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An Equitable and Legal Way to Resolve the “Messy” Process of Tariff Rebates

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Executive Summary

The Supreme Court's ruling against the Trump tariffs imposed under the guise of the International Emergency Economic Powers Act is a setback for President Trump's trade agenda. It will tie his hands in negotiating better trade deals for the United States. But the Court's decision is a victory for free trade, the rule of law and separation of powers. The ruling has created a heated policy debate about what comes next. What happens to the tariff revenues that were collected by the government under an illegal tax?

The logical extension of the ruling is that tariffs illegally collected need to be refunded to the businesses that paid them. The total revenues collected is estimated at roughly \$120 to \$175 billion. This will be a massive undertaking. Government estimates indicate that about 300,000 importers paid the tariffs. Already more than 2,000 tariff lawsuits have been filed with merchants and importers - including FedEx, Dollar General, Brooks Brothers, and Bausch & Lomb.

Our recommendation is that the government return the tariff revenues to the companies that directly paid them, if and when the companies that paid the tax request the refunds. Some will and some won't. These refunds should be made expeditiously to avoid interest payments and lawsuits, which would only add unnecessary costs to the government and small businesses.

We also believe that businesses that receive the refunds should as a due diligence matter and as a customer relations matter, provide refunds or future discounts to reimburse the consumers who absorbed some of these costs.

Introduction

The Supreme Court 6-3 decision was unequivocal that certain tariffs collected in 2025 and 2026 were illegal.

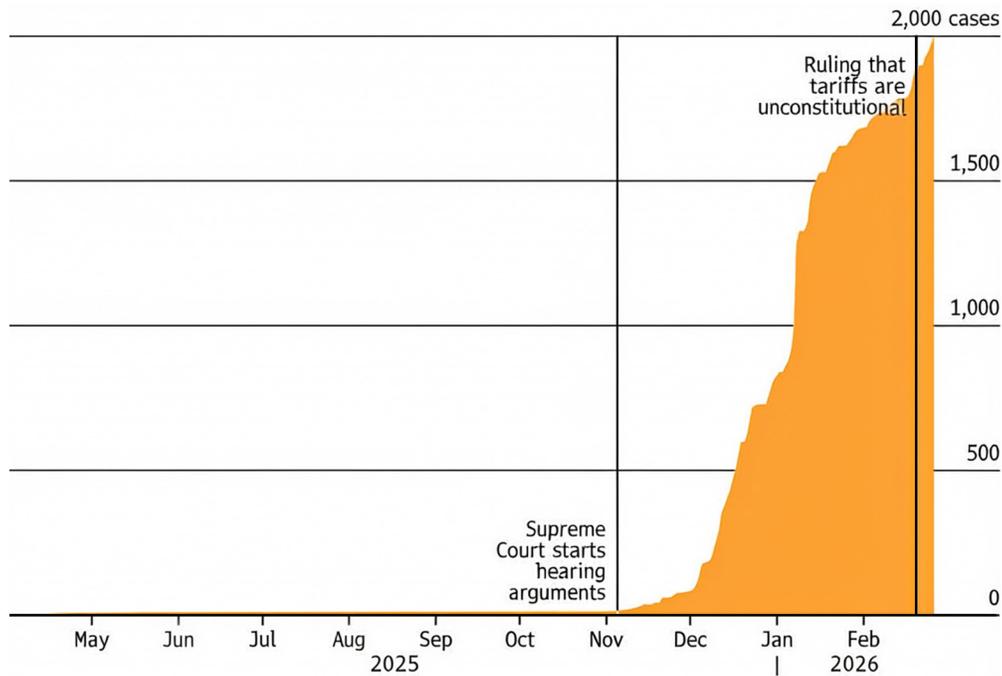
This means the money must be returned. But to whom?

President Trump has suggested his administration might oppose refunds, or at least not make the process easy for the importers that have paid more than \$170 billion in tariffs in the past 10 months. "I guess it has to get litigated,"¹ he said after the February 20 ruling, speculating it could take years to play out.²

1 Lori Ann LaRocco: "Supreme Court Trump Tariff Decision Impact: What to Expect as the Fight for Billions Begins" - Feb 20 2026, CNBC.

