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CIT Judge Allows Lead IEEPA Refunds Case to Proceed as Class Action

Court of International Trade Judge Richard Eaton certified a class in the lead case for refunds of tariffs imposed under the International Emergency Economic Powers Act, according to an Oct. 8 opinion. The litigation will proceed as a class action, and attorneys from Barnes Richardson and Lieff Cabraser were appointed class counsel.

Plaintiff Freestyle World had moved for class certification under CIT Rule 23(b)(2) in June (see ITT 06/25/2026). After two oral arguments regarding class certification at the trade court—one in the V.O.S. Selections case (see ITT 08/06/2026) and the other in the Freestyle World case (see ITT 08/19/2026)—Eaton certified a class that includes: "All importers of record who paid duties imposed by the Challenged Tariff Orders between February 1, 2025, and February 19, 2026, excluding any entity that has separately filed an action seeking to recover IEEPA duties payments."

While the class certification motion in the V.O.S. Selections case sought expanded access to the Consolidated Administration and Processing of Entries (CAPE) refund system, Freestyle World's motion sought injunctive relief that would direct CBP to liquidate or reliquidate "all entries without regard to IEEPA duties."

"Today, the court is certifying a class in the hope, and expectation, that this certification will lead to the liquidation or reliquidation of all of the entries on which the unlawful IEEPA duties were imposed, and the refund of those duties to the importers of record that paid them," Eaton said.

The judge said that about $30 billion of IEEPA duties have yet to be refunded and some importers of record haven't sought refunds through CAPE due to the costs of filing declarations.

"It is believed that these are overwhelmingly small importers who, because of the cost or effort involved in filing a CAPE declaration, or because they are unaware of the program, will never take advantage of CAPE," the judge said.

CAPE doesn't accept several types of entries, like finally liquidated entries that lack court orders directing their liquidation.

"Should further action not be taken, we are left with the prospect of the [Treasury Department] retaining billions of dollars of unlawfully collected duties, and tens of thousands of importers of record being denied the liquidation or the reliquidation of their entries," Eaton said. "Without these liquidations or reliquidations, these tens of thousands of importers will not receive the refunds they are owed."

"For importers across the country who paid the IEEPA tariffs—individuals and businesses small as well as large—the tariff refund process has brought unexpected economic, logistical and practical challenges," attorneys for Freestyle World said in a statement. "Today's certification of a nationwide class is a vital step toward informing and empowering all importers, not just those with the means to file suit, to recover illegally imposed IEEPA duties."

While the government argued that Freestyle World's motion for class certification was untimely, Eaton said that he didn't find the government's argument convincing. Freestyle World began its case by "styling its complaint as a 'Class Action Complaint'" on Feb. 19.

Eaton said that "it is difficult to see any real element of surprise" when Freestyle World moved for class certification.

"Nor could the Government have thought for one moment that the Supreme Court's answer to the legal question posed in *Learning Resources* would apply only to the plaintiffs in that case," the judge said.

He added that "it is simply incredible that the Government was caught off guard when Freestyle and the proposed class banded together to seek reliquidation relief as a class."

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Eaton said that the government's concerns about one-way intervention—which refers to potential class members opting in or out of a case once a judgment is reached—are unwarranted, because there hasn't been a merits determination in the Freestyle World case.

"While the controlling law was decided by the Supreme Court in *Learning Resources*, that law has yet to be applied to *Freestyle*'s facts," Eaton said. "Although the result of this application of the law to the facts, and a resulting injunction, may be a mere formality in the minds of many, it remains the case that a merits decision has not been made here, and that the fortunes of the proposed class members will therefore rise or fall with those of Freestyle itself."

Because class certification was sought under Rule 23(b)(2), Eaton said, the government's concerns that proposed class members will opt in or out of the class are further unwarranted.

"Plaintiff seeks class certification under USCIT Rule 23(b)(2), which does not permit a potential class member to either opt in or opt out," he said. "Nor is the possibility of opting into a class present anywhere in the Court's rules. Thus, membership in a class certified under Rule 23(b)(2) is mandatory and fixed."

Eaton's opinion then considered the requirements for class certification under Rule 23(a).

The government argued that the proposed class didn't meet the commonality requirement under 23(a), because it lacks a "common question" that the trade court can provide a "common answer" for. This is due to the class being made up of "individualized claimants with individualized claims [that] may require a specific form of relief," the government said.

Eaton rejected this argument.

