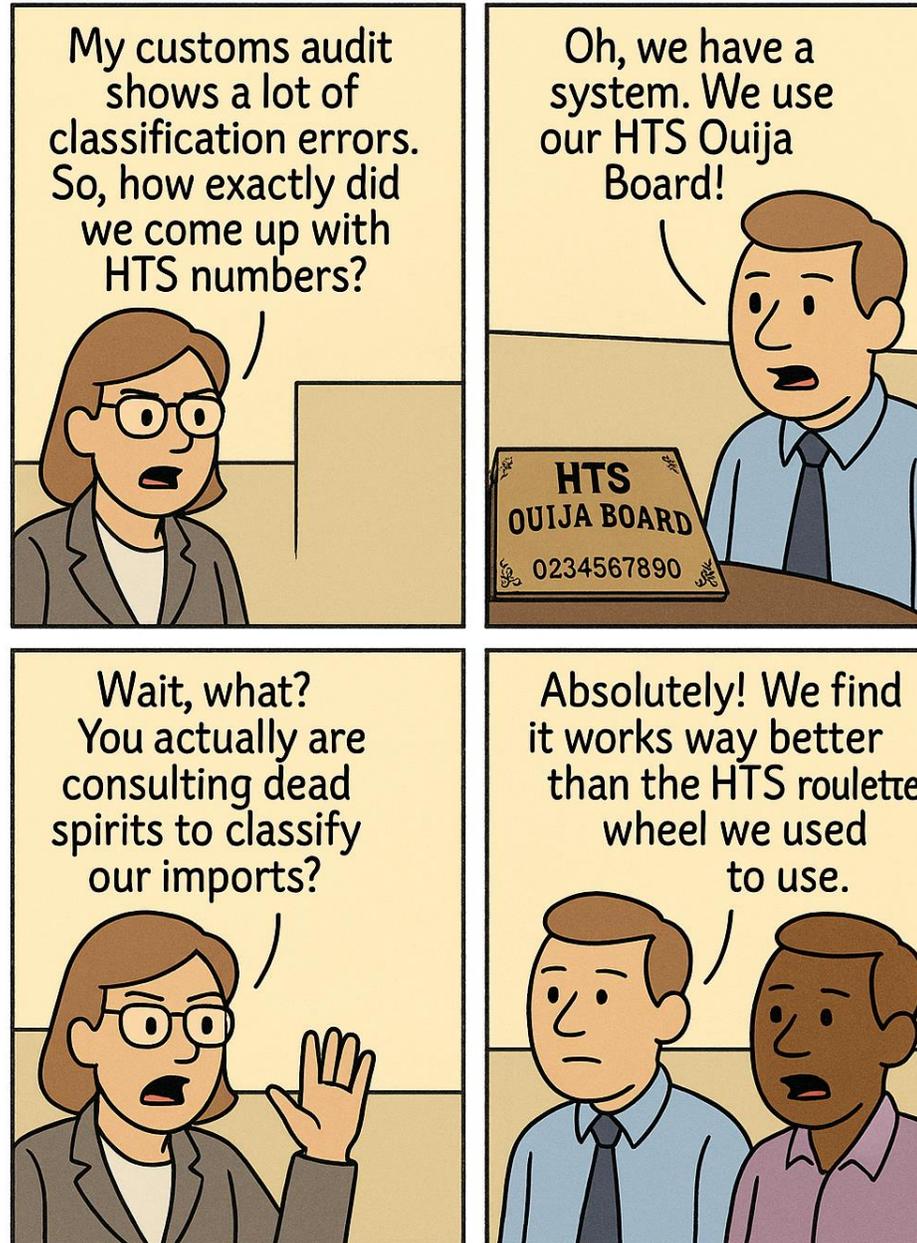
What Importers Must Provide

- To file for refunds under §1581(i), companies need to provide:
 - Importer's parent corporation(s), all publicly owned companies, any publicly held company with 10% or greater ownership interest, and any publicly owned affiliate of the entity, with descriptions of the relationships between the importer and each identified company
 - The principal place of business of each filing importer of record
 - The identity of the real party in interest if distinct from the filing importer
 - Whether the client already requested CBP to extend the liquidation date and whether CBP has ruled on the request
 - Whether the client already filed post-summary corrective actions regarding IEEPA entries and whether the CBP has ruled on the PSC
- Of Note:
 - Entry-level data is not required at filing
 - Can file for multiple related entities in a single filing

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The Administration's Immediate Response

Following the Supreme Court's invalidation of the IEEPA tariffs, the Administration has pivoted to a different statutory authority: **Section 122 of the Trade Act of 1974**

- Section 122 authorizes temporary import restrictions to address balance-of-payments concerns
- Under Section 122, the President may:
 - Impose temporary tariffs of up to **15%**
 - Implement quantitative import restrictions
 - Act without a full investigative process
 - Maintain the measures for up to **150 days** without Congressional approval
- Historically, Section 122 has been used sparingly; it is designed as a short-term stabilization tool



