

Federal Circuit Affirms Invalidation of Trump's IEEPA Tariffs—Tariffs Remain in Effect Pending Supreme Court Review

Client Alerts

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In a highly anticipated decision released last week, the en banc US Court of Appeals for the Federal Circuit dealt a blow to President Trump's tariff agenda. The Federal Circuit's ruling came down in a consolidated appeal of two cases (*V.O.S. Selections* and *Oregon*) brought in the US Court of International Trade (CIT), challenging the President's use of the International Emergency Economic Powers Act (IEEPA) to impose tariffs via Executive Order.¹

A majority of the en banc court held that the President exceeded his statutory authority under IEEPA. Though the Federal Circuit agreed with the lower court's statutory analysis, it vacated the lower court's universal injunction in light of the Supreme Court's intervening decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025), which held that federal courts may not order injunctive relief that sweeps beyond the plaintiffs in the specific case. The Federal Circuit remanded the case to the CIT with instructions for the lower court to reexamine the scope of injunctive relief.

Importantly, however, the Federal Circuit also delayed the issuance of its mandate to allow the parties to seek immediate review from the Supreme Court which the government already did last night. We anticipate that the Supreme Court will grant the petition.

In the meantime, the Federal Circuit's mandate will remain stayed—and the tariffs will remain in effect—until the Supreme Court makes its decision.

The Majority Opinion: Rejection of Broad Tariff Authority

As noted in our prior client alert, the Federal Circuit took the unusual step of hearing this matter en banc in the first instance. (Our prior analysis of the CIT's ruling in *V.O.S. Selections/Oregon* can be found here.)

Eleven judges heard this appeal.² Seven of the judges held that the challenged tariffs were not permitted under IEEPA with four of those judges also joining a separate concurrence

concluding that *no* tariffs were permitted under IEEPA. Four judges dissented, interpreting IEEPA to authorize the President's tariffs.

After concluding that it had subject matter jurisdiction to hear the case, the Federal Circuit held that IEEPA does not grant President Trump the authority to issue the challenged tariffs. The majority's statutory analysis began with the text of IEEPA which authorizes the President to "regulate . . . importation" in order to "deal with any unusual and extraordinary threat." 50 U.S.C. §§ 1701, 1702. Looking to other statutes that grant the President tariff authority, the majority concluded that those statutes expressly refer to "tariffs" or synonymous terms and reasoned that the word "regulate" should not naturally be read to grant the President taxing authority. Noting that, "when drafting IEEPA, Congress did not use the term 'tariff' or any of its synonyms," the Court concluded, "[t]he absence of any such tariff language in IEEPA contrasts with statutes where Congress has affirmatively granted such power." Slip Op. at 27.

Next, the Federal Circuit held that the President's unprecedented use of IEEPA also implicates the major questions doctrine. The Court emphasized that traditional interpretive principles require clear congressional authorization for significant expansions of executive power—especially when policies have outsized social, economic, or other impact. It stated that imposing "tariffs of unlimited duration on imports of nearly all goods from nearly every country with which the United States conducts trade" is "both 'unheralded' and 'transformative.'" *Id.* at 34. Because "[t]he Executive's use of tariffs qualifies as a decision of vast economic and political significance, [t]he Government must 'point to clear congressional authorization'" for its actions. *Id.* at 37. The Federal Circuit found no such congressional authorization here.

Ultimately, the Court held that it was "unlikely" IEEPA afforded "the President unlimited authority to impose tariffs" as invoked in this case, in contrast with other statutes that did grant explicit, and limited, tariff power such as Section 122 of the Trade Act of 1974. *Id.* at 30. Thus, the majority held that IEEPA does not authorize these particular tariffs.

The majority also rejected the administration's emergency justification, finding that longstanding trade deficits failed to meet IEEPA's "unusual and extraordinary threat" standard.

Four members of the majority would have gone a step further. The concurring judges wrote separately to opine that the law cannot be understood to grant the President *any* authority to enact tariffs under IEEPA and that permitting the President to impose these tariffs would amount to an unconstitutional delegation of legislative authority.

While the Federal Circuit affirmed the underlying judgment of the CIT, it vacated the lower court's injunction and remanded the case to the CIT to ensure that the scope of injunctive relief accords with the Supreme Court's recent decision in *Trump v. CASA*.

