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IEEPA Tariffs Invalidated: What Companies Should Do Now to Protect Contract Rights

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February 26, 2026

The Supreme Court recently ruled that the International Emergency Economic Powers Act (IEEPA) did not grant President Trump the authority to impose certain tariffs. As discussed in our prior alert, importers of record seeking refunds will likely need to pursue judicial relief.

In contrast, companies that contracted with an importer of record may have indirectly paid IEEPA tariffs through pass-through contractual provisions, price increases, or other ways. Such non-importing contracting parties may want to seek a refund for paid amounts. Beginning with the assessment of a contractual relationship, the following steps can help guide an analysis and interactions with an importer that passed through IEEPA tariffs. Taking early, strategic action can help protect financial interests while preserving important business relationships.

Step One: Review Your Contract

Start by carefully reviewing an applicable contract or other instrument, such as terms and conditions. When reviewing such documents, the following may stipulate terms on tariff responsibilities:

- Payment
- Taxes (tax clauses or definitions; boilerplate contract language often defines tariffs or duties under the title of "Taxes")
- Price Adjustments
- Risk Allocation

While the above are typical titles for applicable provisions, a document may style such concepts in a different manner. Therefore, it is important to comprehensively review existing documents for mechanisms concerning tariffs.

Step Two: Review Shipping Documents and Incoterms

If a contract lacks the above outlined provisions, shipping instruments may govern tariff responsibilities. When reviewing shipping instruments, one should specifically look for International Commercial Terms (Incoterms).

For example:

- **Delivered Duty Paid (DDP)** generally places responsibility for duties and tariffs on the seller.
- **Ex Works (EXW)** generally places responsibility on the buyer.

The agreed Incoterms can significantly impact which party was contractually responsible for the tariffs.

Step Three: Consider Informal Agreements

If the contract is silent or unclear, determine whether any informal agreements were made after IEEPA tariffs were imposed.

- Were there verbal agreements reallocating responsibility?
- Were there written amendments, side letters, or email agreements?
- Was there a letter providing for a price increase due to tariffs?

Step Four: Evaluate Next Steps

If tariffs were paid and responsibility is disputed or unclear, consider practical business solutions, such as:

- Negotiating revised pricing terms
- Seeking credits or refunds
- Requesting discounts on future projects

In many cases, negotiating new pricing arrangements or incentives with the importer of record may be quicker, more cost-effective, and better for maintaining business relationships.

If negotiation is unsuccessful, it is important to determine applicable dispute resolution processes. This may require:

- Escalation to management
- A formal dispute letter
- Mediation
- Arbitration
- Litigation

Together, our [International Trade and National Security](#) and [Cross-Border Business](#) Teams will continue to monitor developments and provide updates as warranted. If you have any questions or would like to discuss this in further detail, please contact [P. Lee Smith](#), [Felix Faerber](#), or [Javier Becerra, CIPP/US](#).