"That the importers will receive different monetary amounts as refunds, however, does not defeat a finding of a 'common question of law or fact' capable of class-wide resolution," Eaton said.

He said that all importers share the questions of whether the government "lawfully imposed and collected IEEPA duties on their entries" and whether it "must liquidate or reliquidate their entries without regard to the IEEPA duties."

He said the first question was answered by the Supreme Court's *Learning Resources* ruling.

"The second common question concerning the entitlement to liquidation and reliquidation is easily answered, as the liquidation tools are the logical method for determining liability," Eaton said.

"The issuance of an injunction directing liquidation or reliquidation would benefit all class members equally," he continued. "That each plaintiff will receive a refund in a different amount does not alter the common resolution afforded by the injunction."

Quoting the 7th Circuit's 2012 *Johnson v. Meriter Health Services Employee Retirement Plan* ruling, he said that "the calculation of monetary relief will be mechanical, formulaic, a task" once it is determined that plaintiffs are entitled to a refund. He said that CBP has performed the "formulaic task of calculating refunds" through the CAPE system "millions of times."

"Plaintiff and the proposed class members have not received the full benefit of the *Learning Resources* decision—class certification and an order directing liquidation and reliquidation will give them that benefit," Eaton said.

"Such an injunction would provide a common resolution to the proposed class members' question of whether their entries must be liquidated or reliquidated without regard to IEEPA duties—and computers will then calculate the amount of individual duties mechanically," he added.

Eaton found that the proposed class satisfied the other requirements under Rule 23(a), including numerosity, typicality and adequacy of representation.

Finally, Eaton ruled that certifying a class under Rule 23(b)(2) is appropriate in the case.

While the government argued that the injunction sought by Freestyle World wouldn't provide final relief, Eaton disagreed. He said that CBP's CAPE system demonstrated that the agency is capable of automating the refund process.

"Each liquidation or reliquidation resulted in an individualized refund amount," he said. "They did not, however,

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require thousands, or indeed millions, of 'individual determinations.'"

Eaton also rejected the government's argument that the relief sought by Freestyle World is "non-incidental monetary relief," which is prohibited for class certification under Rule 23(b)(2).

He said that "an order directing liquidation or reliquidation is squarely injunctive and non-monetary," and any relief would be incidental because refunds would be "determined mechanically by a computer."

(*Freestyle World v. United States*, Slip Op. 26-123, CIT # 26-01088, dated 10/08/26; Judge: Richard Eaton; Attorneys: Lawrence Friedman of Barnes Richardson for plaintiff Freestyle World; Justin Miller for defendant the U.S. government) — ***Jackson Lanzer***

CBP: Over 15 Million Entries Accepted for CAPE Phase 3

As of Oct. 23 at 3 p.m. ET, 3,960 declarations have been accepted for processing in the third phase of the Consolidated Administration and Processing of Entries (CAPE) refund system, said Brandon Lord, executive director of CBP's trade programs directorate, in his Oct. 26 declaration filed at the Court of International Trade. Those declarations cover 15,834,190 entries (*Freestyle World v. United States*, CIT # 26-01088).

CBP launched CAPE Phase 3 on Oct. 6 for finally liquidated entries from importers that filed suit at the trade court against the tariffs levied under the International Emergency Economic Powers Act and "for which the Court has ordered reliquidation" (see ITT 10/06/2026).

CBP opened Phase 3 last week to another wave of importers who filed suit and submitted importer of record numbers to the agency between July 31 and Aug. 13. The phase was previously limited to importers who submitted their importer of record numbers by July 30 (see ITT 10/20/2026).

Lord said that access to Phase 3 will be provided "on a rolling basis," and "CBP will continue to notify plaintiffs, via email to their counsel, when they are able to file CAPE declarations for Phase 3."

Beyond CAPE Phase 3, Lord provided broad updates about the IEEPA tariffs refund process.

Overall, 315,069 CAPE declarations were submitted as of Oct. 23 at 3 p.m. ET, Lord said. Of those, 222,754 passed the file validations, covering 44 million entries. He added that "approximately $137.9 billion in both potential and certified refunds have been accepted for processing in CAPE." — ***Jackson Lanzer***

Plaintiffs, Government Respond to CIT Panel's Questions About Section 301 Forced Labor Tariffs

The Office of the U.S. Trade Representative wasn't required to consider the level of economic development of the 60 economies that it investigated before imposing tariffs under Section 301 against the economies for failing to implement or enforce forced labor import bans, the government said in an Oct. 16 brief (*In Re Section 301 Forced Labor Cases*, CIT # 26-03555).