2 Tillman, Zoe and Neumann, Jeannette: "Trump Faces 2,000 Tariff Lawsuits Following Supreme Court Loss" - Feb 27, 2026.

Tariff Refund Lawsuits Mount After Supreme Court Ruling:
2,000 cases already pending as lower courts consider next steps



Source: Bloomberg, US court records

Now FedEx, which paid the tariffs, is being sued by hundreds of shippers and consumers for reimbursement of tariffs indirectly, paid by them. FedEx has issued a statement that “our goal is to return to American consumers every penny they were improperly charged.”

This analysis concludes that the law is straightforward: refunds must be paid out expeditiously, and directly to the companies that paid the taxes/tariffs. Many thousands of businesses - particularly small businesses - have taken losses from these tariffs. They deserve their money back.

The issue is complicated by the difference between the incidence and the collection/payment of the tax. The “impact” of a tax is incurred by the party that absorbs the “immediate burden,” in this case the importing company. The “incidence” of a tax/tariff is paid by foreign producers, other middlemen, retailers, and consumers who “ultimately” absorb the cost of the tax. That is the basis of the consumer and middleman lawsuits against FedEx and other importers.

Sorting this out will be, as Justice Barrett pointed out, “messy.” Consumers and middlemen will demand refund compensation since they bore some of the burden of the tax. The Supreme Court Justices did not endorse any remedy, which leaves this decision up to Congress and the President.

Our analysis finds that there are well-established rule-of-law protocols and precedents for issuing tariff refunds in an orderly and efficient way. These legal precedents and protocols unambiguously require the party that paid the tax is the party that gets reimbursed if the tax is ruled unconstitutional. Our recommendation is that Congress and the Trump administration should quickly and expeditiously

pay out refunds for tariffs paid now that these collections have been declared illegal. Firms will need to provide evidence to the government that they paid the tax.

Failure to provide these refunds expeditiously would almost certainly lead to thousands of costly lawsuits that the government would almost certainly lose in Court. Because this action will cause a very significant loss of revenue to the federal government and will harm taxpayers and the federal government's fiscal outlook, Congress could help establish rules for compensation to consumers and other businesses harmed by the tariffs. One option would be to impose a one-time claw back tax on the refunds paid out with the funds returned to American families in the form of a rebate check. This could offset windfall refunds paid out to merchants who paid the tariff, but then passed on the cost to consumers or in some cases other injured parties.

The Tax Foundation estimates that these tariffs have cost consumers as much as \$1,100 per household in higher prices. They will undoubtedly feel aggrieved if they do not receive compensation. Congress will likely look for ways to provide those funds.

What follows are details on the tariffs and the mechanisms by which the refunds can be issued.

Background on Tariffs and Rebates

The President has issued four types of tariffs under the International Emergency Economic Powers Act (IEEPA):

- The “fentanyl” tariffs on Canadian-, Chinese-, and Mexican-origin goods. These fentanyl tariffs went into effect on February 4 for China and on March 4 for Canada and Mexico.
- The reciprocal tariffs, which went into effect on April 5.
- The “free speech” tariffs on Brazilian-origin goods, which went into effect on August 6.
- The secondary tariffs on Indian-origin goods, which went into effect on August 27.

President Trump's trade policy has pushed tariffs to their highest average rate - 11.2 percent - since 1943.³ The cash value of the tariffs has been approximately \$300 billion - and 90 percent of the value of the tariffs have been paid by U.S. firms and U.S. consumers, in the form of higher prices, according to a recent Federal Reserve study.

