

FLASH UPDATE - Tariffs Cancellation Stay by Appellate Court

Client Alerts

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This provides an important update to Jenner's previous client alert which can be found [here](#).

Last night in an unusual en banc per curiam order, the US Court of Appeals for the Federal Circuit, which hears appeals from the US Court of International Trade (CIT) stayed the CIT's order invalidating tariffs issued by President Trump under the International Emergency Economic Powers Act (IEEPA). The order means that the CIT injunction is on hold, and the IEEPA tariffs remain in effect for now, pending resolution of the appeal.^[1] The Federal Circuit also set argument on the merits of the government's appeal for July 31, 2025. This afternoon, the Court of Appeals for the District of Columbia filed an order instructing parties to file motions within 14 days.

The Federal Circuit, sitting en banc, meaning every eligible judge on the circuit participated, reviewed the parties' briefs and several amicus briefs arguing for and against a stay of the CIT decision in *V.O.S. v. United States* and *Oregon v. Trump* to halt the implementation of tariffs set under IEEPA authority.^[2] In issuing the stay, the Federal Circuit concluded that traditional factors the court considers weighed in favor of a continuing stay. The opinion is very short and contains no explanation to support this conclusion, and it was issued the day after the government filed its reply brief arguing in favor of the stay. The Federal Circuit also stated that given the nature of the case, it would be heard en banc in the first instance as opposed to the usual three judge panel. We expect that the en banc court will rule quickly after the merits hearing, meaning that the earliest a decision would likely be issued sometime in August 2025. That in turn makes it unlikely that these issues will come before the Supreme Court on the merits before the beginning of its next term in October.

In *Learning Resources v. Trump*, which is pending in the DC Circuit, the court ordered, per curiam, that the parties file motions within fourteen days of the Federal Circuit issuing a decision on its motion to stay—that is, 14 days from June 10.^[3] The DC Circuit was responding to the parties' arguments that proceedings should be delayed until resolution of the *V.O.S.* stay because, due to differences in interpretation of jurisdictional authority in *V.O.S.* and *Learning Resources*, the Supreme Court likely will hear and decide the cases together.

As a result of the Federal Circuit's order, tariffs on goods from Canada and Mexico, as well as a global 10% tariff, remain in effect and will remain in effect at the very least until July 31, 2025, or until a decision is issued. Even after the Federal Circuit decides the merits of the *V.O.S.* case, its decision will likely be immediately appealed to the Supreme Court, which may continue the stay pending its resolution of the case.

Companies and anyone who imports goods should be aware that the president's challenged IEEPA tariffs will remain in effect for the present, and likely until August at the least, and should prepare to adjust their trade plans accordingly.

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 on IEEPA authority or that modify previous IEEPA executive orders are 14193, 14194, 14195, 14197, 14198, 14200, 14226, 14227, 14228, 14231, 14232, 14256, 14257, 14259, 14266, 14289, and 14298.

[2] *V.O.S. Selections, Inc. v. Trump*, 25-1812, (Fed. Cir.); *State of Oregon v. Trump*, 25-1813, (Fed. Cir.).

[3] *Learning Resources, Inc. v. Donald Trump*, 25-5202, (D.C. Cir.). The *Learning Resources* appeal is pending before the DC Circuit because the plaintiffs filed suit in federal district court for the District of Columbia as opposed to the CIT.

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