CLIENT ALERTS

Federal Appellate Court Invalidates IEEPA Tariffs, Setting up Likely Supreme Court Showdown: What to Know and How to Preserve Rights to Refunds

Client Alert
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Butzel continues to keep clients updated on tariff and trade developments. Real-time updates are available on our Tariff and Trade Resource Center. Over the last several weeks we have reported on developments to challenges brought by various plaintiffs, seeking to stay, overturn, and outlaw various tariffs instituted by the Trump Administration. *See* Court of International Trade Block "Liberation Day" and Other IEEPA-Based Tariffs … For Now (May 29, 2025); UPDATE: Court of Appeals Places Hold on Court of International Trade's Decision Regarding "Liberation Day" and Other IEEPA-Based Tariffs (May 30, 2025).

Last week, the full US Court of Appeals for the Federal Circuit announced its much awaited decision in *V.O.S. Selections, Inc. v. Trump*. In a 7-4 decision, the appellate court upheld the unanimous ruling of a 3-judge panel of the Court of International Trade (CIT) in May, that the International Emergency Powers Act ("IEEPA") does not authorize the President to unilaterally impose tariffs to address opioids trafficking into the United States from Canada, Mexico, and China (the "Trafficking Tariffs") nor to address the lack of reciprocity in bilateral trade agreements between the United States and other countries (the "Reciprocal Tariffs"). For now, however, the Trafficking and Reciprocal Tariffs remain in effect until the CIT determines the proper scope of relief—namely, whether and to what extent it can implement a universal injunction.

The Court's 127-page opinion is broken down in three parts: 1) the per curiam 7-judge majority opinion; 2) a 4-judge "additional views" opinion; and 3) a 4-judge dissenting opinion. The 46-page majority opinion held that, "The Trafficking and Reciprocal Tariffs assert an expansive authority that is . . . beyond the authority delegated to the President by IEEPA." The majority opinion also

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affirmed "the CIT's grant of declaratory relief that the orders are 'invalid as contrary to law,'" but vacated and remanded the CIT's imposition of a permanent universal injunction, directing the CIT to take into consideration the Supreme Court's recent decision on injunctions expressed in *Trump v. CASA. Inc.*, 145 S Ct 2540 (2025).

The majority opinion stated:

> *The statute bestows significant authority on the President to undertake a number of actions in response to a declared national emergency, but none of these actions explicitly include the power to impose tariffs, duties, or the like, or the power to tax. The Government locates that authority within the term "regulate . . . importation," but it is far from plain that "regulate . . . importation," in this context, includes the power to impose the tariffs at issue in this case.*

The Court contrasted the IEEPA with the "numerous statutes" that actually do delegate authority to the President to impose tariffs, in which Congress has used clear and precise terms to delegate tariff power, and concluded that none of those statutes use the broad term "regulate" without also separately and explicitly granting the President the power to impose tariffs. Thus, the Court found, the absence of any such tariff language in IEEPA contrasts with statutes where Congress has affirmatively granted such power and included clear limits on that power.

The Court pointed out several other factors relevant to it reaching its conclusion:

- In each statute clearly delegating tariff power to the President, Congress provided specific substantive limitations and procedural guidelines to be followed in imposing tariffs;
- If the President had the power to impose unlimited tariffs, it would run afoul of the "major questions" doctrine;
- No other President has ever asserted authority under IEEPA to impose tariffs on imports or to adjust the rates thereof; and
- Reading the phrase "regulate . . . importation" to include imposing Trafficking and Reciprocal Tariffs is "a wafer-thin reed on which to rest such sweeping power."

The 4-judge "Additional Views" opinion (16 pages) joined the majority opinion in full (*i.e.*, that the IEEPA does not grant the President the authority to impose the Trafficking and/or Reciprocal Tariffs), but also concludes that IEEPA does not authorize the President to impose any tariffs.

Conversely, the dissent in its 65-page opinion read the phrase "regulate . . . importation" to provide a sufficient basis for the President to exercise such power:

> *IEEPA's language, as confirmed by its history, authorizes tariffs to regulate importation—a conclusion that the majority does not squarely reject, but Judge Cunningham and those who join her opinion do. And IEEPA's language does not contain the additional limits on which the majority opinion today relies as the sole basis for its illegality holding. Maj. Op. at 37–42. IEEPA embodies an eyes-open congressional grant of broad emergency authority in this foreign-affairs realm, which*

> *unsurprisingly extends beyond authorities available under non-emergency laws, and Congress confirmed the understood breadth by tying IEEPA's authority to particularly demanding procedural requirements for keeping Congress informed. And, contrary to the CIT's reason for invalidating the reciprocal tariffs, such emergency authority is not displaced by another statute (section 122 of the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978, 1987–88, (1974) (codified at 19 U.S.C. § 2132)); nor does IEEPA contain the exclusion of using IEEPA authorities as leverage that the CIT articulated as the sole basis for holding the trafficking tariffs unlawful. Finally, the major questions doctrine does not call for a different statutory conclusion.*

So, what's next? This case is ostensibly headed back to the CIT to determine whether and to what extent it can grant the universal injunction stopping tariffs based on applicable law and equity in light of the Supreme Court's recent holding in *Trump v. CASA, Inc.* However, the Federal Circuit gave the President until mid-October to appeal to the Supreme Court. Pam Bondi, the US Attorney General, and Peter Navarro, a White House trade advisor, both stated over the weekend that the White House intended to do so. The White House appears optimistic that the conservative majority on the current Supreme Court will use the emergency docket to affirm, at least provisionally, another presidential assertion of authority. Mr. Navarro expressed confidence that the Federal Circuit dissenting opinion "presents a very clear road map to how the Supreme Court can rule in our favor."

