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Supreme Court Strikes Down IEEPA Tariffs; Trump Responds With Section 122 Global Surcharge

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On February 20, the Supreme Court of the United States held that the president lacks authority under the International Emergency Economic Powers Act (IEEPA) to impose tariffs. The decision invalidates duties imposed pursuant to the IEEPA-based executive orders issued in 2025, including tariffs imposed on Mexico, Canada, and China designed to combat fentanyl trafficking and immigration concerns, the reciprocal tariffs regime, and related country-specific actions (*e.g.*, Brazil and India). That same day, President Donald Trump issued an executive order titled "Ending Certain Tariff Actions" (the IEEPA Terminating Order), formally terminating those IEEPA-based tariffs. U.S. Customs and Border Protection (CBP) subsequently issued guidance confirming that IEEPA-based tariffs will no longer be collected on imported goods starting February 24, 2026, and that it is updating the Automated Commercial Environment (ACE) portal to deactivate the relevant Chapter 99 Harmonized Tariff Schedule of the United States (HTSUS) provisions.

The ruling does not affect tariffs imposed under other statutory authorities, including Section 232 of the Trade Expansion Act of 1962 (Section 232), Section 301 of the Trade Act of 1974 (Section 301), and Section 201 of the Trade Act of 1974 (Section 201), as well as antidumping and countervailing duty (AD/CVD) orders, which remain in full force and effect (collectively, Sectoral Tariffs). This development does not signal a broader rollback of U.S. tariff policy. Within hours of the Court's decision, President Trump, through the issuance of a proclamation titled "Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems" (the Section 122 Proclamation), invoked Section 122 of the Trade Act of 1974 (Section 122), imposing a temporary 10% global import surcharge starting February 24, 2026.

For importers, the landscape now presents two parallel considerations: (1) potential refund strategies for the IEEPA-based tariffs previously paid; and (2) forward-looking exposure modeling under Section 122 and Sectoral Tariffs.

The Court's Holding

In *Learning Resources, Inc. et al. v. Trump*[1] and *V.O.S. Selections v. Trump*,[2] the Court concluded that IEEPA's authorization to "regulate … importation" does not include the power to impose tariffs. The Court emphasized that: (1) the Constitution vests taxing and tariff authority in Congress; (2) IEEPA does not expressly authorize duties; and (3) when Congress intends to delegate tariff authority as part of its core taxing and foreign commerce powers, it does so explicitly (*e.g.*, Section 122, Section 201, Section 301, and Section 232).

Accordingly, the decision invalidates tariffs imposed under the following executive orders, including amendments

(collectively, the IEEPA Tariffs):

- Executive Order 14193 (Northern Border/Fentanyl)
- Executive Order 14194 (Southern Border/Migration)
- Executive Order 14195 (China Synthetic Opioid Supply Chain)
- Executive Order 14245 (Countries Importing Venezuelan Oil)
- Executive Order 14257 (Reciprocal Tariffs)
- Executive Order 14323 (Brazil)
- Executive Order 14329 (India/Russia)

The Court did not expressly address refunds for duties already paid. However, the dissent recognizes that the ruling is likely to trigger significant refund claims (potentially billions of dollars) to be administered through the existing customs and Court of International Trade (CIT) framework, indicating that importers may have recourse, for example, through the protest mechanism with CBP.

IEEPA allows the president to regulate international commerce after declaring a national emergency in response to an "unusual and extraordinary threat." The government argued that the statute's reference to "regulate … importation" implicitly authorized tariffs at any rate and duration once an emergency is declared. The Court disagreed, stressing that IEEPA lists specific powers but does not mention "tariffs" or "duties" and that Congress has granted tariff authority expressly in other trade statutes. The majority also highlighted the magnitude of the power the government claimed — open?ended, emergency-triggered tariff authority — as a reason to read the statute narrowly.