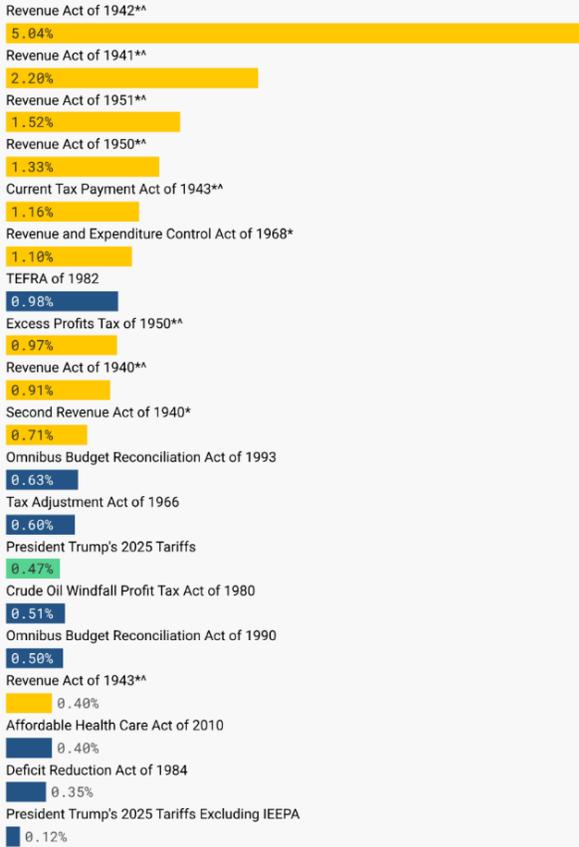
This has been a massive tax on American consumers – equivalent to \$1,100 on every U.S. household in 2025, which is the largest tax increase as a share of GDP since 1993.⁴⁴ The Tax Foundation projects that if the tariffs continue at the same level in 2026, they will amount to a tax of \$1,500 on every household.

3 Erica York and Alex Durante: “*TariffTracker: Impact of Trump's Tariffs & Trade War by the Numbers*” - Feb 23, 2026, National Tax Foundation

4 Donald Trump: “The actual numbers we would have to pay back if, for any reason, the Supreme Court were to rule against...” - Jan 12, 2026, Truth Social.

Trump's 2025 Tariffs Are the Largest Tax Hike Since 1993

Average Annual Revenue Change as a Share of GDP Across Major Tax Laws and Trump's Proposed Tariffs, Yellow Bars Indicate War-Related Tax Laws



Note: * Tax bills were fully or partially used to fund war efforts in World War II, the Korean War, or the Vietnam War. ** The "full-year effect" for the first year of revenue was used, rather than the effect on the first fiscal year after enactment.
Source: Jerry Tempalski, "Revenue Effects of Major Tax Bills"; Congressional Budget Office, "Revenue Projections, by Category"; Tax Foundation General Equilibrium Model; Author calculations.

Chart: Erica York



Trump's Average Tariff Rate Would Be Highest in Decades

Average Tariff Rate on All Imports, Historical Rates from 1890-2023, Projected Rate for 2024, Estimated Rate for 2025 Under Trump's Imposed Tariffs



Note: Includes IEEPA tariffs on Canada, Mexico, and China (with USMCA exemptions); IEEPA "reciprocal" tariffs; and steel aluminum, auto, and auto parts tariffs. Tariff revenue estimate uses an elasticity of -0.997 and a noncompliance rate of 8 percent.
Source: US Census Bureau, *Historical Statistics of the United States: Colonial Times to 1970, Part II*; US International Trade Commission, "U.S. Imports for consumption, duties collected, and ratio of duties to values, 1891-2023, (Table 1)"; Tax Foundation calculations.



Trump Administration Has Conceded that Refunds Are Inevitable

On January 12, 2026, President Trump wrote on Truth Social that if the Supreme Court invalidated the tariffs the U.S. government imposed last year, and required that they be paid back, the cost “would be many Hundreds of Billions of Dollars.” If the refunds included the value of plants, factories, and equipment that were situated in the United States to avoid having to pay tariffs, said Trump, the cost could be “Trillions of Dollars.”

“It would be a complete mess, and almost impossible for our country to pay,” wrote Trump. He derided the idea that the refunds could be “quickly and easily done.” Trump’s lawyers made similar arguments.

The Justices on the Court also knew full well, before they made their ruling, that refunds were required if they ruled as they did. Clearly all parties were fully aware of this remedy, not least the President.

Fortunately, there is a clear roadmap of legal precedence for refunding taxes paid when the government has exceeded its authority to collect them.

These cases all point to the fact that there can be an orderly and efficient way to return money collected from invalidated taxes and tariffs. The grand economic impact appears to be that those payments could total up to \$150 billion.