Current Tariff Rate Under Section 122

- The recent Executive Order sets tariffs at **10%** under Section 122 authority
- However, President Trump publicly stated over the weekend that the rate may increase to **15%**, the statutory maximum
- This creates:
 - Continued pricing volatility
 - Ongoing supply chain uncertainty
 - Potential near-term increases

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Other Tariff Developments of Note

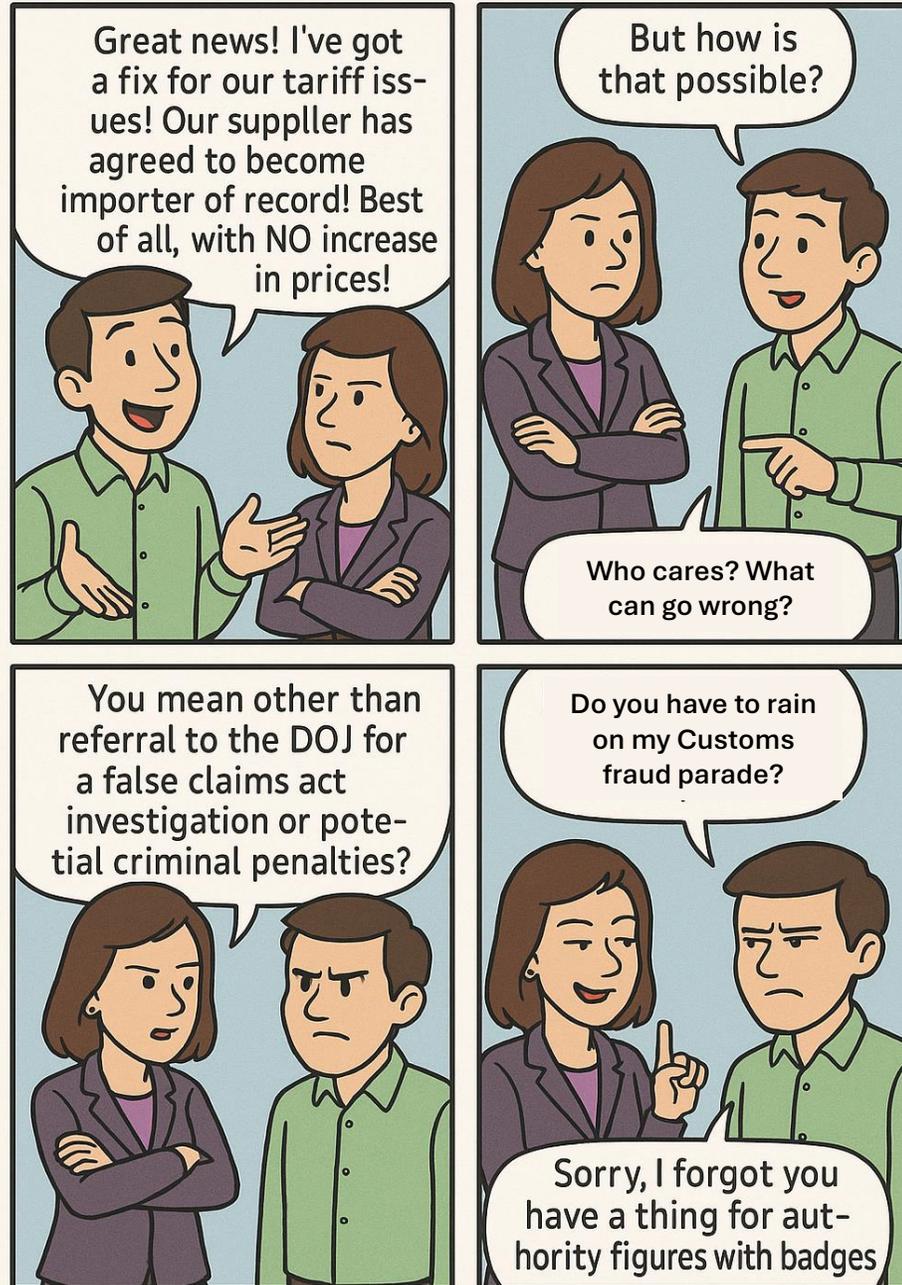
- Validity of Section 122 tariffs is unknown
- Use of secondary tariffs is up in the air
- Administration says it will work to maintain tariff framework for all countries that have struct deals
- Section 232 steel and aluminum copper content revisions on deck
- USMCA negotiations are ongoing to be completed by July 2026



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Why Section 122 Is a Bridge, Not a Destination

- Section 122 is:
 - Temporary (150-day limit)
 - Procedurally streamlined
 - Vulnerable to policy and political constraints
- It is not designed to sustain a long-term tariff regime
- The Administration is therefore expected to:
 - Accelerate existing Section 232 investigations
 - Launch new Section 232 investigations with national security angle
 - Initiate country-specific Section 301 investigations on accelerated timeframe
- Supply chain strategy must account for layered tariff risk



Section 232: National Security Tariffs

- **Section 232 (Trade Expansion Act of 1962)** allows tariffs when imports threaten national security
- Key Features:
 - Investigation by the Department of Commerce
 - National security determination
- Sector-based (steel, aluminum, autos, semiconductors, critical minerals, etc.)
 - Highly durable once imposed
- Expect:
 - Expansion into additional sectors (e.g., plastics, chemicals)
 - Faster investigative timelines
 - Broader “economic security” interpretations