The government's brief was filed in response to questions from the panel of Court of International Trade judges overseeing the litigation against the forced labor tariffs (see ITT 10/02/2026). Plaintiffs led by Learning Resources also filed a brief in response to the questions.

Despite claiming in oral argument last month that USTR relied on neither Section 301(d)(3)(A) nor (d)(3)(B) to make its determination about whether the practices of the investigated economies were unreasonable (see ITT 09/30/2026), the government said, in its Oct. 16 brief, that "USTR relied on the definition of 'unreasonable' in Section 301(d)(3)(A) and made that clear in its report."

"But even assuming there were 'less than ideal clarity' in USTR's decisions, the Court still should uphold them because USTR's path referring to Section 301(d)(3)(A) 'may be reasonably discerned,'" the government said.

Section 301(d)(3)(A) states: "An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable."

Because USTR made its determination under (d)(3)(A), the government said that it wasn't required to consider the level

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of economic development of the investigated economies, as required by Section 301(d)(3)(B)(iii). The government said that (d)(3)(B)(iii) only applies to Section 301(d)(3)(B), not (d)(3)(A).

USTR also wasn't required to consider the level of economic development of the countries under the Administrative Procedure Act, the government continued. Citing the U.S. Court of Appeals for the Federal Circuit's 2025 *HMTX Industries* ruling, the government said USTR is only required to consider "significant" comments under the APA, which refer to comments that "raise points relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rule."

"But, USTR did not determine (and was not required to determine) that an investigated economy maintains an act, policy, or practice described under subparagraph (B)(iii), and USTR did not make (and was not required to make) a finding regarding an economy's level of economic development pursuant to Section 301(d)(3)(C)(i)(II)," the government said. "Therefore, the level of economic development could not 'require' a change in USTR's unreasonableness determination."

However, plaintiffs led by Learning Resources argued that USTR was required to use Section 301(d)(3)(B), which then would require the agency to consider the level of economic development of the economies.

"USTR cannot rely on Subsection (A) because Subsection (B) is the exclusive statutory source of authority for treating worker-rights violations—and forced-labor practices in particular—as 'unreasonable' practices," the plaintiffs said.

"If USTR could also rely on Subsection (A)'s general catch-all authority to reach the very types of practices addressed in Subsection (B), those limitations would have no operative effect and Subsection (B) would become surplusage," they continued.

While claiming that Section 301(d)(3)(B) was the only statute that USTR could invoke, the plaintiffs argued that Section 301(d)(3)(B) doesn't cover the lack of a forced labor import ban as an unreasonable practice.

"By its terms, that provision addresses labor practices a country allows within its own jurisdiction, not forced-labor inputs incorporated into goods produced elsewhere," the plaintiffs said.

Regardless of whether USTR invoked Section 301(d)(3)(A) or (d)(3)(B), the plaintiffs said that the agency was required to consider the level of economic development of the economies under the APA.

"Its conceded failure to consider the affected countries' levels of economic development—which Congress obviously considered 'an important aspect of the problem' when it comes to workers' rights …—rendered its unreasonableness determinations arbitrary and capricious under the APA," the plaintiffs said.

The government argued that the trade court shouldn't vacate USTR's determinations, even if the court determined that more explanation was needed. But the plaintiffs claimed that vacatur is necessary.

"Because the agency wholly failed to consider the factors that Section 301 and/or the APA made relevant to its decision, the defect requires vacatur," the plaintiffs said.

Finally, regarding standing, the plaintiffs argued that they have standing to challenge UTSR's tariffs for all 60 investigated economies.

"To establish standing under the APA, a plaintiff need show only that it has 'suffer[ed] legal wrong because of agency action' or that it has been 'adversely affected or aggrieved by agency action,'" the plaintiffs said. "It need not show that it has been injured by each subsidiary component of the challenged action."

The government disagreed, arguing that "plaintiffs do not possess standing to challenge USTR's actions as to economies from which they do not establish that they import merchandise." ***— Jackson Lanzer***

USTR: Section 301 Tariffs From 2018 Will Continue

The Office of the U.S. Trade Representative announced that its second four-year reviews of the Section 301 actions in 2018—the tariff hikes on List 2 and List 3—resulted in the administration deciding to leave the tariffs in place. The agency made the announcement in a *Federal Register* notice scheduled for Oct. 7 publication.

