

Calculating Damages In IEEPA Tariff Refund Litigation

By **Tiago Duarte-Silva and Zawadi Lemayian** (April 10, 2026)

The U.S. Supreme Court's February ruling in *Learning Resources Inc. v. Trump*, opening the door to more than \$175 billion in government refunds, resolves one question: The tariffs imposed under the International Emergency Economic Powers Act were illegal. But it did not resolve a harder question: Who bore their economic cost?

That distinction is now driving two parallel waves of private litigation: commercial disputes between importers, distributors and retailers over how tariff burdens were allocated across supply chains, and consumer class actions against companies that passed tariff costs to end purchasers, and are now collecting refunds.

At the center of these disputes is a distinction familiar to public economists but increasingly relevant to courts: the difference between statutory and economic incidence.

The statutory incidence of a tariff falls on the importer of record, i.e., the entity that writes the check to U.S. Customs and Border Protection. "Economic incidence" describes where the cost of a tariff ultimately lands after prices adjust throughout the supply chain. These two concepts can diverge substantially, and that divergence is the source of most of the private litigation discussed below.



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Disputes Between Private Parties Following Government Refunds

Tariffs are typically paid by the importer of record when goods enter the U.S. When the Supreme Court invalidated the tariffs, it opened the door to refunds of those payments. Even if the importer of record is the one who claims and gets a refund, that is not necessarily the entity that ultimately absorbed its cost. As a result, refund claims are likely to trigger disputes among participants in the supply chain over who bore the economic burden of the tariffs.

If an importer passed tariff costs through to downstream customers and now receives a refund from the government, those customers are likely to argue that the importer is getting a windfall. For example, distributors or retailers may assert that they paid higher prices because importers incorporated tariff costs into their pricing. If the importer later recovers a refund of those tariffs, the downstream purchaser may argue that the refund should be shared.

These disputes echo a well-developed line of cases in federal antitrust law. The U.S. Supreme Court's 1977 ruling in *Illinois Brick Co. v. Illinois* barred indirect purchasers from recovering on the grounds that measuring cascading pass-through was too speculative and risked duplicative recoveries. Some states have enacted related statutes restoring indirect purchaser claims.

Courts adjudicating tariff refund disputes may look to this body of doctrine, even though the IEEPA context does not map onto it precisely, as a framework for thinking about how economic burdens are assigned and traced across a supply chain.

Private disputes may also arise in the opposite direction: Suppliers whose contracts were renegotiated in response to tariffs may argue that they absorbed part of the tariff burden through reduced prices, altered contract terms or canceled orders. For example, a downstream purchaser may have demanded price concessions or declined to honor minimum purchase commitments after tariffs increased the cost of imported inputs.

Consumer Class Actions Over Tariff Refunds

Plaintiffs have begun filing class actions alleging that companies collected amounts from consumers that were attributable to IEEPA tariffs and should return those amounts if tariff refunds are obtained. The theories vary.

Stockov v. Costco Wholesale Corp. in the U.S. District Court for the Northern District of Illinois and *Ward v. EssilorLuxottica S.A.* in the U.S. District Court for the Eastern District of New York are framed around higher retail prices or tariff-related charges allegedly borne by consumers.

Reiser v. Federal Express Corporation, a case in the U.S. District Court for the Southern District of Florida, is different: It seeks recovery of import duties, and related brokerage and clearance fees allegedly collected on shipments that would have been duty-free absent the IEEPA tariffs.

The economic theory underlying these class actions is parallel to the above. If the economic incidence of the tariffs fell on consumers rather than importers, then consumers will argue they should be the proper beneficiaries of any refund. If retailers incorporated tariff costs into product prices, end purchasers can argue they effectively funded those duties, and that a refund flowing only to the importer constitutes a windfall.

However, demonstrating such pass-through at the consumer level is often difficult in practice. Retail prices typically reflect many concurrent influences, including broader inflation, transportation costs, supplier negotiations and strategic pricing decisions. Observed price increases therefore cannot automatically be attributed to tariffs alone.

Consumer class actions will also face significant hurdles at the class certification stage. Under the the U.S. Supreme Court's 2013 ruling in *Comcast Corp. v. Caroline Behrend*, a plaintiff's damages model must be capable of measuring classwide damages attributable specifically to the liability theory advanced. So, a general model of industry-wide price effects is unlikely to satisfy Rule 23 if the claimed harm varies materially across products, customers or time periods.

Because tariffs affected some products more than others, and because retailers adjusted prices differently across regions, channels and individual stock-keeping units, defendants will argue that pass-through cannot be demonstrated with common evidence sufficient to establish predominance.

These challenges mirror issues that courts have confronted in indirect purchaser litigation under antitrust law. In those cases, economic analysis often focuses on estimating how upstream cost shocks propagate through supply chains and whether a measurable overcharge can be identified at the consumer level.

Whether and to What Extent Tariff Costs Were Passed Through

Both supply chain disputes and consumer class actions will therefore turn on a similar economic issue: Whether and to what extent tariff costs were passed through to various parties.

