

Client Alert Update:

CAPE 3 Launched October 6, CIT Plaintiffs Can Now Recover on Finally Liquidated Entries

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October 8, 2026

As previously reported in our DCG Client Alert Update dated August 21, 2026, *Why Filing at the Court of International Trade ("CIT") Is Essential to Securing Certain IEEPA Tariff Refunds* ([LINK](#)), Consolidated Administration and Processing of Entries ("CAPE") had previously not been accepting refund declarations on entries where the respective liquidation date had passed for 80+ days ("80+ Days Liquidation Entries"). U.S. Customs and Border Protection ("CBP") has now opened CAPE 3 on **October 6, 2026**,¹ for the initial wave of 80+ Days Liquidation Entries refund declarations where the Importer of Record ("IOR") filed a plaintiff-specific complaint at the CIT and received a reliquidation order. This alert summarizes the CAPE 3 eligibility requirements, how the filing process works, and why importers who have not yet filed at the CIT should consider acting promptly.

WHAT CAPE 3 COVERS AND WHO IS ELIGIBLE

CAPE 3 accepts refund requests for 80+ Days Liquidation Entries for IORs that filed a complaint at the CIT and for which the CIT has entered a plaintiff-specific reliquidation order directing CBP to reliquidate without regard to tariffs imposed under the International Emergency Economic Powers Act ("IEEPA").² These plaintiff-specific orders are being issued by Judge Richard K. Eaton pursuant to the universal orders entered on July 15, 17, and 21, 2026 in *Freestyle World, Inc. v. CBP* (CIT No. 26-01088, the "Consolidated Lead Case"),³ directing CBP to provide relief to all IORs that paid IEEPA tariffs. The administration has appealed those orders, challenging their universal application.⁴

To be eligible for the initial October 6 rollout, an IOR must:

- 1) be a plaintiff with entries covered by one of Judge Eaton's reliquidation orders; and

¹Declaration of Brandon Lord, CBP Executive Director of Trade Programs, filed September 15, 2026 in *Freestyle World, Inc. v. CBP*, CIT No. 26-01088.

²IEEPA tariffs were declared illegal by the U.S. Supreme Court on February 20, 2026, in *Learning Resources, Inc. v. Trump*.

³These plaintiff-specific reliquidation orders are available only to importers who have filed suit at the CIT, as the CIT's previous universal order covering all importers is currently on appeal to the Federal Circuit.

⁴*Euro-Notions, Inc. v. CBP*, Fed. Cir. No. 26-1898. Notices of appeal filed June 3, 2026.

- 2) have submitted a valid IOR number to CBP by July 30, 2026. Plaintiffs whose IOR numbers were submitted after July 30 should confirm timing with their counsel. CBP estimates that CAPE 3 will process approximately \$11.4 billion in refunds.

CAPE 3 is expected to accept on a rolling basis IOR numbers submitted to CBP after July 30, 2026.

HOW CAPE 3 FILING WORKS

The CAPE 3 process follows the same general mechanics as the earlier CAPE 1 and CAPE 2 procedures, but there are differences. Under CAPE 1 and CAPE 2, IORs, directly or through their brokers, file a CAPE declaration in ACE containing a CSV-formatted list of covered entries. CBP validates the submission and reliquidates each entry by removing Chapter 99 IEEPA duties. Refunds, including interest, are generally being issued 60–90 days after acceptance via ACH to the IOR's ACE-enrolled refund account. For CAPE 1 and CAPE 2, filing instructions are directly accessible to the IOR and/or the IOR's broker.

THE PENDING APPEAL AND RECOUPMENT CONCERNS

The government's Federal Circuit appeal⁵ challenges the CIT's authority to grant universal relief to non-litigating IORs, particularly with respect to finally liquidated entries. However, the government has confirmed that it is *not challenging the importer-specific reliquidation orders and intends to comply with them*.⁶ Simply put, the appeal affects only importers that have not sued. Importers that file at the CIT and obtain a reliquidation order should be able to recover through the applicable CAPE version. There are ongoing industry discussions as to whether CBP could seek to revisit or recoup refunds paid to non-litigating IORs through CAPE 1 (unliquidated and sub-80-day entries, processed under CBP's own voluntary reliquidation authority under 19 U.S.C. § 1501) and CAPE 2 (reconciliation-flagged entries), in the event the government prevails on appeal. This uncertainty concerning IEEPA refunds received by the IOR has serious implications for IORs that are considering refunding to their customers a portion of the purchase price representing IEEPA tariffs.

While the government has not announced any intent to claw back CAPE 1 or CAPE 2 refunds, an adverse Federal Circuit ruling could leave non-litigants without a court order underpinning their refunds and potentially subject to recoupment arguments. By contrast, a company-specific CIT order provides the most secure footing: the CIT has held the government judicially estopped from arguing that refunds are unavailable after liquidation for plaintiffs who have individually challenged the tariffs.⁷ There is another pathway to recovery for importers that have not sued individually – they may be joined as members of a certified class and, as class members, become parties to the currently-pending flagship cases. However, the class certification motions pending in *V.O.S. Selections* and *Freestyle World* are unresolved, the government opposes certification, and any grant is expected to be appealed. If class certification is denied, importers with finally liquidated entries may still need to file their own CIT lawsuits to obtain refunds. For that reason, importers should not rely on either the universal orders or a possible class as a substitute for an individual CIT action, which is currently the only way to compel reliquidation of the 80+ Days Liquidation Entries.

Non-litigants should note that the two-year statute of limitations under 28 U.S.C. § 1581(i) runs from the date of the relevant executive action. Commentators have identified approximately February 4, 2027, as the earliest expiration date of the limitations period for fentanyl IEEPA entries and approximately April 5, 2027, for reciprocal tariff entries. Please confirm with trade counsel which limitations period applies to you.

⁵*Id.*

⁶ Opening Brief for Appellants at 19, *V.O.S. Selections, Inc. v. Trump*, Nos. 2026-1895, -1897, -1899 (Fed. Cir. Aug. 10, 2026), Dkt. 19.

⁷*AGS Co. Automotive Solutions v. CBP*, Consol. No. 25-00255 (CIT Dec. 15, 2025).

NEXT STEPS FOR IMPORTERS

- **If you have not filed at the CIT:** Evaluate filing now to secure your right to recover on 80+ Days Liquidation Entries and to protect refunds already received through CAPE 1 and CAPE 2. In addition, file protests on any entries still within the 180-day protest window under 19 U.S.C. § 1514. If and when you become eligible to file a declaration pursuant to a reliquidation order, you will need to withdraw the protest.
- **If you have already filed at the CIT:** Confirm that your IOR number was submitted to CBP by July 30, 2026 (for the initial rollout on October 6) or contact your counsel for your specific CAPE 3 date. Ensure your plaintiff name matches your CBP Form 5106 exactly and that you have enrolled in ACH: <https://www.cbp.gov/document/guidance/cbp-modernizes-electronic-refund-enrollment-process>. Prepare and carefully verify your entry list before submitting a CAPE 3 declaration.

We will continue to monitor developments and provide updates as they become available. If you have questions about the CIT order, the CAPE refund process, or your specific situation, please do not hesitate to contact Dentons Cohen & Grigsby's International Trade Team.

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