By confirming the limits of IEEPA, the decision delineates the procedural boundaries within which the U.S. may impose tariffs and provides greater statutory clarity regarding the legal basis for future trade measures. In doing so, the ruling re-anchors U.S. trade policy within established statutory frameworks.

Practical Impact on Duty Liability

The Court's invalidation of the IEEPA Tariffs removes only the IEEPA component of the duty "stack" on affected imports; it does not alter any other tariff authorities. In the immediate aftermath of the decision, CBP began updating its systems for processing imports. On Sunday evening, CBP issued CSMS #67834313, titled "Ending IEEPA Tariff Collection." That notice explains that IEEPA Tariffs will no longer be assessed or collected on goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12 a.m. ET on February 24, 2026. Correspondingly, importers will no longer be required to input IEEPA-related Chapter 99 HTSUS codes to secure release of their cargo. All other applicable duties, including most-favored nation (MFN) general duty rates, Sectoral Tariffs, *deminimis* restrictions (CSMS #67845486), and, where applicable, the new Section 122 global surcharge, remain fully in effect.

At present, there is no sign that CBP will automatically reliquidate all affected entries. Importers will therefore need to use existing customs procedures to pursue refunds and to distinguish between: (i) entries where IEEPA duties were layered on top of other trade remedies, and (ii) entries where IEEPA was the only source of additional duties. For products — particularly non?steel, non?aluminum, and non?copper components — that were not subject to Section 232 or other trade measures and became dutiable only because of the IEEPA Tariffs, the Court's decision

removes the sole extra duty layer. Going forward, those products revert to their normal MFN or other applicable rates, and the IEEPA Tariffs previously paid on such entries are likely to be the most straightforward candidates for potential refunds.

Relief and Refunds

Under the U.S. customs framework (discussed in detail here): (i) before liquidation, importers may file post?summary corrections (PSCs) to amend duty, value, classification, and other declaratory elements, and CBP may extend or suspend the liquidation period, although entries are generally liquidated within 314 days of entry; (ii) after liquidation, duty determinations are final unless the importer files a protest within 180 days of the liquidation date; and (iii) if CBP denies the protest (or does not act within the statutory period), the importer may file suit in the CIT within 180 days of the mailing date of CBP's notice of denial. These tools provide possible avenues to seek relief but do not create an automatic refund program for IEEPA?related duties. It remains uncertain whether CBP will adapt these existing processes or whether specific administrative guidance or new legislation will be required to implement any comprehensive refund regime.

Because the first IEEPA Tariffs were implemented in 2025, the first wave of entries subject to those tariffs began liquidating around December 16, 2025. For those initially liquidated entries, importers would need to file a protest on or about June 13, 2026 (*i.e.*, within 180 days of liquidation) to preserve their administrative refund rights and the ability to pursue judicial review. If the protest period expires without a timely protest, the liquidation becomes final and conclusive under 19 U.S.C. § 1514, and the importer generally does not have the right to file suit in the U.S. Court of International Trade to challenge those duties. Absent an atypical basis for residual jurisdiction under 28 U.S.C. § 1581(i), the loss of protest rights typically means the loss of judicial recourse for those entries.

The Court clarified that challenges to the legality or application of tariffs "arising out of" federal trade and customs laws fall within the exclusive jurisdiction of the CIT. The Court did not, however, directly prescribe the specific remedies available to the many importers that have already paid IEEPA Tariffs, and the administration has indicated that it is awaiting further guidance from the lower courts.

Although the majority opinion does not explicitly discuss remedies, the dissent acknowledged that the government may ultimately be required to refund tens of billions of dollars in unlawfully collected duties and characterized the likely refund process as a "mess." The mechanics and temporal scope of any refunds remain unresolved. The majority opinion does not dispute the dissent's characterization of potential refund exposure, nor does it purport to limit the availability of refunds. Instead, the Court effectively leaves the implementation of refunds to existing customs procedures and the CIT framework.

