Tariff Litigation & Section 122 Tariffs

March 2, 2026
By Janine M. Campanaro and Matthew S. Reddington

On February 20, 2026 the U.S. Supreme Court issued a landmark decision in *Learning Resources, Inc. v. Trump* holding that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs. The decision invalidates the reciprocal tariffs and trafficking/immigration tariffs imposed in 2025 under IEEPA and confirms that the power to impose tariffs lies with Congress. The Court did not prescribe a refund mechanism; that responsibility now falls to the U.S. Court of International Trade (CIT) and U.S. Customs and Border Protection (CBP).

Within hours of the decision, the Administration imposed a new 10% tariff under Section 122 of the Trade Act of 1974 (now 15%), effective February 24, 2026, and limited to 150 days (absent congressional action).

This creates two immediate opportunities:

1. Refund claims for prior IEEPA tariffs (available to domestic and foreign companies)
2. Advisory and planning work related to new Section 122 tariffs and potential replacement regimes (Section 232/301)

What Changed:

1. IEEPA Tariffs Invalidated

The Supreme Court ruled that IEEPA does not authorize tariff imposition.
IEEPA tariffs imposed in 2025 are unlawful *ab initio*. Refunds are not automatic. Importers must act.

2. Section 122 Tariffs Now in Effect

- 15% tariff on most imports entered on or after February 24, 2026
- Limited to 150 days (approx. expires July 24, 2026 unless extended)
- USMCA-qualified goods excluded
- “Goods on the water” exception for certain shipments loaded before Feb 24 and entered before Feb 28

This is a temporary bridge. Section 232 (tariff imposed for national security) and 301 (tariffs imposed on foreign products to counter unfair trade practices) actions may follow.

Who May Have a Refund Claim:

Those who:

- Imported goods between February 2025 and February 24, 2026
- Paid additional IEEPA ad valorem duties
- Are the importer of record
- Have entries that are unliquidated or recently liquidated
- Did not yet file a protective Court of International Trade (CIT) action
- Refund claims are available to domestic and foreign companies – the controlling factor: who is the Importer of Record on the customs entry

Important:
Only IEEPA duties are refundable — not Section 232 or 301duties.

Downstream buyers *may* have contract-based reimbursement claims.

Areas Where Offit Kurman Can Assist You:

1. Tax Litigation / Customs Litigation

- Refund analysis and quantification
- Protest filings
- Protective CIT litigation
- Federal Circuit appeals
- Strategic coordination of administrative and judicial remedies

2. Transactional Tax

- Tariff deductibility analysis
- Accounting method considerations
- Timing of refund recognition
- Contingent asset treatment
- Structuring to mitigate future tariff exposure

3. Corporate & Business Structuring

- Restructuring importer-of-record status
- Creating new import entities
- Evaluating transfer pricing implications
- Risk allocation between affiliates
- Supply chain realignment

4. Commercial Contracts

- Review of tariff pass-through clauses
- Reimbursement rights for downstream buyers
- Force majeure and change-in-law provisions
- Supplier renegotiation strategy
- Indemnification enforcement

5. Commercial Litigation

- Claims between buyers and suppliers over tariff allocation
- Breach of contract actions
- Indemnity disputes
- Class or coordinated actions among distributors

6. Restructuring & Insolvency

- Tariff-driven liquidity pressure
- Claims valuation in bankruptcy
- Recovery of tariff refunds as estate assets

Documents You Should Be Gathering:

- Entry summaries (CF 7501)
- Duty payment records
- Liquidation dates
- PSC filings
- Contracts allocating tariff responsibility
- ACE and ACH refund account status
- SKU lists affected by Section 122

Bottom Line:

IEEPA refunds are potentially significant. Deadlines are running. Section 122 tariffs create immediate planning needs.

If you import goods, manufacture overseas, distribute foreign products, or rely on cross-border supply chains, connect with Offit Kurman for consultation.