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LEGAL UPDATES

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# Federal Circuit Finds IEEPA Reciprocal Tariffs and Trafficking Tariffs Illegal but Continue to Be Required at Time of Entry

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The U.S. Court of Appeals for the Federal Circuit held unenforceable the Trump administration's Reciprocal Tariffs and Trafficking Tariffs instituted under the International Emergency Economic Powers Act (IEEPA).

In *V.O.S. Selections, Inc. v. United States*, plaintiffs challenged the administration's reciprocal tariffs and trafficking tariffs, arguing that the president lacked authority to impose them. After the U.S. Court of International Trade (CIT), the lower court, agreed with plaintiffs, the Federal Circuit took up the case en banc on fast track, hearing oral argument on July 31, 2025. In a 7-4 decision, the Federal Circuit affirmed the CIT's decision, holding that while IEEPA grants the executive "authority to 'regulate' imports," the statute "does not authorize the particular reciprocal tariffs and trafficking tariffs imposed by various administration executive orders." The Federal Circuit's majority opinion was joined by Judges Lourie, Dyk, Reyna, Hughes, Stoll, Cunningham, and Stark. Four of those judges also joined an "additional views" concurrence, indicating that in the opinion of those four judges, no tariffs were permitted under IEEPA, not merely the two types of tariffs covered under the majority opinion. Judge Taranto dissented, joined by Judges Moore, Prost, and Chen. Importantly, the Federal Circuit's decision affects only the IEEPA reciprocal tariffs and trafficking tariffs. It does not affect tariffs imposed under other statutory provisions (Section 301, Section 232, etc.).

In sum, the Federal Circuit found that the Trump administration had exceeded its authority in imposing the reciprocal tariffs and trafficking tariffs. Specifically, the Federal Circuit acknowledged that tariffs are a form of a tax and commented “[t]he power to ‘regulate’ has long been understood to be distinct from the power to ‘tax.’” Especially when considered together with the major questions doctrine—which applies in “cases in which the ‘history and the breadth of the authority … asserted’ ‘by the government entails vast ‘economic and political significance’”—“the government must point to ‘clear congressional authorization’ for that asserted power.” In this instance, IEEPA does not confer that authority on the president.

In addition to holding that the Trump administration’s IEEPA tariffs were unlawful, the Federal Circuit issued an accompanying order clarifying next steps. First, whereas the CIT had granted a universal injunction preventing implementation of the tariffs, the Federal Circuit vacated that injunction. In light of the Supreme Court’s recent ruling in *Trump v. CASA* limiting nationwide remedies, the Federal Circuit remanded the case back to the CIT for that court to reevaluate the scope of remedy. It will be up to the CIT to either limit the injunction to just the named plaintiffs or justify a broader remedy. Second, in an accompanying order, the Federal Circuit stayed the effective date of its mandate until October 14, 2025, in order to give the government time to appeal the decision to the Supreme Court. The government has indicated it plans to file a petition for certiorari, and we believe it will do so in the very near future. Assuming the government files a cert petition, the Federal Circuit will further delay its mandate pending: (1) denial of certiorari (meaning the Supreme Court declines to hear the case), or (2) a Supreme Court decision on the merits, if certiorari is granted. In the meantime, the Federal Circuit’s order further clarified, “[w]hile the issuance of the mandate is withheld, [the CIT] shall take no further action in this case.”

So as of now: the IEEPA trafficking and IEEPA reciprocal tariffs are declared unlawful, but the government can continue to collect and enforce them pending Supreme Court action. We believe there is a strong likelihood that the Supreme Court will hear the case. Oral argument could take place in late 2025 or early 2026, with a decision by June 2026, although recent reporting is that the administration will petition the Supreme Court for an “expedited ruling” on the IEEPA tariffs imposed. If the Supreme Court affirms the Federal Circuit’s decision holding the tariffs unlawful, that affirmance could—but won’t necessarily—apply universally to all importers.

## **What this means to you**

The next step for importers is to evaluate their current tariff exposure and determine how best to protect their individual interests in obtaining retroactive and prospective relief. At this time, the Federal Circuit’s ruling does not apply to non-parties to that case. But a future court ruling, whether from the Supreme Court or the CIT, could apply the holding to all importers and affect the ability of individual importers to claim refunds. The situation is complex with different options depending on

how the courts ultimately rule. For example, importers should consider whether filing protests to preserve their rights to potential refunds would be appropriate action. We urge you to contact your Husch Blackwell International Trade & Supply Chain counsel to evaluate the merits of your individual case and to discuss next steps.

This is an evolving situation, and Husch Blackwell's International Trade & Supply Chain team will continue to monitor and post updates as they become available.

**Contact us**

If you have questions regarding this decision and/or its potential impacts, please contact your Husch Blackwell International Trade & Supply Chain attorney.