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U.S. TARIFF INVALIDATION: DEVELOPMENTS IN REFUND PROCEDURES AND POTENTIAL RECOVERY SCENARIOS FOR CHILEAN EXPORTERS

Following the U.S. Supreme Court's decision invalidating the "reciprocal" tariffs imposed under President Donald Trump's administration pursuant to the International Emergency Economic Powers Act (IEEPA), the U.S. government implemented the CAPE (Consolidated Administration and Processing of Entries) program, enabling the reimbursement of tariffs previously paid and creating a new scenario for companies affected by such measures.

While only importers of record in the United States may directly request refunds of the tariffs paid, in many cases foreign exporters ultimately absorbed the economic impact of these measures through commercial discounts, price adjustments, contractual renegotiations or commercial concessions implemented to preserve operational continuity and competitiveness in the U.S. market.

In this context, a potential indirect recovery opportunity may begin to emerge for Chilean exporters that could be entitled to claim all or part of the amounts currently reimbursed to their U.S. counterparts, depending on the applicable contractual and commercial structure in each case.

The beginning of the refund process

As reported in our News Alert dated February 26, 2026, on February 20, 2026, the U.S. Supreme Court issued decisions in Learning Resources, Inc. v. Trump and Trump v. V.O.S. Selections, Inc., declaring unlawful the so-called "reciprocal" tariffs imposed under the IEEPA.

The Court concluded that such measures exceeded the authority granted to the Executive Branch under that statute. In Chile's case, these tariffs reached a rate of 10% on certain exports to the United States.

As a consequence of this decision, the U.S. government implemented

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the CAPE program, a mechanism through which importers of record may request reimbursement of payments made under the tariffs subsequently invalidated.

The program has been operational since April 20, 2026, and refund requests have already begun to be processed.

An opportunity that could extend beyond U.S. importers

While only importers of record in the United States may receive direct reimbursements from the U.S. government, in many cases Chilean exporters themselves ultimately absorbed these costs, whether through agreed Incoterms, commercial discounts, extraordinary price adjustments, contractual absorption of additional charges or commercial concessions aimed at preserving commercial relationships during the tariff period.

This situation could create indirect recovery scenarios regarding amounts currently reimbursed to U.S. importers or distributors, particularly where Chilean exporters effectively absorbed the economic or contractual impact of the tariffs during the relevant period.

Depending on the contractual framework and the circumstances of each transaction, different legal actions against importers or other counterparties could be considered, based on various principles applicable to the contractual relationship with U.S. importers, including:

• Breach of contract, where the parties' agreement contemplated the allocation of tariffs or the distribution of any resulting refunds;
• Unjust enrichment, to avoid the importer obtaining a double benefit;
• Recovery of funds improperly received, where tariff amounts are identifiable and traceable; and
• Good faith principles and estoppel doctrines, depending on how price adjustments were negotiated during the tariff period.

In this regard, a case-by-case assessment, document traceability and the ability to demonstrate the effective economic absorption of these costs will be particularly relevant in any assessment or potential claim or recovery strategy.

The importance of acting promptly

The implementation of the CAPE program creates a scenario where timing may be critical both from a strategic and procedural standpoint, in order to preserve legal positions, prepare potential claims, and strengthen negotiating leverage vis-à-vis counterparties in the United States.

U.S. importers are already requesting and receiving refunds, without necessarily having any economic incentive to share those amounts with foreign exporters. Likewise, the absence of express contractual provisions may complicate future claims or create procedural advantages for certain counterparties.

In this context, it is advisable to timely review the relevant contracts and commercial documentation, as well as the financial, logistics, and communications records associated with the period during which the tariffs were in effect, in order to preserve evidence and prepare for potential future actions.

New tariffs following the decision and ongoing litigation

Following the U.S. Supreme Court's February 20, 2026 decision, the U.S. government announced new global tariffs of 10%, this time invoking Section 122 of the Trade Act of 1974 as legal basis, replacing the tariffs previously invalidated by the Court.

However, these new measures have also been challenged in court. On May 7, 2026, the U.S. Court of International Trade preliminarily ruled that such tariffs may have been imposed beyond the authority granted to the President under that statute.

This new litigation could create additional restitution or recovery scenarios regarding subsequent tariff measures, and its development will continue to be particularly relevant for Chilean exporters exposed to the U.S. market.

We will continue monitoring these judicial proceedings and their potential implications for Chilean exporters affected by tariff measures imposed under Section 122.

Our support

Carey has a multidisciplinary team with experience in international trade, litigation and dispute resolution, capable of advising clients on the assessment of potential recovery mechanisms, contractual analysis and strategic approaches related to this new regulatory and

judicial landscape.

For more information regarding these matters and how we may assist you, please contact Matías Vergara, partner of Carey's International Trade practice, and Francisco León, senior associate.