How Refunds Would Work

The day the Supreme Court deemed the Trump tariffs' illegal, Politico's coverage, including this excerpt, made immediately clear that the fight was far from over:

“The justices, in their 6-3 ruling, did not order the Trump administration to provide refunds to importers for the tariffs already paid, or spell out how repayment should work. That likely leaves the U.S. Court of International Trade responsible for sorting out a thicket of legal issues related to possible repayments - under customs law, tariff refund claims are typically handled through that trade-focused, New York-based court and processed by U.S. Customs and Border Protection.

‘I would assume that the Trump people will fight the idea of refunds, and that’ll be the next thing that’ll go winding through the courts,’ Trump’s first term Commerce Secretary Wilbur Ross said in an interview. “There will be more litigation.”

That would create a “particularly unfair burden for smaller importers,” said Scott Lincicome, vice president of general economics at the libertarian Cato Institute, noting they “lack the resources to litigate tariff refund claims.”

The Justice Department and parties in the tariff litigation have already asked the Court of International Trade to establish a steering committee to coordinate the more than 1,000 refund-related cases now pending, a common step in large, complex trade disputes.⁵

Plainly put, the importers' expectation, universally, is that the value of these tariffs will be refunded to those who paid them. As noted by Joshua Claybourn, an adjunct scholar at the Cato Institute, “Courts have long recognized that when duties or tariffs are later invalidated, the government cannot lawfully retain those amounts.”⁶

The Trump administration has already stipulated that it will not object to the Court of International Trade ordering a recalculation of customs duties - “reliquidation” - in the future if the IEEPA tariffs were found to be unlawful. This will be true even if the duties have already been finalized (“liquidated”). The Court of International Trade has also held that the administration cannot reverse itself after the Supreme Court decision. This will help ensure that the refunds are issued.

5 Ari Hawkins: “What happens to billions in tariff money already paid? Supreme Court leaves refunds unsettled” - Feb 20 2026, Politico.

6 Joshua Claybourn: *Recovering Unlawfully Imposed Tariffs: Navigating the Refunds of Duties from IEEPA* - Sep 17, 2025, Lawfare

During the Supreme Court hearing on the tariffs, Justice Amy Coney Barrett said, “It seems to me like [the refund process] could be a mess.” “We don’t deny that it’s difficult,” responded the attorney representing the businesses challenging the tariffs.⁷

Part of that difficulty would stem from the amount of tariff revenue that needs to be refunded - about \$150-\$175 billion - to hundreds of thousands of importers. But the federal government has well-established protocols for how to issue tariff refunds. Most likely, refunds will be facilitated by a repayment system known as the Automated Commercial Environment (ACE). In early January, CBP announced an upgrade to ACE - all refunds will now be processed electronically, which will translate to “faster payments, fewer errors and a simplified process for importers, brokers and refund recipients.”⁸ This is but one facet of a well-established process in place to process refunds to entities who paid the tariffs.

According to Claybourn: CBP typically implements such court orders through formal guidance, instructing importers to submit PSCs or administrative protests to secure refunds. Should CBP fail to act promptly or deny relief, importers retain recourse to the [Court of International Trade] under 28 U.S.C. § 1581(a) (protest-denial jurisdiction) or § 1581(i) (residual jurisdiction for illegal exactions). In such cases, courts commonly compel compliance and award refunds with interest, and persistent delay or resistance by CBP may expose the government to liability for attorneys’ fees under the Equal Access to Justice Act.⁷

Writing prior to the Supreme Court’s decision, legal expert Adam Feldman spelled out a possible sequence of events if the tariffs were struck down.⁹

Phase 1: Court of International Trade (CIT) Lifts the Stay (Days 1-14 after SCOTUS decision) *The Court of International Trade should immediately lift the stay on all consolidated IEEPA tariff cases. Companies that filed protective suits can now proceed with their claims.*

Phase 2: Test Cases (Months 1-6) *The CIT will likely select 5-10 “test cases” representing different industries, tariff categories, and fact patterns. The AGS lead case (AGS is plaintiff in the tariff case) will almost certainly be one.¹⁰ These test cases will proceed to briefing and decision first, establishing precedent for the hundreds of other consolidated cases.*

Given the government’s January 14 stipulation, these test cases may proceed on abbreviated briefing. The core legal question - whether IEEPA authorized the tariffs - has been answered by the Supreme Court. The remaining issues are primarily administrative: which entries are covered, what amounts are due, what interest rate applies.