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It said either list or rate could be subject to further modifications.

The Section 301 law requires that the tariffs end after four years, unless domestic producers tell USTR that the tariffs are beneficial. The four-year deadlines were July 6 and Aug. 23.

DHS to Add Three Xinjiang-Linked Companies to UFLPA Entity list

DHS is adding three companies to its list of entities that may be using forced labor from the Xinjiang region of China, bringing the total number of companies on the list to 190, the agency said in a *Federal Register* notice. The listings take effect on Oct. 29, the date the notice is to be published.

The companies, BGI Genomics, MGI Tech and Shenzhen BGI Technology (also known as BGI Group and BGI Holdings), will be added to the Uyghur Forced Labor Prevention Act Entity List in the category of companies working to recruit, transport or receive forced labor or Uyghurs, Kazakhs, Kyrgyz or members of other persecuted groups, while BGI Genomics and Shenzhen BGI Technology were also added to the section that identifies facilities that source material from the Xinjiang region or from persons participating in government-supported poverty alleviation schemes.

DHS said it has reasonable cause to believe that these companies conduct genetic testing in Xinjiang alongside the government of the Xinjiang region to facilitate the recruitment, transport and transfer of forced labor. The government also has reason to believe that BGI Genomics conducts genetic testing on material from plants, animals and bacterial diseases sourced from Xinjiang, and Shenzhen BGI Technology conducts similar testing, including on genetic material of people from Xinjiang. — ***Kalie Walker***

Unfair Seafood Trade Highlighted in America First Strategy

The White House issued an "America First Seafood Strategy" that says the administration aims to protect U.S. seafood producers "from unfair foreign competition through aggressive enforcement of existing trade laws and measures, stronger inspection of high-risk imports, leveraging compliance and enforcement tools against seafood fraud and mislabeling, and ensuring reciprocity so that U.S. seafood competes on a level playing field in domestic and foreign markets."

It said that federal agencies will continue to enforce country-of-origin designations, investigate seafood mislabeling, including false species labels, and focus enforcement on "high risk, foreign supply chains, and repeat violators."

The strategy said the administration will use improved monitoring and traceability technology to prevent the import of seafood caught illegally.

The strategy also talked about efforts to open export markets and address other countries' subsidies.

It said that the Office of the U.S. Trade Representative is tackling both through reciprocal trade negotiations.

"USTR secured preferential market access for U.S. seafood exports to the European Union; however, persistent barriers remain, including the EU CATCH scheme, which imposes burdensome documentation and reporting requirements on U.S. fishermen despite the United States' strong fisheries management and enforcement regime and safeguards against illegal, unreported and unregulated [IUU] fishing."

It said that USTR is asking India to address its "substantial fisheries subsidy programs that enable Indian producers to export seafood to the United States at lower-than-market prices," and asking Vietnam to address its IUU fishing practices.

The strategy said Japanese consumers imported about $760 million in U.S. seafood last year, "but tariffs of up to 10 percent and import quotas disadvantage U.S. exports relative to competitors that benefit from preferential market access. USTR continues to press Japan to reduce and eliminate these barriers."

It also said that USTR is engaging on Mexico's promise to prevent the illegal harvesting of totoaba fish bladders in the Upper Gulf of California, and is monitoring Mexico's efforts to prevent small fishing boats from entering U.S. waters in the Gulf of Mexico. — ***Mara Lee***

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FDA: Registration Renewals Due From Facilities That Manufacture, Process, Pack Foods

The FDA is reminding owners, operators and agents in charge of a domestic or foreign facility that manufactures, processes, packs or holds food for consumption by humans or animals in the U.S. that they must renew their registration with the FDA, according to a Sept. 29 constituent update. This renewal process occurs every two years between Oct. 1 and Dec. 31.

Further, facilities that are qualified facilities must submit an attestation supporting their qualified facility status during the same time period, the FDA said.

EPA Updates Voluntary Formaldehyde Standards for Composite Wood Products

EPA is publishing a final rule, effective Nov. 27, that updates the voluntary consensus formaldehyde standards for composite wood products under the Toxic Substances Control Act, according to a notice.

The final rule updates the test methods and product standards concerning composite wood products that use formaldehyde. A new small-scale quality control chamber test method was incorporated, while another standard was removed to avoid redundancy, according to EPA.

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