



By: TA | AP Insight

# The \$133 billion question - will the US government return the money it collected from Trump's tariffs?



The **Supreme Court** on Friday struck down President Donald Trump's biggest and **boldest tariffs**. But the justices left a \$133 billion question unanswered: What's going to happen to the money the government has already collected in import taxes now declared unlawful?

Companies have been **lining up for refunds**. But the way forward could prove chaotic.

When the smoke clears, trade lawyers say, importers are likely to get money back — eventually. "It's going to be a bumpy ride for awhile," said trade lawyer Joyce Adetutu, a partner at the Vinson & Elkins law firm.

The refund process is likely to be hashed out by a mix of the U.S. Customs and Border Protection agency, the specialized Court of International Trade in New York and other lower courts, according to a note to clients by lawyers at the legal firm Clark Hill.

"The amount of money is substantial," Adetutu said. "The courts are going to have a hard time. Importers are going to have a hard time."

Still, she added, "it's going to be really difficult not to have some sort of refund option" given how decisively the Supreme Court repudiated Trump's tariffs.

In its 6-3 opinion on Friday, the court ruled Trump's attempt to use an emergency powers law to enact the levies was not valid.

Two of the three justices appointed by Trump joined the majority in striking down the first major piece of his second-term agenda to come before them.

At issue are double-digit tariffs Trump imposed on almost every country in the world last year by invoking the 1977 International Emergency Economic Powers Act (IEEPA).

The Supreme Court ruled that the law did not give the president authority to tax imports, a power that belongs to Congress.

## The refund process is likely to be a mess

The U.S. customs agency has already collected **\$133 billion in IEEPA tariffs** as of mid-December.

But **consumers hoping** for a refund are unlikely to be compensated for the higher prices they paid when companies passed along the cost of the tariffs; that's more likely to go to the companies themselves.

**The Court says nothing today about whether, and if so how, the Government should go about returning the billions of dollars that it has collected from importers - Brett Kavanaugh**

In a dissenting opinion, Justice Brett Kavanaugh dinged his colleagues for dodging the refund issue: "The Court says nothing today about whether, and if so how, the Government should go about returning the billions of dollars that it has collected from importers."

Borrowing a word that Justice Amy Coney Barrett — who sided with the majority — used during the court's November hearing on the case, Kavanaugh warned that "the refund process is likely to be a 'mess.'"

"I guess it has to get litigated for the next two years," Trump told reporters at a press conference Friday, in which he decried the court's decision and said he was "absolutely ashamed" of some justices who ruled against his tariffs. "We'll end up being in court for the next five years."

## Easing inflationary pressures

The **end of the IEEPA tariffs** could help the economy by easing inflationary pressures.

The tariff refunds — like other tax refunds —

could stimulate spending and growth. But the impacts are likely to be modest.

Most countries still face steep tariffs from the U.S. on specific sectors, and Trump intends to replace the IEEPA levies using **other options**.

The refunds that do get issued will take time to roll out – 12 to 18 months, estimates TD Securities.

The U.S. customs agency does have a process for refunding duties when importers can show there's been some kind of error.

The agency might try to build on the existing system to refund Trump's IEEPA tariffs, said trade lawyer Dave Townsend, a partner with the law firm Dorsey & Whitney.

**The courts and U.S. customs have never had to deal with anything like this – thousands of importers and tens of billions of dollars at once**

And there has been a precedent for courts making arrangements to give companies their money back in trade cases.

In the 1990s, the courts struck down as unconstitutional a harbor maintenance fee on exports and set up a system for exporters to apply for refunds.

But the courts and U.S. customs have never had to deal with anything like this – thousands of importers and tens of billions of dollars at once.

“Just because the process is difficult to administer doesn't mean the government has the right to hold on to fees that were collected unlawfully,” said trade lawyer Alexis Early, partner at the law firm Bryan Cave Leighton Paisner.

Ryan Majerus, a partner at King & Spalding and a former U.S. trade official, said it's hard to know how the government will deal with the massive demand for refunds. It might try to

streamline the process, perhaps setting up a special website where importers can claim their refunds.

But Adetutu warns that “the government is well-positioned to make this as difficult as possible for importers. I can see a world where they push as much responsibility as possible onto the importer” – maybe forcing them to go to court to seek the refunds.

## Consumers are unlikely to enjoy a refund

Many companies, including Costco, Revlon and canned seafood and chicken producer Bumble Bee Foods, filed lawsuits claiming refunds even before the Supreme Court ruled, essentially seeking to be at the head of line if the tariffs were struck down.

There are likely to be more legal battles ahead. Manufacturers might, for example, sue for a share of any refunds given to suppliers that jacked up the price of raw materials to cover the tariffs.

“We may see years of ongoing litigation in multiple jurisdictions,” Early said.



Illinois Gov. JB Pritzker, a Democrat and Trump antagonist, is demanding a refund on behalf of his state's 5.11 million households

Consumers, though, are unlikely to enjoy a refund windfall. The higher prices they've had to pay would likely be hard to attribute to a specific tariff.

Should they pursue refunds anyway? Early wouldn't advise wasting money on legal fees, but said: "In America, we have the ability to file a lawsuit for anything we want."

Illinois Gov. JB Pritzker, a Democrat and Trump antagonist, is demanding a refund on behalf of his state's 5.11 million households.

In a letter addressed to Trump and released by Pritzker's gubernatorial campaign, the governor said the tariffs had cost each Illinois household \$1,700 — or \$8.7 billion. Pritzker said failure to pay will elicit "further action."

Nevada Treasurer Zach Conine submitted a payment request to the federal government for \$2.1 billion to recoup the costs of the tariffs, his office announced Friday.

"As Nevada's chief investment officer, I have a responsibility to try to recoup every single dollar that the Trump Administration takes from Nevada families," Conine said in a statement.