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IEEPA Tariffs Invalidated by Federal Appeals Court

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On Friday, August 29, the United States Court of Appeals for the Federal Circuit (the “Appeals Court”) ruled 7 to 4 that President Trump’s tariffs implemented via the International Emergency Economic Powers Act (“IEEPA”) were illegal. In its opinion, the Appeals Court agreed with the Court of International Trade (“CIT”) in finding that “IEEPA’s grant of presidential authority to ‘regulate’ imports does not authorize the tariffs imposed by the Executive Orders.”

In its ruling, the Appeals Court stated that “[i]t seems unlikely that Congress intended, in enacting IEEPA, to depart from its past practice and grant the President unlimited authority to impose tariffs. The statute neither mentions tariffs (or any of its synonyms) nor has procedural safeguards that contain clear limits on the President’s power to impose tariffs.” While the IEEPA has never been used to impose tariffs, it is notable that President Nixon utilized its predecessor, the Trading with the Enemy Act (“TWEA”), to implement a temporary 10% tariff back in 1971. The Court of Customs and Patent Appeals held that the President had the authority to impose an import duty surcharge under TWEA’s authority to “regulate ... importation.”

The subject appeal concerned five Executive Orders (“EOs”), specifically EO nos. 14193, 14194, 14195, 14257, and 14266, which imposed tariffs on foreign trading partners to address various national emergencies declared by President Trump. These emergencies included the presence of cartels and drug trafficking at the United States’ southern border with Mexico, threats involving the transport of illicit drugs from Canada and China, as well as the threat posed to the national security and economy of the United States by a lack of trading reciprocity with numerous other foreign countries.

Tariffs Impacted

The IEEPA tariffs, including the fentanyl/drug trafficking tariffs, as well as the reciprocal tariffs, were impacted by the Appeals Court ruling. The tariffs will remain in force through October 14, giving the Trump administration time to appeal the decision to the Supreme Court.

The affected IEEPA tariffs are summarized below:

Country	Tariff	Current Tariff
China	Reciprocal	10% (34% pos

China	Fentanyl	20%
Canada/Mexico	Fentanyl	0% if USMCA 25% Mexico 35% Canada 10% Canadian
All other countries	Reciprocal	10% universal separately)

Tariffs Not Impacted

Various other tariffs are not impacted by the Appeals Court ruling. These include:

- **Section 232 Tariffs.** Section 232 of the Trade Expansion Act of 1962 grants the President authority to impose restrictions on imports if deemed to threaten national security. President Trump has used Section 232 to impose tariffs on automobiles, steel, aluminum, and to propose tariffs on semiconductors, pharmaceuticals, and various other products.
- **Section 201 Tariffs.** Section 201 of the Trade Act of 1974 authorizes the President to impose temporary import restrictions, such as tariffs or quotas, on goods that are being imported in such increased quantities that they cause or threaten to cause serious injury to a domestic industry producing like or directly competitive goods.
- **Section 301 Tariffs.** Section 301 of the Trade Act of 1974 authorizes the President to address foreign trade practices that are deemed unfair, discriminatory, or unreasonable and that burden or restrict U.S. commerce. Following an investigation into China's technology transfer and intellectual property practices, the Trump administration imposed Section 301 tariffs on China in 2018. These tariffs continued through the Biden administration and into Trump's second term.

What's Next?

President Trump continues to vociferously defend the IEEPA tariffs and plans to take his challenge to the Supreme Court. It remains to be seen which way the Court will rule.

Should President Trump lose, he may consider other avenues to impose tariffs, although his ability to swiftly apply broad and lasting tariffs would be significantly curtailed. One such avenue is Section 122 of the Trade Act of 1974, which grants the president the authority to impose a tariff of up to

15% for a maximum of 150 days to address "large and serious" balance-of-payments deficits or to prevent significant dollar depreciation. However, Congress must approve any extension beyond the initial 150 days. He may also seek to further wield Section 232, although this requires Department of Commerce investigation, as well as the collection of public comment.

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