

Client Alert: Supreme Court Rules Against IEEPA Tariffs

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passed, “no President has invoked the statute to impose any tariffs—let alone tariffs of this magnitude and scope.” Thus, the Court cited to *Biden v. Nebraska* (600 U.S. 477, 506 (2023)) to state that “the President must ‘point to clear congressional authorization’ to justify his extraordinary assertion of the power to impose tariffs.” The Court concluded simply: “He cannot.”

The Court acknowledged IEEPA’s grant of authority to “regulate . . . importation”, and did not define that scope, other than to conclude that IEPPA does not provide a clear congressional authorization specifically for tariffs. The Court likewise said: “We claim no special competence in matters of

economics or foreign affairs. We claim only, as we must, the limited role assigned to us by Article III of the Constitution. Fulfilling that role, we hold that IEEPA does not authorize the President to impose tariffs.”

The decision did not, however, address the question of remedy. It did not speak to the collection of the tariffs going forward or to the question of refunds. Indeed, the Supreme Court’s decision affirmed the holding of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *V.O.S. Selections* (Case No. 25-250, decided Aug. 29, 2025). That decision affirmed the holding of the U.S. Court of International Trade (CIT) (772 F. Supp. 3d 1350 (Ct. Int’l Trade 2025)) that the President’s IEEPA tariffs exceeded the authority delegated by the statute and that affirmed the CIT’s grant of *declaratory relief to the plaintiffs in that case*.

However, the CAFC vacated the CIT’s *universal* injunction and remanded the case to the CIT on the question of *injunctive* relief for other importers. The CAFC found that the CIT issued a universal injunction under the Uniformity Clause to ensure a complete legal remedy (rather than “piecemeal refunds to specific plaintiffs”), but the CAFC vacated that injunction based on the Supreme Court’s intervening decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025). The CAFC instructed the CIT to reconsider the injunction according to the *CASA* factors and also with consideration of the four factors in *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

It is possible that the CIT will consider all these standards and will still issue a universal injunction, effectively applying today’s Supreme Court ruling to all importers. While that would avoid the need for a flood of identical CIT claims, which could bog down dockets for months or longer, the CAFC instructed the CIT to consider very specific legal factors, and it is possible that the CIT could determine that each importer must seek its own judgment.

In a press conference after the ruling issued, President Trump called the decision “totally defective” on the issue of remedies, and he said, “I guess it has to get litigated.” At the same time, President Trump announced that he would replace the IEEPA tariffs with a 10% global tariff under Section 122 of the Trade Act of 1974, and the President has already issued a proclamation to impose these tariffs, beginning February 24. The President also indicated on social media that he might increase the 10% tariffs to 15%.

These new tariffs mitigate the practical impact of the Supreme Court decision on a going forward basis, at least for the time being. Notably, though, the Section 122 tariffs exempt USMCA qualifying goods, goods subject to Section 232 tariffs, certain agricultural goods, critical minerals, and other imports that also enjoyed relief from IEEPA tariffs.

Section 122 provides authority to the President to impose tariffs of up to 15% to deal with “large and serious United States balance-of-payments deficits,” “to prevent an imminent and significant depreciation of the dollar in foreign exchange markets,” or “to cooperate with other countries in correcting an international balance-of-payments disequilibrium”. Section 122 limits such tariffs to 150 days in duration, unless Congress passes legislation to extend them. No President has previously used this authority, and the apparent use as a fallback authority immediately after an unfavorable Supreme Court decision on the IEEPA tariffs suggests that its use could also trigger litigation.

In addition to the proclamation imposing Section 122 tariffs, the President issued an executive order to stop the collection of IEEPA tariffs. However, replacement of IEEPA tariffs with new tariffs under a separate authority does not address whether or how importers can receive refunds for IEEPA tariffs paid on past entries. Many importers have been protesting entries subject to IEEPA tariffs as they liquidate, to seek refunds directly from Customs. Many importers have also filed their own actions in the CIT.

Initially, those cases focused on injunctive relief to stop entries from liquidating, so that the CIT could order Customs to refund the tariffs. The Government did not contest the CIT’s ability to order such refunds even if entries were liquidated, and the CIT agreed and denied that injunctive relief. *See AGS Company Automotive Solutions v. United States*, (Slip Op. 25-154, Ct. Int’l Trade (Dec. 15, 2025)). Presumably, these plaintiffs will now point to the Supreme Court decision and ask the CIT to order Customs to refund tariffs already paid by them and other importers.

Until the CIT rules on these questions, it is advisable for importers to continue protesting entries within 180 days of liquidation (because, if protests are necessary, there is no exception to this statutory protest deadline). Customs might also issue guidance about whether it will accept protests (or even post summary corrections for unliquidated entries). Importers may also consider filing claims in the CIT, although such claims would be filed under the court’s “residual” jurisdiction (28 U.S.C. 1581(i)), for which the statute of limitations is two years from the time the cause of action first accrues (28 U.S.C. 2636(i)), so other importers may choose to delay filing for a bit longer, pending CIT action on existing cases.

Importers evaluating these options are encouraged to reach out to BJ Shannon (bjshannon@bcrlaw.com) for guidance.

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