

7 Steps For Gov't Contractors In Post-IEEPA Tariff Landscape

By **Anne Delmare, Ashley Akers and Amy Fuentes** (March 17, 2026)

The U.S. Supreme Court's recent landmark decision in *Learning Resources Inc. v. Trump* fundamentally shifted the legal framework governing recent U.S. tariffs.

By holding that the International Emergency Economic Powers Act does not authorize the president to impose tariffs, the Feb. 20 decision invalidated the legal basis for nearly \$175 billion in duties collected since March 4, 2025, and triggered a fast-moving scramble over who can recover what and when.[1]

For government contractors, the stakes are especially high. Many contractors either absorbed IEEPA-driven cost increases or passed them through to the government and other customers under existing contract mechanisms.

As refund pathways and new tariff authorities continue to evolve, contractors will need to move quickly to (1) preserve potential rights to IEEPA tariff refunds within their supply chains and (2) manage the government's likely efforts to recoup amounts that were already reimbursed under federal contracts.

Against this unsettled backdrop, this article highlights practical steps government contractors should consider to preserve potential reimbursement rights and contracting strategies to address the next wave of tariffs.

The Threshold Question

Importers of record that paid IEEPA duties have a legal basis for recovery. However, the process for securing refunds is unsettled and evolving. As of this writing, U.S. Customs and Border Protection has not issued guidance on pursuing refunds administratively, and the Trump administration has suggested that refund claims may require prolonged litigation.

In a recent filing in *V.O.S. Selections Inc.*, at the U.S. Court of Appeals for the Federal Circuit, the government suggested that the courts should delay the next steps in the litigation for 90 days to allow "the political branches an opportunity to consider options." The court, however, was not persuaded. On March 2, the Federal Circuit issued an immediate mandate — over the government's objection — denying its request to delay the ongoing tariff refund litigation.

In response to the Supreme Court's opinion, many companies have filed lawsuits at the U.S. Court of International Trade, while others have pursued administrative remedies — though the viability of administrative protests remains unclear.

What's clear is that importers should act promptly to identify applicable deadlines and take affirmative steps to safeguard their entitlement to reimbursement.[2]



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The Importer of Record Issue for Government Contractors

The right to seek a refund belongs to the importer of record. Companies should therefore closely monitor refund developments and act promptly to recover tariff costs that were passed down to them.

Government contractors that purchase commercial items, components or finished goods from U.S. manufacturers, distributors or resellers frequently are not the importer of record, even where they ultimately bore the tariff's economic impact as increased input costs that passed into their contract pricing.

Because only the importer of record may file a protest or post-import refund claim with CBP or at the CIT, contractors that are not importers of record need to coordinate with their suppliers to ensure that eligible entries are identified, timely claims are filed and there are contractual mechanisms in place for sharing any refunds.

Contractors should review the terms and conditions of their downstream supply chain contracts to determine what rights and remedies they might have to recover tariff refunds.

Claims for reimbursement by downstream purchasers — including prime contractors and higher-tier subcontractors — will be contingent on the importer first securing a tariff refund. Companies should therefore closely track refund developments, map which suppliers are acting as importers of record for affected items and act promptly to recover tariff costs that were passed down to them through price increases, surcharges or other contract adjustments.

Remedies Available to Companies That Absorbed Tariffs Costs

For downstream customers, the ability to recover tariff costs will largely depend on how tariff risk and pricing authority were allocated in the contract.

Companies throughout the supply chain should closely review their agreements for:

- Provisions addressing tariff or duty refunds or other pass-through mechanisms;
- Material adverse change clauses tied to significant tariff or trade developments; and
- Cost-plus or other pricing provisions that encompass duties and surcharges.

Where contracts do not clearly address tariffs, companies should identify documentation that links price increases to IEEPA tariffs, including:

- Written communications with suppliers regarding tariff-driven price changes; and
- Invoices or purchase orders with separately itemized tariff surcharges.

To preserve potential recovery rights, companies should promptly consider issuing written demands or preservation-of-rights notices asserting a claim to any IEEPA tariff refunds.

Remedies If Contract Is Unclear or Silent

Even where contracts do not expressly address tariffs, companies may have viable paths to recovery.

These include:

- Renegotiating contract terms or pursuing practical, cooperative solutions, such as sharing with the importer the costs and potential benefits of seeking IEEPA refunds;
- Requesting credits, rebates or reimbursements; and
- Revising pricing arrangements on a go-forward basis.

Importers that passed tariff costs through to customers may have limited incentive to pursue refunds independently. Companies should therefore take immediate steps to engage importers and negotiate workable, mutually beneficial arrangements, including express agreements on how any refunds would be allocated.

Whether IEEPA Tariff Refunds Must Be Credited to the Government

Federal contractors that previously absorbed those costs — or were compensated for them — may be required to credit the government for any IEEPA tariffs that are refunded. Whether a credit is owed will depend on the contract type, applicable contract clauses and whether the contractor previously recovered the tariff costs through billing, price adjustments or claims.

