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Costco and Others File Suit for Import Duty Refunds

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Last Friday, Costco Wholesale Corporation filed suit against the United States Government in the U.S. Court of International Trade, apparently as a preemptive measure to ensure that before many of its imports liquidated with US Customs, Costco would be paid refunds for payments made under the Trump Administration's fentanyl and "reciprocal" tariffs. This comes after the Federal Circuit Court of Appeals concluded that the fentanyl and reciprocal tariffs were invalid. Other companies have reportedly filed similar claims, premised on a gray area in US customs law under which it may not be possible to simply protest against previously liquidated entries if an importer seeks a refund of duties paid under a later-invalidated tariff.

Ordinarily, a specific import entry will liquidate prior to the 314-day deadline. The date of liquidation is the day on which the entry was formally resolved and closed (although the goods will normally have already been released to the importer well before then, with import duties secured by the importer's import bond). For companies with large amounts of import duties paid who may share the concern that the courts will not order the Trump Administration to implement a refund program for duties paid under the fentanyl and reciprocal tariffs, it is wise to determine how many entries remain unliquidated and the monetary amount of duties paid, prior to considering whether to similarly file suit. Currently, the legal challenge to these tariffs is being considered by the US Supreme Court, so it is not known whether that court's decision may also address importers' entitlements to refunds.

Importers should also be aware that Section 232 steel, aluminum, and automotive tariffs remain legally effective and are not the subject of these refund concerns.

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