Senate Democrats have introduced a bill titled "Tariff Refund Act of 2026," which would require the administration to refund, with interest and within 180 days, all revenue collected under the invalidated IEEPA tariffs, with a priority placed on small businesses and smaller importers in the refund process. It remains uncertain whether the bill will garner sufficient bipartisan support to clear both chambers of Congress or if it will overcome a potential veto from President Trump.

Recent decisions from the CIT confirm that the court can order reliquidation and refunds where duties were unlawfully collected, suggesting that early, "protective" lawsuits are not always required to preserve refund rights

if a tariff regime is later invalidated. At the same time, the government has indicated that it views refunds as generally available only to importers that affirmatively pursue relief — through protests, litigation, or both — creating uncertainty over how courts will apply exhaustion requirements and whether CBP will adopt any broader administrative refund program.

Against this backdrop, importers that paid IEEPA duties should assess their current posture, including liquidation status, protest deadlines, and any existing challenges, to protect potential refund rights. By way of example, an international shipping and logistics company has filed suit in the CIT to contest the now?invalidated duties and seek refunds, arguing that IEEPA never authorized the president to impose tariffs and that CBP's role was purely ministerial. For other importers, similar litigation may be a viable path to recovery, but whether to pursue that approach will depend on each company's specific duty exposure, entry profile, and timing, and should be evaluated on a case?by?case basis.

Uncertainties Going Forward

Even with these procedures in place, significant questions remain on both the remedial and constitutional fronts.

It remains unclear whether potential refunds will be limited to importers that previously "preserved their rights" through CBP processes or litigation. In December 2025, multiple importers, including several large national retailers, filed suit in the CIT to preserve their refund rights under the current customs protest and litigation process in the event that the Court ultimately invalidated the IEEPA Tariffs. The CIT held that importers who had already filed timely challenges to the IEEPA Tariffs would not forfeit potential refunds merely because their entries liquidated while the Court was considering the legality of IEEPA Tariffs. How any eventual refund process will treat importers that did not take similar steps is unresolved. Notably, the IEEPA Tariffs were held to be invalid on the merits, rather than merely procedurally defective, which reinforces the argument that some form of relief should be available, even though the scope, mechanics, and eligibility criteria have not yet been defined.

Relatedly, the CIT will be the central forum for addressing IEEPA Tariff refunds, with appeals going to the U.S. Court of Appeals for the Federal Circuit. It remains unclear how the court will structure any relief: whether it will apply plaintiff?specific standards or instead articulate broader principles that CBP must implement, potentially through additional guidance. What is clear is that companies will need to monitor developments closely and be prepared to affirmatively seek relief.

Beyond refunds, the decision leaves unresolved several constitutional and policy issues that may shape future tariff practice. The Court did not address whether the national emergencies invoked — for example, drug trafficking issues at the northern and southern borders and fentanyl smuggling facilitated by China — to justify tariffs on products from Canada, Mexico, and China satisfied IEEPA's "unusual and extraordinary threat" threshold. And although the Court held that IEEPA cannot be used to levy peacetime tariffs, it remains unclear whether the same stated emergency concerns the government relied upon for IEEPA Tariffs could instead be advanced under other statutory frameworks, such as the Sectoral Tariffs, subject to their own procedural and substantive constraints.

Future Tariff Power

From a business planning perspective, the decision is less a "tariff rollback" and more a rebalancing of tools, and

it should be considered together with potential Section 122, Section 232, and Section 301 developments. The Court's decision also has immediate implications for existing trade agreements and ongoing or future trade negotiations. Businesses must consider how the Court's ruling affects broader trade developments internationally. With the IEEPA Tariffs now invalidated, trading partners have sought assurances that future tariff measures will be grounded in durable statutory authority and consistent with the trade agreement they have struck with this administration. For example, the EU, which was set to vote on approval of a trade agreement reached with the administration last year, agreed to further delay any such vote in light of the Court's ruling. Thus, the risk profile of business deals negotiated based on expected international agreements may be left in flux.

