

# IEEPA Tariffs to Remain Temporarily Despite Adverse Ruling; Aluminum and Steel Tariff Rate Increased

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On May 28, the U.S. Court of International Trade ruled that the tariffs imposed by President Trump under the International Emergency Economic Powers Act (IEEPA) were unlawful. In the case of *V.O.S. v. United States*, the court found that IEEPA does not delegate such broad tariff powers to the president and that the tariffs addressing illegal migration and illicit drug flows “do not deal with an unusual and extraordinary threat.”

Immediately following the ruling, the Trump administration filed an appeal with the U.S. Court of Appeals for the Federal Circuit (the Federal Circuit). On June 10, the Federal Circuit [granted](#) the government’s motion for a stay, leaving the IEEPA-based tariffs in place while the full court hears the expedited merits appeal. Citing the case’s “exceptional importance,” the Federal Circuit took the unusual step of having the full 11-member panel hear the appeal, with arguments set for July 31 and a decision expected by the end of the summer. All other tariffs are still in effect and were not challenged in this case, including the tariffs imposed under Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974.

The court’s ruling covered the tariffs on Canada, Mexico, and China that were designed to combat fentanyl trafficking (the Fentanyl/Migration IEEPA Orders), as well as the tariffs designed to rectify [trade imbalances](#) (Reciprocal Tariffs). The Fentanyl/Migration IEEPA Orders imposed a 25% tariff on Canada and Mexico, and a 20% tariff on China, in addition to the Reciprocal Tariffs. We discussed these tariffs and their developments [here](#) and [here](#). The Reciprocal Tariffs imposed a 10% ad valorem duty on all imported goods from almost all countries, which later would increase to up to 50% for 57 trading partners. China was the exception and was temporarily hit with a 125% ad valorem tariff rate. We discuss these Reciprocal Tariffs in a prior alert, [here](#).

### ***Court Found that IEEPA Does Not Authorize Unlimited Delegation of Tariffs***

In analyzing the Reciprocal Tariffs under the nondelegation and major questions doctrines, the court found these tariffs could not be authorized because they exceeded the limits imposed by IEEPA under § 1702, “which authorize the President to ‘regulate ... importation.’” Since administering tariffs is an essential legislative function, as delineated by the U.S. Constitution, Congress must impose “‘meaning[ful] constraints’ [on] the President’s authority.” When “Congress delegates powers of ‘vast economic and political significance,’ it must [also] speak clearly.” The court found that the words “regulate ... importation” “cannot grant the President unlimited tariff authority” because those words cannot be read to grant the president the authority “to impose whatever tariff rates he deems desirable... [as] such a reading would create an unconstitutional delegation of power.” The Reciprocal Tariffs “contain no ...[sufficient] limit” and are “unbounded as it is by any limitation in duration or scope, exceed[ing] any tariff authority delegated to the president under IEEPA.”

The court determined that Congress had removed the president's ability to use IEEPA to impose tariffs to address trade deficits through the enactment of Section 122 of the 1974 Trade Act, which serves essentially the same policy purpose as the Reciprocal Tariffs. Therefore, in imposing tariffs for this purpose, the president must adhere to the strict limits of Section 122 and cannot rely on the broader and more flexible IEEPA authority. These limits under Section 122 include a maximum 15% tariff rate and a maximum duration of 150 days without approval from Congress.

### ***Court Found that the Fentanyl/Migration IEEPA Orders Do Not “Deal With” an Unusual and Extraordinary Threat***

Rejecting the government's assertion of deference doctrines such as the political question doctrine, and invoking Loper Bright Enters v. Raimondo, 603 U.S. 369, 403 (2024), the court found that the Fentanyl/Migration IEEPA Orders did not actually “deal with” the “unusual and extraordinary threat” that the administration purported to be trying to address: trafficking drugs and migrants into the United States. Rather, these tariffs were designed to pressure the governments of other countries to deal with the problem. The court found that pressuring another government to deal with the threat does not address it directly and therefore is outside the bounds of IEEPA's authority. As the court put it: IEEPA does not authorize the president merely to seek “leverage” over another government.

This is a remarkable finding by the court that, if applied in other contexts, could meaningfully reduce the U.S. government's ability to use IEEPA authority in a variety of areas, including economic sanctions. Sanctions are frequently – some may even say most commonly – used to pressure other governments to address a threat to the United States or its allies and partners. It will be important to watch, therefore, whether this leg of the court's ruling survives.

### **Increased Steel and Aluminum Tariffs**

On June 3, President Trump issued [Proclamation 10947](#), increasing the tariff rates on steel and aluminum and derivative products from 25% to 50%, effective June 4. However, steel and aluminum and their derivatives from the United Kingdom (UK) are temporarily excluded from the increased 50% tariff rate due to the [U.S.-UK Economic Prosperity Deal](#) (the EPD) signed by the US and UK on May 8, although they remain subject to the 25% tariff until July 9, at which point the U.S. could increase the tariff rate to 50% if the U.S. determines the UK has not complied with relevant aspects of the EPD. We have previously discussed the background of these [tariffs](#) on steel

and aluminum under Section 232 of the Trade Expansion Act, which is based on national security determinations.

These Section 232 tariffs were not part of the recent efforts to challenge the tariffs imposed under IEEPA. In fact, the court previously [upheld](#) Section 232 tariffs implemented during the first Trump administration.

## Next Steps

The administration appears to be [undeterred](#) by the court's ruling finding the IEEPA tariffs to be unlawful. Commerce Secretary Howard Lutnick [vowed to employ other presidential powers](#) to effectuate the same tariff policy if the Trump administration does not prevail on appeal.

It is possible that the president will seek to expand sectoral tariffs enacted under Section 232 or look to other legislation for authority to enact tariffs. The president could increase the use of Section 301 tariffs, which are intended to combat unfair trade practices. The first Trump administration introduced Section 301 tariffs against China in 2018, and they were expanded under the Biden administration. Now there are Section 301 tariffs ranging from 7.5% to 100% on certain sectors of the Chinese economy. President Trump could increase the use of these tariffs on China and/or apply them to other countries, but would need to go through a more rigorous process and conform with certain limitations set out in the statute in order to do so.

The president could also potentially use Section 338 of the Tariff Act of 1930, which grants sweeping authority to implement up to a 50% tariff in response to countries that discriminate against U.S. commerce.

## Other Litigation

The U.S. District Court for the District of Columbia similarly ruled in [Learning Resources, Inc. v. Trump](#) that the tariffs imposed under IEEPA were unlawful, but applied its ruling only to the two companies that brought the suit. On June 3, the district court [stayed](#) its decision until the U.S. Court of Appeals for the District of Columbia Circuit has heard the appeal.

Troutman Pepper Locke will continue to monitor the rapidly changing tariff landscape and provide updates on ongoing developments.

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