Pass-through is not uniform across industries or even necessarily across products by the same company. In competitive settings, the extent to which a cost shock is transmitted to buyers versus absorbed by sellers depends on the relative elasticities of supply and demand, and so a wide range of outcomes is possible.

In differentiated or concentrated markets, pass-through also depends on demand curvature, cost conditions and strategic pricing behavior. For that reason, pass-through can be incomplete, complete or in some settings exceed 100%, a counterintuitive result that has appeared in the empirical literature and reflects the dynamics of strategic pricing among a small number of competitors.

Some firms may have absorbed tariffs by reducing their margins, particularly if competitive pressures limited their ability to raise prices. Others may have passed the costs through partially or fully, depending on demand conditions, contractual relationships and market structure.

The timing of pass-through can also vary. Prices may adjust gradually rather than immediately after tariffs are imposed, reflecting negotiations with customers, inventory cycles or strategic pricing decisions. In some cases, companies may initially absorb tariffs and later raise prices once it becomes clear that the policy will remain in place.

One key issue will be measuring pass-through — i.e., the extent to which tariff costs were absorbed by the importers of record versus transmitted to downstream purchasers. That analysis may rely on customs records, pricing data, invoices and broader market indicators to estimate how tariff shocks affected prices across products, customers and time periods.

As introduced above, measuring economic harm requires paying attention to various categories of loss. Each tells a different story about who bore the burden and what a refund does and does not remedy.

- A price effect: margin compression when tariff costs were absorbed by the importer rather than passed through.
- A volume effect: lost profits on sales that did not occur because higher prices reduced demand, as buyers substituted toward alternative products or deferred purchases.
- Adjustment costs: the expense of restructuring supply chains, renegotiating commercial relationships, rationalizing product lines or shifting sourcing — i.e., costs that are triggered by the tariffs but are not remedied simply because prices eventually adjust or duties are refunded.

This taxonomy matters for litigation because a refund of collected duties addresses none of these losses directly. A firm that fully passed through tariff costs in its prices may still argue that it has suffered harm through volume erosion and adjustment costs, even if duties are later refunded.

Establishing tariff pass-through may also be particularly challenging because the tariffs coincided with other economic forces that affected prices. Many industries experienced broader inflationary pressures, supply chain disruptions and fluctuations in input costs unrelated to tariffs. As a result, observed price increases cannot automatically be attributed to tariffs.

Significant Amounts of Interest on Refunds May Raise Additional Economic Questions

A related but distinct set of disputes concerns who is entitled to the interest accruing on refunded duties. Under current U.S. Customs and Border Protection rules, the applicable rate on duty overpayments is 6% annually for corporations, a meaningful sum given both the volume of duties collected and the time elapsed since payment.

The importer of record may argue that it is the proper recipient because it advanced the tariff payment and therefore bore the financial cost of having capital tied up. From this perspective, interest compensates the importer for the time value of money and the risk associated with paying duties that were later invalidated.

Downstream purchasers, however, may contend that if tariff costs were passed through in the form of higher prices, they effectively financed the tariff payments. In that case, they may argue that interest on refunded tariffs should also be shared because they bore part of the economic burden of the payment during the period before the refund.

The economic logic of the downstream purchaser's claim will likely be that, if tariff costs were passed through in the form of higher prices, then the downstream party advanced an interest-free loan to the importer, i.e., it funded the duty payment without receiving the time value of that money during the period before refund.

The interest allocation question may therefore be seen by courts as linked to the pass-through question: Whoever bore the economic incidence of the tariff also bore the liquidity cost of having capital tied up. The answer will depend on contractual arrangements, pricing dynamics and the timing of payments across the supply chain.

Conclusion

The government refund litigation will resolve many of the legal questions raised by the Supreme Court's February decision. The private disputes now forming between commercial actors, and the consumer class actions now being filed, will address a different and in some ways harder set of questions — not whether the tariffs were lawful, but who ultimately bore their economic cost.

Those questions will not be answered by reviewing invoices or customs records alone. The period during which the tariffs were in effect coincided with broader inflationary pressures, supply chain disruptions and demand shifts that independently affected prices across industries. Isolating the tariff-specific contribution to an observed price change will require economic analysis drawing on pricing data, contract terms and market indicators — and will need to account for the different ways in which price effects, volume effects and adjustment costs may have materialized across different products, customers and time periods.

Courts will draw on jurisprudence for guidance, but those frameworks will require adaptation. The IEEPA tariffs were imposed by executive order rather than through the standard administrative process, affected supply chains spanning dozens of countries and

generated economic consequences that a refund of collected duties does not fully address.

As those cases develop, the central methodological challenge will be distinguishing tariff-related effects from the other market forces operating during the same period — and determining, with as much precision as the available evidence allows, where in the supply chain the economic burden of the tariffs ultimately came to rest.

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[7] *Ward v. EssilorLuxottica SA*, No. 1:26-cv-01133 (E.D.N.Y. filed February 26, 2026). <https://apnews.com/article/tariffs-fedex-essilorluxottica-consumers-lawsuits>.

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