Uncertainty persists across multiple industries. Other tariff tools remain available, including Sectoral Tariffs and Section 122 global surcharges. Businesses involved in steel, aluminum, lumber, automobile and automotive parts, medium and heavy-duty trucks and truck parts, copper, and semiconductors may continue to operate with rising or unpredictable input costs, new and shifting compliance obligations, and supply chain adjustments driven by shifting trade patterns. As a result, importers may still experience a disconnect between the Court's ruling on the IEEPA Tariffs and the practical realities of a continued tariff regime that may still impact their businesses. However, tariffs affect more than just duty rates. They directly impact cargo values, supply chains, pricing, and trade flows, which in turn shape risk exposure across marine, cargo, trade credit, surety, political risk, and other specialty insurance lines. The Court's decision does, however, provide meaningful clarity with respect to the IEEPA Tariffs. By removing much of the legal volatility and "wait-and-see" uncertainty surrounding that specific authority, it gives market participants a more stable baseline. That said, the broader tariff landscape remains fluid. Sectoral measures and new global surcharges could still introduce volatility. While reduced legal uncertainty around IEEPA Tariffs should allow insurers and reinsurers to price risk and assess exposure with greater confidence, business risk tied to new or evolving trade measures remains.

President Trump's Response to the Court's Holding

In response to the Court's decision, President Trump issued: (i) the IEEPA Terminating Order, which terminated all IEEPA Tariffs; (ii) an executive order continuing the suspension of duty-free *deminimis* treatment (*i.e.*, low-value shipments (generally valued at $800 or less) remain ineligible for duty-free entry and must be formally entered, declared, and assessed all applicable duties, taxes, and fees); and (iii) the Section 122 Proclamation, which imposed a 10% global surcharge (the Section 122 Tariff), effective at 12:01 a.m. ET on February 24, 2026, and, absent an extension by Congress, remaining in effect through July 23, 2026. The administration has announced its intention to increase Section 122 Tariffs to 15%, but no implementing proclamation or other formal directive has yet been issued.

Unlike the national emergencies that were declared under the IEEPA Tariffs, Section 122 Tariffs are framed as a temporary import duty expressly limited to addressing "large and serious" balance-of-payments deficits or preventing significant deterioration in the U.S. balance-of-payments position. Its justification is macroeconomic stabilization. Section 122 allows the president to impose up to a 15% ad valorem surcharge on most imports for a period of up to 150 days (unless extended by Congress), and it does not require the type of formal investigation that Sections 201, 232, or 301 mandate.

The Section 122 Tariff does not apply to goods that: (i) were loaded onto a vessel at the port of loading and were in transit on the final mode of transit prior to entry into the U.S. before 12:01 a.m. ET on February 24, 2026, and (ii)

are entered for consumption, or withdrawn from warehouse for consumption, before 12:01 a.m. ET on February 28, 2026.

The Section 122 Tariffs apply broadly to articles imported into the U.S., with exceptions for the following categories of products:

- Certain critical minerals, metals used in currency and bullion, energy, and energy products;
- Natural resources and fertilizers that cannot be grown, mined, or otherwise produced in the U.S. (or in sufficient quantities to meet domestic demand);
- Certain agricultural products, including beef, tomatoes, and oranges;
- Pharmaceuticals and pharmaceutical ingredients;
- Certain electronics;
- Passenger vehicles, certain light trucks, certain medium and heavy-duty vehicles, buses, and certain parts of passenger vehicles, light trucks, heavy-duty vehicles, and buses;
- Certain aerospace products; and
- Informational materials (*e.g.*, books), donations, and accompanied baggage.

Goods that qualify for duty-free treatment under the United States-Mexico-Canada Agreement, as well as textiles and apparel articles that enter duty-free under the Dominican Republic–Central America Free Trade Agreement are also exempt from the Section 122 Tariff.