Phase 3: Test Case Decisions (Months 4-9) *The CIT will issue decisions in the test cases ordering CBP to reliquidate the affected entries and issue refunds. These decisions will establish the template for resolving the remaining cases.*

Phase 4: Application to Remaining Cases (Months 6-18) *The CIT will apply the test case precedent to the remaining consolidated cases, issuing orders on a rolling basis. Given the volume (600+ cases, potentially thousands more), this will be a prolonged administrative process even with streamlined procedures.*

7 *Learning Resources, Inc. et. all v. United States* - Nov 05, 2025, Heritage Corporation

8 *CBP modernizes electronic refund enrollment process* - Jan 06, 2026, Department of Homeland Security

9 Adam Feldman, “*The \$133 Billion Question: Inside the Supreme Court’s Historic Tariff Case*” - Feb 06, 2026, Legalytics on Substack.

10 *AGS Company Automotive Solutions vs U.S. Customs & Border Protection*, Dec 15, 2025 – Department of Justice.

Phase 5: CBP Processes Refunds (Months 12-36) For each case where the CIT orders reliquidation (if any), CBP must administratively process the refund. This involves:

- Identifying all entries covered by the order
- Recalculating duties owed (removing IEEPA tariffs)
- Calculating interest from date-of-payment to date of refund
- Processing payment through Treasury

Precedents for U.S. Government-issued Refunds

There are several precedents for the United States government tariffs being returned to those who paid them. In the 1998 case, *United States v. United States Shoe Corp.*, the Supreme Court unanimously invalidated an export tax applied to exporters, importers, and domestic shippers. They had paid the government 0.125% of the value of commercial cargo shipped through U.S. ports. The justices ordered the federal government to refund the taxes companies had paid (and even pay interest). The U.S. Court of International Trade managed the process and a judge on the court established a claims-resolution procedure for those who could document their tax payments. In all, the federal government issued \$730 million in refunds.

In several other cases, the Court of International Trade has ordered refunds of tariffs that courts struck down, including *Transpacific Steel LLC v. United States* and *Star-kist Foods, Inc. v. United States*.

Tariffs have also been refunded when legal issues have not been at stake. On January 1, 2018, the Generalized System of Preferences expired. The program provides duty-free treatment of select products imported from designated countries. It was renewed in April 2018, and the renewal was made retroactive. As a result, CBP later refunded the companies that paid the duties on U.S.-eligible imports during the period when GSP had lapsed. As CBP explained:

GSP-eligible formal and informal entries summaries filed electronically via the Automated Broker Interface (ABI) using SPI “A” as a prefix to the tariff number will be processed automatically by U.S. Customs and Border Protection (CBP) and no further action by the filer is required to initiate the refund process.

CBP projected that the refunds would be paid within three months. GSP duties were also refunded after the program was renewed, and made retroactive to include the period when it had lapsed, from August 2013-June 2015.

Claybourn concludes: *The combination of statutory provisions, judicial precedent, and explicit directives from the CIT’s ruling leaves CBP no discretion in the matter. Once these tariffs are finally invalidated, the government will be legally required to refund the unlawfully collected IEEPA duties to importers, along with interest.*⁷

How Long will it Take to Receive Refunds

While there are well established protocols for issuing refunds, there's no guarantee that the process will move quickly. Feldman points out that plaintiffs challenging the Trump administration's 2018-19 China tariffs started filing legal challenges to the tariffs in 2019. But while the issues in that case and this one are different, Feldman points, out there has still been no resolution seven years later:

*The [Court of International Trade] has issued some decisions favorable to plaintiffs on legal theories, but the administrative process of identifying covered entries, calculating refunds, and processing payments continues to grind forward... the administrative challenges are similar: thousands of entries, millions of individual transactions, case-by-case determination of refund amounts.*⁹

A Potential Role for Congress

If importers encounter obstacles in recovering their tariff payments, they can press for congressional involvement. In December 2025, Representative George Latimer of New York and 20 of his House colleagues wrote to Treasury Secretary Scott Bessent and Homeland Security Secretary Kristi Noem questioning whether the Departments of Treasury and Homeland Security were prepared to process refunds that could be ordered by the Supreme Court.

