

Federal Circuit Court of Appeals Issues Ruling Deeming Tariffs Under IEEPA Unlawful

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On August 29, 2025, the U.S. Court of Appeals for the Federal Circuit [affirmed](#) a ruling by the U.S. Court of International Trade, holding that President Trump overstepped the authority provided by Congress under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA) to impose broad tariffs aimed at addressing drug trafficking, illegal migration, and international trade imbalances. The court deemed unlawful those tariffs imposed on Canada, Mexico, and China meant to curb the flow of illicit drugs and illegal migration, and reciprocal tariffs imposed on dozens of countries throughout the world to curb trade imbalances (collectively, the IEEPA Tariffs).

Although the Federal Circuit deemed the tariffs unlawful, it left them in place until October 14 to provide the administration with the opportunity to appeal the ruling to the Supreme Court. If the administration appeals the ruling, the tariffs will remain in place until either (i) the Supreme Court denies review, or (ii) if the Court accepts review, then until the Court issues a judgment. This means that companies importing goods will be subject to existing tariffs for at least another six weeks, but, given the likelihood of appeal, potentially much longer, pending Supreme Court review.

What Is IEEPA?

IEEPA in essence provides the president with the authority to regulate international economic transactions to combat an “unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States.” A brief discussion on the legal implications of IEEPA can be found [here](#). Historically, IEEPA has been used primarily as a sanctions tool, allowing the president to block property and prohibit transactions, including restricting trade with specific countries or persons. It has not, however, been used as a general vehicle for imposing tariffs or duties on imports, which are traditionally considered a form of taxation reserved for Congress under Article I of the Constitution. Indeed, no previous president has leveraged IEEPA to impose tariffs.

The Lawsuit and Court of International Trade Decision

In the first few months after taking office, President Trump issued a series of executive orders and proclamations, discussed in detail [here](#) and [here](#), imposing tariffs under the authority of IEEPA.^[1] As justification for imposing these tariffs under IEEPA, the administration declared national emergencies, citing an influx of illicit drugs and illegal immigration flowing across the northern and southern borders into the U.S., as well as persistent trade

deficits.

After a group of small businesses filed suit in the Court of International Trade challenging the invocation of IEEPA as a basis for these sweeping tariffs (later joined by a group of 12 states), the court ruled on May 28 that IEEPA does not authorize the IEEPA Tariffs. See our discussion of the case [here](#). The court set aside the tariffs and permanently enjoined their enforcement. The Trump administration, however, immediately appealed the decision to the Federal Circuit, and the court's holding was stayed pending the appeal's outcome.

The Federal Circuit Decision

During oral argument, attorneys for President Trump argued that Congress has long given the president broad discretion to confront national emergencies, including trade imbalances. The administration focused on IEEPA's granting of authority to "regulate . . . importation," which, according to the government, necessarily includes tariffs. The administration also argued that IEEPA allows the president "to take extraordinary action," and that the courts could not second guess a president's declaration of a national emergency.

The Federal Circuit [affirmed](#) the Court of International Trade's holding^[2] that the IEEPA Tariffs exceeded the authority delegated to the president under IEEPA.^[3] The majority focused on the text of IEEPA, which authorizes the president to "regulate" importation and exportation of property but does not refer to "tariffs" or synonymous language like "duties" or "taxes." The majority found that, without explicit delegation by Congress of a power to impose tariffs, IEEPA's grant of presidential power to "regulate" imports does not unambiguously include the power to impose broad, indefinite tariffs. The court was also swayed by precedent, recognizing that in the nearly 50 years since its promulgation, no other president has invoked IEEPA to impose tariffs or adjust tariff rates.

The ruling affects both the country-by-country "reciprocal" tariffs, which have been imposed on many countries at varying rates, as well as the tariffs imposed on some goods from Canada, China, and Mexico for what the Trump administration said was a failure on the part of those countries to curb fentanyl imports and uncontrolled immigration. Importantly, tariffs imposed under other laws, such as tariffs on steel and aluminum, copper, and automobiles and automotive parts, imposed under Section 232 of the Trade Expansion Act, and tariffs targeting unfair trade practices imposed under Section 301 of the Trade Act of 1974, are not impacted by the court's decision.

While the majority opinion deemed the IEEPA Tariffs unlawful, the decision comes with important limitations. First, the opinion addresses only whether the IEEPA Tariffs imposed by the challenged executive orders are authorized by IEEPA (concluding that they are not), rather than addressing the broader question of whether IEEPA authorizes any tariffs at all. Second, the court allowed the tariffs to remain in place through October 14, 2025, to give the Trump administration a chance to appeal to the U.S. Supreme Court. Third, the court remanded the case on the issue of whether a nationwide and universal injunction was appropriate relief in light of the Supreme Court's recent ruling regarding birthright citizenship.^[4] Thus, the trade court will still need to wrestle with whether the IEEPA Tariffs are unlawful as to all, or only those plaintiffs who challenged the tariffs.

