

Tariffs Cancelled By Courts—Or Are They?

Client Alerts

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Two courts this week invalidated the tariffs issued by the President under the International Emergency Economic Powers Act (IEEPA). First, late Wednesday night (May 28), the US Court of International Trade (CIT) in *V.O.S. v. United States* issued an order gutting seventeen executive orders that imposed tariffs under IEEPA.^[1] Before the ink could dry on the order, the government appealed and requested a stay from the CIT. Before the CIT ruled on that request, the Court of Appeals for the Federal Circuit (CAFC) stayed the CIT's order — at least until the government's motion to stay is briefed and decided.

Then, on May 29, the District Court for the District of Columbia preliminarily enjoined the government from enforcing IEEPA tariffs levied against the plaintiffs in *Learning Resources v. Trump*. The government likewise immediately appealed. While the order applies only to the two plaintiffs in the action, it suggests a path for similar challenges in federal district courts to the President's power to issue tariffs under IEEPA.

Despite these victories, the tariffs currently are in full force and effect and likely will remain so until appeals in these cases, including a likely further appeal to the Supreme Court, are resolved.

Moreover, given the Supreme Court's recent hearing in *Trump v. CASA Inc.*,^[2] it is unclear if the victory in *V.O.S.* is affirmed whether the ruling will apply beyond the parties in the cases. And the administration already has stated that it will attempt to impose similar tariffs under other statutes. As a result, companies should continue to evaluate how the tariffs may affect their business relationships and what recourse they may have and consider their own challenges to the tariffs.

IEEPA Tariffs Subject to the Court's Order

Since taking office in January 2025, President Trump has imposed extensive tariffs under IEEPA, purportedly to address two national emergencies. First, the President claimed that tariffs were necessary to address the fentanyl crisis and issued Executive Order 14193 against goods from Canada (Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border), 14194 against Mexico (Imposing Duties to Address the Flow of Illicit Drugs Across Our Southern Border), and 14195 against China (Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China).

Second, the President stated that “reciprocal” tariffs against all global imports were necessary to address the economic crisis caused by the United States’ trade imbalance and issued Executive Order 14157 (Regulating Imports with A Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits), as well as a number of retaliatory tariffs specifically targeting China. These tariffs include the 10% world-wide “baseline tariff” imposed on April 5, and also country-specific additional “reciprocal” rates, currently scheduled to go into effect on July 9. The CIT’s injunction invalidates all of these tariffs.

Notably, however, neither case involves recent tariffs imposed under Section 232 on steel, aluminum, and automobiles and parts, or ongoing Section 232 investigations into timber, pharmaceuticals, and semiconductors. The Court’s decision also does not affect the Section 301 tariffs imposed during the previous Trump administration on goods from China.

The Courts’ Decisions

The CIT issued a single order covering two separate appeals in *V.O.S. Selections, Inc. v. United States* and *State of Oregon v. Department of Homeland Security*.^[3] In that order, the CIT ordered the US government to stop levying IEEPA-based tariffs against any importer or small business, and to refund tariffs that have been paid already. The three-judge panel from the CIT, which issued a per curiam order, concluded that the administration’s broad interpretation of IEEPA exceeds both statutory authorization and constitutional limits. While it did not declare that tariffs could never be imposed under IEEPA, it held that the current tariffs exceeded the executive’s authority under the statute.

In reaching its holding, the CIT panel performed an in-depth interpretation of IEEPA, including its text, legislative history, and related statutes, noting that IEEPA was enacted to restrict executive authority. The Court then examined numerous challenges to the tariffs, including the doctrines of nondelegation and political question deference. The CIT concluded that “simply with separation of powers in mind, any interpretation of IEEPA that delegates unlimited tariff authority is unconstitutional.”^[4] The CIT distinguished this case from its prior precedent which permitted certain tariffs under IEEPA’s predecessor statute, explaining that the Court held that the statute did not authorize limitless authority.^[5]

The Court rejected the administration’s attempt to use IEEPA for tariffs on different grounds depending on the type of tariff. It held that as to fentanyl-related tariffs (or what the Court calls “trafficking tariffs”), the tariffs are not authorized by IEEPA because the statute requires that emergency authority only be “exercised to *deal with* an unusual and extraordinary threat with respect to which a national emergency has been declared... [and] not be exercised for any other purpose.”^[6] It held that imposing tariffs to create “leverage” to encourage countries to take measures to counter fentanyl production and trafficking did not “deal with” the crisis as required by

the statute.^[7] The “unusual and extraordinary threat” requirement is not what the court called a “symbolic festoon” — instead, it is a meaningful constraint that must be satisfied.^[8]