They also requested “a wide-reaching informational campaign be quickly implemented by the Departments targeted to American small businesses so that they may have all the resources available to enable them to navigate the complexity of the protest process without the disadvantage of lacking the resources of a large company.”¹¹

The Congressional Research Service states that Congress could “consider enacting legislation to streamline the process of obtaining any refunds.” That outcome sounds wise to us.

Looking ahead, Congress should take a more active role in identifying who will be harmed by tariffs.

Robert Pozen, senior lecturer at MIT, recommends that Congress: “...require the executive branch to assess explicitly how proposed tariffs will affect small businesses before implementation. Agencies should provide clear notice periods, transparent exemption processes and predictable implementation schedules. If tariffs proceed, policymakers should mitigate the cash-flow strain on smaller firms - perhaps through delayed payment mechanisms or temporary tax credits.”¹²

What about consumers? As noted above, consumers were indirectly harmed by the tariffs to the tune of roughly \$1,000 per family. It's an open question as to how they would be reimbursed.

11 Representative George Latimer, et. all: “Letter to Treasury and DHS on Prompt Refund of Tariffs Unlawfully Collected from Small Businesses under the International Emergency Economic Powers Act” – Dec 11, 2025, U.S. House of Representatives.

12 Robert Pozen: *Trump's Tariffs Get Knocked Out - But the Hit to Small Business is Just Beginning* – Feb 21, 2026, Morningstar.

And how would the refunds work? One bill that has been sponsored by leading Senate Democrats, the Tariff Refund Act of 2026, which would require refunds paid immediately and a “sense of the Congress that these rebates be passed on to consumers.” Here is the summary:

The **Tariff Refund Act of 2026** would ensure that U.S. Customs and Border Protection (CBP) complete the payment of refunds quickly and prioritizes the interests of small businesses in that process. Importantly, the bill would ensure that importers are not required to take costly administrative steps to receive a refund of the tariffs unlawfully collected by the Administration. The bill would also direct CBP to coordinate with the Small Business Administration (SBA) to provide information and technical support. Finally, the bill’s reporting requirements would provide Congress, which has constitutional authority over trade and tariffs, with proper oversight over the refund payment process.

What the Bill Does:

- Requires CBP to pay refunds of all tariffs that were unlawfully imposed by the President under IEEPA and paid by importers—even if the importation has already been finalized and closed (“liquidated”) by CBP.
 - Sets a deadline of 180 days after enactment for CBP to process all refunds.
 - Requires CBP to pay interest on the refunded amount.
- Directs CBP to prioritize small businesses when paying refunds and to coordinate with the SBA to provide key information on the refund process to small businesses.
- Requires CBP to report every 30 days to relevant congressional committees on the status of refunds until CBP has completed the payment of all refunds.
- Directs CBP to issue guidance on how to address duty drawback claims.
- Expresses the Sense of Congress that importers, wholesalers, and large corporations should pass on those refunds to their customers.

One way to do this is to negotiate a settlement with the importers that sets aside some of the \$175 billion to reimburse consumers.

Conclusion - There Is No Other Way

We know that the Trump administration, consumer groups, and fiscal hawks who worry about the impact on America’s debt will not be happy with this solution. The claim will be made that importers will receive windfall payments for taxes that they passed on to others along the supply chain - most notably, the final consumers.

The National Retail Federation has urged Congress and the lower courts to “ensure a seamless process to refund the tariffs to U.S. importers. The refunds will serve as an economic boost and allow companies to reinvest in their operations, their employees and their customers.”

We agree with established law that this should be the first (but not necessarily the final) step in resolving what the Supreme Court admitted would be a “messy” process of tariff refunds. The next step will be coming up with an equitable solution to reimbursing consumers for tariffs passed on to them.