The Trump administration has indicated it will appeal the case to the U.S. Supreme Court.

What Does the Ruling Mean?

The U.S. has brought in more than \$100 billion in revenue from tariffs through August 2025.^[5] For those in the construction industry, project stakeholders have been wrestling with the risks and responsibilities for bearing tariffs for months and have included varying contingencies and risk-allocation strategies in their current contracts and for future projects. The Federal Circuit's ruling adds a new wrinkle and uncertainty to an ever-fluctuating legal and business landscape of the new tariff era.

Parties now must navigate an environment where tariffs affecting their supply chains, businesses, and projects have been deemed unlawful, yet remain in place and are still being collected for at least another six weeks. This period will likely be extended upon appeal to the Supreme Court, as the Federal Circuit ordered that the tariffs remain in place until the Supreme Court issues a judgment.

Companies should revisit their supplier agreements and supply chains to evaluate whether the IEEPA Tariffs impact their businesses and projects. It is critical to take steps now to run comprehensive analyses that will help identify ways for companies to prepare for this new uncertainty. Parties should also closely examine their contracts for provisions regarding changes in law, and whether their contracts address those situations where a law existing at the time of contract is changed.

Furthermore, if the Supreme Court affirms the Federal Circuit's decision, affected businesses could seek reimbursement or refund of tariffs already paid through administrative protests with the Customs and Border Protection under 19 U.S.C. § 1514 and seeking refunds under 19 U.S.C. § 1520. It remains to be seen, however, if the trade court's decision remains as a universal injunction and whether non-litigation entities will be permitted to seek this type of comprehensive relief. Although not directly addressed in the Federal Circuit's opinion, the potential to reclaim costs paid under the stricken tariffs should be a major consideration for businesses. Companies should closely monitor the trade court's decision on remand determining whether the ruling deeming the IEEPA Tariffs unlawful will be given universal effect.

In the short term, businesses should remain both vigilant and adaptable. Strategic planning should include contingency measures to address potential changes in tariff regulations. It is never too early to begin strategic discussions with both current and future project stakeholders to develop contingencies and prepare for the next tariff ruling.

Troutman Pepper Locke has a dedicated Tariff + Trade Task Force to aid our clients in navigating and anticipating the impacts that evolving tariffs have on their businesses. As your business develops strategies to mitigate continued tariff uncertainty, the Troutman Pepper Locke Tariff + Trade Task Force and Construction Practice Group are here to help guide you through the process.

[1] See Executive Orders 14193 ("Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border" (issued Feb. 1, 2025)), 14194 ("Imposing Duties To Address the Situation at Our Southern Border" (issued Feb. 1, 2025)), 14195 ("Imposing Duties To Address the Synthetic Opioid Supply Chain in the People's Republic of China" (issued Feb. 1, 2025)), 14197 ("Progress on the Situation at Our Northern Border" (issued Feb. 3, 2025)), 14198 ("Progress on the Situation at Our Southern Border" (issued Feb. 3, 2025)), 14227 ("Amendment to Duties To Address the Situation at Our Southern Border" (issued Mar. 2, 2025)), 14231 ("Amendment to Duties To Address the Flow of Illicit Drugs Across Our Northern Border" (issued Mar. 6, 2025)), 14257 ("Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and

Persistent Annual United States Goods Trade Deficits” a.k.a. “Liberation Day Tariffs” (issued Apr. 2, 2025)), 14266 (“Modifying Reciprocal Tariff Rates To Reflect Trading Partner Retaliation and Alignment” (issued Apr. 9, 2025)), 14316 (“Extending the Modification of the Reciprocal Tariff Rates” (issued Jul. 7, 2025)), 14326 (“Further Modifying the Reciprocal Tariff Rates” (issued Jul. 31, 2025)), and 14334 (“Further Modifying Reciprocal Tariff Rates to Reflect Ongoing Discussions with the People’s Republic of China” (issued Aug. 11, 2025)). Throughout its opinion, the court refers to these executive orders collectively as the “Challenged Executive Orders.”

[2] See *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350 (Ct. Intl. Trade 2025).

[3] See *V.O.S. Selections, Inc. v. United States*, No. 25-1812 at 44 (Fed. Cir. Aug. 29, 2025).

[4] See *Trump v. Casa, Inc.*, 145 S. Ct. 2540 (2025).

[5] <https://www.piie.com/research/piie-charts/2025/trumps-tariff-revenue-tracker-how-much-us-collecting-which-imports-are>. See also Fiscal Data, *July 2025 Monthly Treasury Statement*, U.S. Treasury (Aug. 29, 2025), <https://fiscaldata.treasury.gov/datasets/monthly-treasury-statement/receipts-of-the-u-s-government> (claiming a \$141,732,686,796.90 “Current Fiscal Year to Date Gross Receipts Amount” in Customs Duties).

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