As to reciprocal and retaliatory tariffs, the Court held that the tariffs that aimed to address “a type of balance-of-payments deficit,” even if those deficits were “large and serious,” could not be addressed under IEEPA because another statute specifically dealt with balance-of-payment deficits, the Trade Act of 1974.^[9] IEEPA does not allow the administration to circumvent the procedural requirements and congressional oversight mechanisms that Section 122 imposes on an executive trying to balance foreign and domestic payments of tariffs.^[10]

The CIT characterized its central holding as one of constitutional avoidance. It held that regardless of whether it applied the nondelegation doctrine (which requires Congress to provide guidance when delegating power so that executive authority is not without limits), major questions doctrine (which likewise requires statutory clarity when Congress delegates “powers of vast economic and political significance”), or separation of powers principles, any interpretation of IEEPA that delegates unlimited authority to impose tariffs for any reason is unconstitutional.^[11] Specifically, the nondelegation doctrine limits how much authority Congress can delegate to the President to impose tariffs under IEEPA, and the major questions doctrine requires that IEEPA’s language be exceptionally clear in authorizing tariffs of such significance—which was lacking, given that IEEPA does not even mention tariffs. The CIT held that permitting unfettered executive branch tariff authority under IEEPA would effectively transfer congressional power to the President, violating principles that prevent excessive concentration of governmental authority.^[12]

Because the tariffs were not authorized under IEEPA, the CIT invalidated them and issued a permanent injunction that required the government, within ten days, to effectuate cancellation of all tariffs imposed under claimed IEEPA authority. The CIT further ordered the immediate cessation of tariff collection under the enjoined executive orders; refund of tariffs collected during the pendency of litigation; notification to Customs and Border Protection; and coordination with trading partners and international customs authorities.

Almost immediately after the CIT issued its order, the government appealed to the CAFC and simultaneously requested that the CIT and the CAFC stay the order pending a decision on its appeal. While the CIT issued an expedited schedule for briefing on the motion to stay, the CAFC stepped in and issued a temporary administrative stay while the broader stay issue is briefed and decided before it—thus pausing implementation of the injunction. For now, that leaves the tariffs in place.

The District Court in *Learning Resources* similarly held that IEEPA does not authorize tariffs, and that if it did, its delegation of power would likewise be far too broad.^[13] The government already has appealed this decision as well. Notably, the District Court limited its holding to the plaintiffs in that

case and pointed out that the nationwide injunction against tariffs in *V.O.S.* meant that its order would have “virtually no effect on the government.”^[14]

What These Rulings Mean for Companies Affected by IEEPA Tariffs

Given the current stay of the CIT’s order, IEEPA tariffs remain in effect for now. Companies subject to the tariffs are in the same situation as they were before the CIT’s ruling. This may well be the case until the CAFC decides the appeal, given that it already stayed the injunction before the CIT even ruled on the motion to stay before it. And this matter is very likely headed to the Supreme Court, given the significance of the issues at stake.

Moreover, even if the appellate courts ultimately uphold these rulings that IEEPA tariffs at issue are void, the administration already has stated that it is planning other means to try to impose reciprocal and retaliatory tariffs, including using a provision of the Trade Act of 1974 that allows for tariffs of up to 15% for 150 days to address trade imbalances, followed by individualized tariffs against each major trading partner to counter unfair foreign trade practices.

That said, while the *V.O.S.* case is working its way up through the appellate process, companies should take this time to check their supplier and purchaser contracts to determine where tariff liability lies, re-negotiate terms where possible, and set prospective tariff allocations.

Jenner & Block will continue to monitor these and other cases concerning tariffs under IEEPA and provide updates as appropriate. We also stand ready to assist our clients as they navigate their way through these difficult issues.

Footnotes

[1] The Executive Orders in these two categories that are based in IEEPA authority or modify previous IEEPA EOs are 14193, 14194, 14195, 14197, 14198, 14200, 14226, 14227, 14228, 14231, 14232, 14256, 14257, 14259, 14266, 14289, and 14298.

[2] No. 24A884, oral argument held May 15, 2025.

[3] Opinion, *V.O.S. Selections et al v. United States et al*, Case No. 1:25-cv-00066, Doc. 55, Slip Op. 25-66 (Ct. Intl. Trade, May 28, 2025).

[4] *Id.* at 28.

[5] *Id.* at 28-29 (discussing *United States v. Yoshida Int’l. Inc.*, 526 F.2d 560, 584 (C.C.P.A. 1975)).

[6] *Id.* at 41. (quoting 50 U.S.C. § 1701(b))

[7] *Id.* at 45-47.

[8] *Id.* at 41.

[9] *Id.* at 33-34.

[10] *Id.* at 34.

[11] *Id.* at 27-28 (quoting *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 764 (2021) (quotation marks omitted).

[12] *Id.* at 26-28.

[13] Memorandum Opinion, *Learning Resources, Inc. et al v. Trump et al*, 1:25-cv-01248-RC, Doc. 37, 17-18 (D.D.C., May 29, 2025).

[14] *Id.* at 32.

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