The Section 122 Tariff applies in addition to other duties (including MFN duties and Section 301 tariffs), but it does not apply to goods already subject to Section 232 tariffs, which include: (i) aluminum articles and their derivatives; (ii) steel articles and their derivatives; (iii) copper and its derivatives; (iv) passenger automobiles and parts; (v) lumber, timber, and their derivative products; (vi) medium and heavy-duty vehicles and parts; and (vii) semiconductors and critical minerals. For steel, aluminum, and copper (including derivative items that contain these metals), Section 122 Tariffs apply to the non-metal components in a manner similar to the IEEPA Tariff framework; however, unlike IEEPA Tariffs, there is no exemption for U.S. content under Section 122 Tariffs.

CBP issued guidance via CSMS #67844987 on February 23 titled, *"Imposing Temporary Section 122 Duties,"* to guide importers on how to navigate these Section 122 Tariffs. It advises that importers utilize certain HTSUS code sequences based on applicability and potential exemptions of the underlying goods and expressly provides drawback availability.

President Trump has signaled that the Section 122 Tariff is only a first step and that his administration will pursue additional tariff measures under other statutory authorities to recoup revenue and maintain pressure on trading partners. Ambassador Greer, the U.S. Trade Representative (USTR), has indicated that new Section 301 investigations will be initiated that encompass most major trading partners and target areas of concern such as industrial excess capacity, forced labor, pharmaceutical pricing practices, discrimination against U.S. technology companies and digital goods and services, digital services taxes, ocean pollution, and practices related to the trade in seafood, rice, and other products. Businesses should therefore expect continued volatility in U.S. tariff policy over the coming months.

Section 122 as a Transitional Tariff Bridge

Section 122 does not require product-level (or necessarily even country-level) findings. By contrast, Section 232 and Section 301 require more detailed determinations supported by administrative records. During the 150-day window provided by Section 122, the U.S. Department of Commerce and USTR could develop evidentiary records sufficient to support more durable Section 232 and/or Section 301 measures to replace the broader Section 122 Tariff before expiration. As a result, Section 122 functions less as a permanent solution and more as a temporary staging tool for more durable, record-based actions under Section 232 and/or Section 301.

Moving Forward

In light of the Court's holding and the administration's swift imposition of Section 122 Tariffs, importers that have paid IEEPA Tariffs may wish to evaluate both (i) their potential refund avenues, and (ii) their exposure under the emerging tariff framework. In particular, companies could:

- **Identify** all imports subject to IEEPA Tariffs, by time period, HTSUS classification, and country of origin, and quantify duties paid under those measures to assess potential refund magnitude.
- **Review** the liquidation status of affected entries and determine where PSCs can still be filed and where protest periods remain open.
- **Confirm** which protests have already been filed and assess whether additional procedural avenues (including new protests or litigation) may be available.
- **Collect** entry documentation, duty payment records, and internal analyses of the tariffs.
- **Review** contracts (supply, sales, and logistics) to ensure tariff-related cost allocations are clear and flexible.
- **Pursue** actions to seek refunds. These could include a number of parallel avenues for relief:
  - Legal action before the CIT.
  - Legal action against companies to which tariff-related charges were paid.
  - Negotiations with contractors, suppliers, and other partners to recover tariff-related charges.

We do not anticipate that the Court's decision will affect CBP's enforcement activities. CBP is expected to continue actively enforcing existing tariffs to ensure full collection and compliance, with ongoing coordination alongside the U.S. Department of Justice's cross-agency Trade Fraud Task Force. This means importers should continue to take reasonable steps to help ensure compliance with all applicable U.S. customs laws and regulations and maintain proper documentation to mitigate enforcement risk.

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[1] This decision stemmed from a District Court of the District of Columbia judgment that was vacated and remanded by the Court with instructions to dismiss for lack of jurisdiction because these challenges belong in CIT.

[2] This Court holding affirmed the U.S. Court of Appeals for the Federal Circuit decision.

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