The Dissenting Opinion: In Defense of Broad Executive Authority

The remaining four judges dissented. They concluded that IEEPA authorized the President's tariffs, finding that Congress granted broad executive authority via IEEPA and applying doctrines of deference to executive decision-making in matters of national security.

The dissenting judges reasoned that IEEPA's grant of power to "regulate" imports should be read expansively, emphasizing the historical connection between "regulation" and "taxation" in American trade policy. *See* Dissent at 30. Importantly, the dissent reasoned that Congress intended to craft IEEPA to confer broad authority on the President to respond to national emergencies and crises, and it pointed to doctrines of judicial deference to Presidential determinations regarding national security and foreign policy. Courts, the dissent explained, lack the institutional competence to second-guess the President's judgment about what constitutes a national emergency. The dissenters argued that the text of IEEPA should be interpreted against this backdrop of judicial deference to executive decision-making. For the same reason, the dissent maintained that the major questions doctrine does not apply to the text at issue. And even if it otherwise would, the dissent pointed out that the doctrine has not been applied in the national security or foreign policy contexts.

The dissent tracked arguments that the Administration has made thus far and likely will make if the Supreme Court agrees to hear the case.

What Comes Next

Last night, the Government petitioned the Supreme Court for review, asking the Supreme Court to "grant certiorari, expedite consideration on the merits, and reverse" the judgment below. Cert. Pet. at 6. Importantly, the Federal Circuit's order withholding issuance of the mandate ensures that the order will remain stayed pending a judgment from the Supreme Court (or a denial of certiorari).

The Government also filed a motion to expedite the petition, asking the Supreme Court to decide whether it will take the case by September 10, 2025, and requesting that the Court expedite consideration of the merits "to the maximum extent feasible." Mot. to Expedite at 3. The Government proposed (with no objection from the respondents) a briefing schedule that would allow for oral argument in the first week of November.

In parallel, another case challenging the President's tariffs—*Learning Resources*—is scheduled for oral argument before the US Court of Appeals for the D.C. Circuit on September 30. The government also appealed *Learning Resources* directly to the Supreme Court, seeking certiorari before judgment. The petition is scheduled to be considered at the Supreme Court's long conference on September 29. We do not expect the pending petition in *Learning Resources* to have any impact on the Supreme Court's decision to grant or deny the Government's petition or motion to expedite in this case. Should the Supreme Court grant review here—as we expect it will—we anticipate that the D.C. Circuit will stay its decision in *Learning Resources* pending the Court's decision in this case.

In sum, Supreme Court review of the IEEPA tariffs appears virtually certain given the importance of the issue to the administration. Already, the President and other senior administration officials have publicly denounced the Federal Circuit’s decision and are warning that a Supreme Court decision invalidating the tariffs would be disastrous for the United States.

Importantly, even if the Supreme Court affirms the Federal Circuit and invalidates the challenged tariffs, the administration already has indicated that it will seek to issue similar tariffs under other statutes—though those statutes have more procedural requirements and restrictions.

Although the Supreme Court is likely to hear this case, it is unclear when it would rule. So the legality of the President’s tariff regime may remain unsettled for many months to come. This means that companies, foreign governments, and markets must account for tariff uncertainty as they review supply chains, conduct financial planning, and pursue new opportunities. Companies should take this time to review their supplier and purchaser contracts to assess where tariff liability lies, re-negotiate terms where possible, and set prospective tariff allocations.

Jenner & Block will continue to monitor regulatory developments, as well as forthcoming actions by the Supreme Court, and provide updates as appropriate. We stand ready to assist our clients as they navigate their way through these uncertain times.

Footnotes

[1] Specifically, the private plaintiffs in *V.O.S. Selections* challenged the universal and reciprocal tariffs imposed by E.O. 14257 (enacted under IEEPA, the National Emergency Act, Section 604 of the Trade Act of 1974, and 3 U.S.C. § 301); the coalition of 12 state attorneys general in *Oregon* challenged all “IEEPA Tariff Orders,” including the country-specific fentanyl tariffs on China, Canada, and Mexico, as well as the reciprocal tariffs (challenged only on the basis of exceeding IEEPA authority).

[2] Judge Newman did not participate in the case.

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Tariff Task Force

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