Section 301: Unfair Trade Practices

- **Section 301 (Trade Act of 1974)** allows the United States to impose tariffs in response to:
 - Unfair trade practices; discriminatory foreign policies
 - Intellectual property violations
 - Technology transfer concerns
- **Key Features:**
 - Requires USTR investigation
 - Notice and comment process
 - Country-specific targeting
 - Potentially long duration
- **Expect:**
 - Accelerated or expanded investigations
 - Broader product coverage
 - Strategic targeting of key trade partners



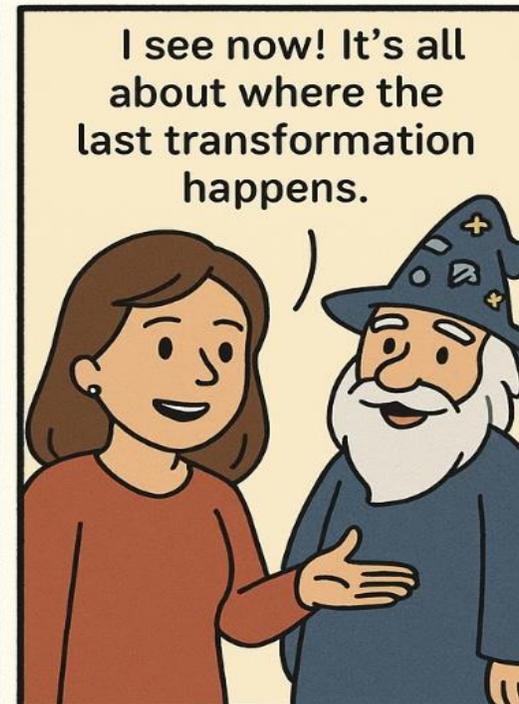
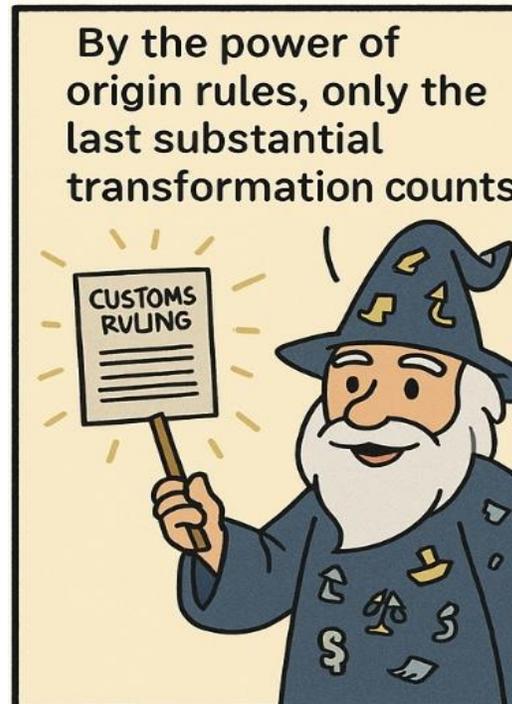
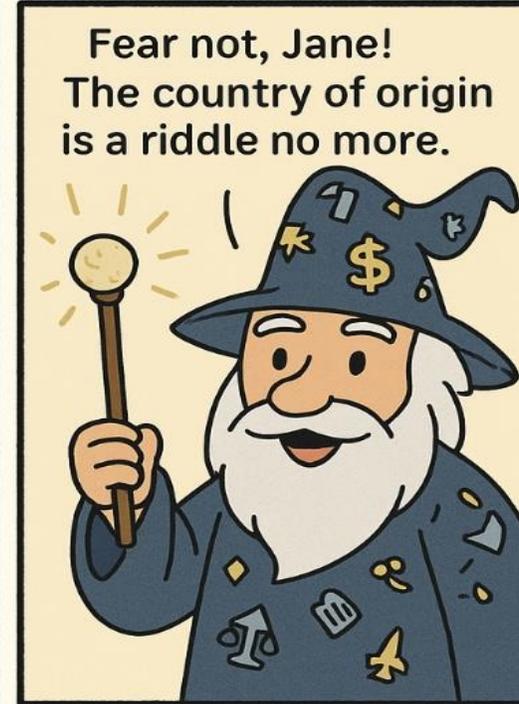
What This Means for Importers

- The U.S. remains a high-tariff, high-penalty environment for importers
- Section 122 provides short-term continuity
- Section 301 and 232 provide long-term durability
- Investigations may accelerate significantly
- Companies should anticipate sector- and country-specific escalation
- The trade landscape is changing procedurally — but not economically



Final Strategic Takeaways

- The Supreme Court ended IEEPA tariffs.
- ~\$160 billion in refunds are now at issue.
- Section 122 is a temporary bridge.
- Section 301 and Section 232 will likely form the long-term tariff backbone.
- Proactive legal and supply chain planning is critical.
- The aftermath of the IEEPA decision is not the end of tariff risk – it is the beginning of a new statutory phase.



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