For example, under a cost-reimbursement contract, if IEEPA tariffs were treated as allowable costs and billed to the government, a subsequent refund may be viewed as a credit allocable to the contract, requiring repayment or an offset against future billings.

Contractors should be cautious of nuances in firm-fixed price contracts. Although contractors generally bear the risk of cost increases and benefit from cost decreases in these types of contracts, provisions such as price adjustment clauses addressing taxes and duties or prior equitable adjustments tied to tariff increases may give the government a right to recoup or offset refunded amounts.

In short, where the government has already borne the cost of tariffs, it may seek recovery if those costs are later eliminated through reimbursement.

As refund mechanisms continue to develop, contractors should conduct a contract-by-contract review to assess how tariff costs were treated and identify relevant clauses — including taxes, changes and economic price adjustment clauses. Failure to do so may expose contractors to audit risks or, in some circumstances, False Claims Act liability.

Contractors should not assume tariff refunds may be retained without careful contractual and regulatory analysis.

Offsetting the Costs of Pursuing Reimbursement

The Federal Acquisition Regulation does not provide an automatic right to offset recovery costs against any required credit to the government. Instead, a contractor will likely need to

demonstrate that such costs are allowable and allocable under specific contract terms, or address cost recovery through negotiation with the government — for example, through indirect cost rates or a tailored agreement on how refund-related expenses will be treated.

Planning for Future Tariffs

Tariffs are not going away. In fact, effective Feb. 24, the U.S. replaced IEEPA-based tariffs with a 10% global import surcharge under Section 122 of the Trade Act of 1974 — a temporary 150-day measure aimed at balance-of-payments concerns, with the potential to be increased to 15%.

The administration has also signaled a transition to more long-lasting tariffs under Section 301 of the Trade Act. It remains to be seen whether these tariffs will withstand future legal challenges, though the legality of these tariff authorities is on firmer footing.

Going forward, companies should closely watch for new tariff developments that may affect their pricing and margins.

In the wake of tariff uncertainty, they should consider whether agreements for imported goods should expressly address:

- Allocation of tariff risk across the supply chain;
- Mechanisms for sharing or passing through tariff-related costs and refunds; and
- Procedures for repricing or renegotiation in response to material tariff changes.

Early coordination with suppliers and contracting officers, supported by legal guidance and contract modifications, can help manage risk and preserve flexibility as tariff law and enforcement efforts continue to evolve.

Key Takeaways

In the wake of Learning Resources, and the rapid pivot to Section 122 tariffs and anticipated measures under Section 301, federal contractors face a compressed timeline for assessing both refund opportunities and potential repayment obligations to the government.

The seven action items below distill the practical steps contractors should prioritize now — both to preserve their place in any refund waterfall, and to manage audit, overpayment and FCA risk.

Taken together, these steps provide a road map for coordinating with importers, contracting officers and suppliers as the post-IEEPA tariff regime continues to unfold.

1. Move quickly to preserve potential refunds.

Identify 2025 and 2026 imports that were subject to IEEPA tariffs and identify the importer of record. Coordinate with importers now on litigation, administrative challenges— such as protests — and documentation to preserve refund rights, and negotiate how any refunds will be allocated. Timing is critical.

2. Map tariff costs to specific contracts.

For each major federal contract, determine whether IEEPA tariff costs were (1) absorbed by the contractor; (2) passed through to the government via cost-type billing, equitable adjustments or economic price adjustments; or (3) embedded in firm-fixed prices without adjustment.

3. Perform a clause-by-clause risk assessment.

Review key clauses — i.e., taxes, changes, economic price adjustment, allowable cost and payment — and any prior equitable adjustments to assess whether tariff refunds may be treated as credits to the government and where the government may assert offset rights.

4. Anticipate audits and potential FCA exposure.

Contractors that received tariff-driven increases or billed IEEPA duties as costs should plan for audit scrutiny. Develop a strategy now for how refunds will be identified, tracked and credited to avoid allegations of overpayment retention or false claims.

5. Address recovery costs up front.

Consider how legal fees and administrative costs associated with pursuing IEEPA refunds will be handled — both in negotiations with importers and in discussions with contracting officers regarding allowability, allocation and any net-to-government credit.

6. Recalibrate contracting strategy for future tariffs.

As Section 122 surcharges and anticipated Section 301 measures take hold, incorporate explicit tariff allocation and refund-sharing provisions into subcontracts and prime contracts where possible, and consider pricing, indexing and economic price adjustment mechanisms that address future tariff volatility.

7. Document everything.

Maintain contemporaneous records linking pricing decisions and surcharges to specific tariffs, and document any communications with suppliers, importers and government counterparts about tariff impacts and refunds. This documentation will be critical, both to support refund claims and to defend against potential government recoupment efforts.

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[1] <https://www.hklaw.com/en/insights/publications/2026/02/supreme-court-strikes-down->

ieepa-tariffs.

[2] <https://news.bloomberglaw.com/legal-exchange-insights-and-commentary/act-fast-for-tariff-refunds-as-trump-walks-back-doj-assurances>.