Affected Tariffs

For clarity, here are the tariffs directly affected by the Court's ruling:

Effective Date

Trading Partner(s)

Rate

Cited Basis

2/4/25

China

20% (10% from 2/4/25-3/3/25)

IEEPA (Synthetic Opioids)

3/4/25

Canada

35% on non-USMCA compliant goods (25% from 3/4/25-7/31/25)

IEEPA (Illicit Drugs)

3/4/25

Mexico

25% on non-USMCA compliant goods

IEEPA (Situation at Southern Border)

4/5/25

All Except Belarus, Canada, Cuba, Mexico, North Korea, & Russia

10%

IEEPA (Reciprocal Tariffs)

4/9/25

China

10% (was 125% from 4/10/25-5/3/25; was 84% on 4/9/25)

IEEPA

8/7/25

68 Countries & Territories + EU

10% - 41%; 40% for transshipped goods

IEEPA (Reciprocal Tariffs)

The Executive Orders imposing additional duties of 40% on Brazil and 25% on India (on top of their current reciprocal tariff rates of 10% and 25%, respectively) and suspending duty-free *de minimis* treatment for shipments of $800 or less were also based on IEEPA and are likely to be invalidated if the ruling is upheld.

Indeed, in late July, the CIT denied a motion for a preliminary injunction in and stayed a case in which an auto parts supplier challenged the suspension of *de minimis* treatment for China, ruling that the requested relief was redundant to the relief in *V.O.S. Selections. See Axle of Dearborn, Inc. d/b/a Detroit Axle v. Dep't of Commerce*, No. 25-00091, slip op. 25-96 (Ct. Int'l Trade July 28, 2025).

Other IEEPA Tariff Appeals

On May 29, the US District Court for the District of Columbia granted a preliminary injunction staying the imposition of the IEEPA tariffs only for the two named plaintiffs (educational toy importers) in *Learning Resources, Inc. v. Trump*. The plaintiffs have petitioned the Supreme Court to take up the case on an expedited basis for the upcoming October 2025 term. The Supreme Court will decide whether to do so during its September 29 conference. Otherwise, the US Court of Appeals for the DC Circuit will hear oral argument in that case on September 30.

In addition, district courts in California and Montana have dismissed challenges to the IEEPA tariffs for jurisdictional reasons. The US Court of Appeals for the Ninth Circuit will hear oral arguments in appeals from those two cases, *California v. Trump* and *Webber v. Department of Homeland Security*, on September 17.

The Supreme Court is likely to take up one (or all) of the IEEPA tariff challenges and could issue a decision within the upcoming term (*i.e.*, by June 2026).

Preserving Rights to Possible Refunds

One issue not addressed by any of the courts so far is the potential for refunds of Trafficking and/or Reciprocal Tariffs already paid if the *V.O.S. Selections* ruling is upheld.

Importers should not expect that refunds will be automatic. Rather, importers would likely have to take action to claim a refund in one of two ways.

First, the courts might require US Customs and Border Protection (CBP) to set up a claims process, by which companies could submit claims for refunds of the tariffs that they have paid.

Second, and perhaps more likely, companies may have to submit Post-Summary Corrections of unliquidated entries and/or Protests of liquidated entries to claim refunds.

There is a precedent for these types of processes—after the Supreme Court ruled that the Harbor Maintenance Tax was an unconstitutional export tax in *United States v. U.S. Shoe Corp.*, 523 U. S. 360 (1998), importers were able to seek refunds through either a court-approved claims process or administrative relief (*i.e.*, Protests). The courts may follow that precedent here.

Either way, importers should carefully keep track of all records for imports on which they have had to pay IEEPA tariffs and carefully monitor the liquidation dates, so that they can make the proper submissions.

Liquidation occurs no later than 1 year from the date of entry—and typically occurs a month to a few weeks earlier than that. Accordingly, affected imports will likely begin liquidating in early 2026.

Protests must be filed within 180 days of liquidation. This means that the protest deadlines for affected entries may pass before the Supreme Court renders a final decision.

Importers should be prepared to file Protests within 180 days after the liquidation of each and every entry on which they have paid IEEPA tariffs to ensure that they preserve their rights.

Butzel attorneys have significant experience with the Protest process and can assist clients in preparing and filing Protests with Customs.

The Butzel International Trade, Tariffs and Customs Specialty Team is available to assist in dealing with tariffs and related issues. Please visit our Tariff and Trade Resource Center for additional up-to-date news on tariffs, trade, and business implications. We encourage you to reach out to the authors or your Butzel attorney for further information.

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