CLIENT ALERTS & INSIGHTS

IEEPA Tariffs - Top Five Q&A for Supply Chains after U.S. Supreme Court Decision

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Key Takeaways

- The U.S. Supreme Court ruled that the President cannot use the International Emergency Economic Powers Act (IEEPA) to impose tariffs, overturning recent tariffs on global imports announced throughout 2025 in response to fentanyl, immigration, and trade imbalances.
- This decision creates uncertainty about the immediate path forward for supply chains, as billions of dollars in duties are now in question and the process for potential refunds remains unclear. However, not all tariffs will be impacted since many imposed under other legal authorities, such as Section 232 and 301, remain in effect.
- Now is the time for importers to ensure they maintain thorough records of customs entries and duties paid in 2025, monitor developments on potential future refund procedures, and are prepared for new tariffs under alternative statutes. Companies can also watch for updates on electronic refund processes and consider submitting comments on other pending customs changes.

The U.S. Supreme Court issued its highly anticipated decision regarding tariffs Friday. The Court held that the International Emergency Economic Powers Act ("IEEPA") does not authorize the President to impose tariffs according to the 6-3 decision. This bulletin delivers answers to the top five questions facing domestic and global supply chains looking to next steps following the decision.

Q: Why did the U.S. Supreme Court decide that IEEPA does not grant tariff power?

A: The Court explained that the Constitution grants Congress alone the power to lay and collect taxes, duties and imposts. That power includes the authority to impose tariffs. The Constitution does not vest any part of that taxing power in the Executive Branch. The IEEPA language permitting the President to "regulate" "imports" does not amount to sweeping delegation of Congress's tariff authority. When Congress delegates tariff authority it does so in explicit terms with strict limits. There is no such delegation in IEEPA. The Court also observed that the Administration's use of IEEPA to impose tariffs was new and novel in IEEPA's half-century history. In the eyes of the Court, the Nixon Administration's prior limited use of the predecessor Trading with the Emeny Act to establish limited short-term tariffs did not establish authority for this Administration's sweeping implementation of new tariff programs.

Q: Which tariffs are now in jeopardy following the decision?

A: The scope of tariffs targeted by this decision is critical to understanding the effect. The Court only overturned tariffs issued under IEEPA. These tariffs were rolled out in two tranches related to national emergency declarations.

First, China, Canada and Mexico tariffs were announced on February 1, 2025, in response to declaration of a national emergency for fentanyl trafficking and immigration. The President implemented duties under IEEPA on imports from China, Canada and Mexico. China imports were subject to 20% additional duties effective February 4, 2025. Canadian and Mexican imports were subject to 25% additional duties (10% for energy and potash imports) effective March 4, 2025. These duties were paused, increased and decreased for various geopolitical reasons throughout 2025.

Second, universal and reciprocal tariffs applicable to nearly all countries were announced in April of 2025. Those tariffs were in response to declaration of a national emergency related to ongoing trade deficit. The President declared April 2, 2025, to be Liberation Day and imposed varying rates of duty ranging from 10% to 125% to most imports based on country of origin. China was included but Mexico and Canada were excepted from this regime. The varying duties were set to take effect on April 10, 2025, but the Trump Administration instead paused their application and implemented a 10% interim universal additional duty to nearly all countries instead. The varying rates did not ultimately take effect until August 7, 2025. These rates were then modified throughout the year so that imports from most countries were subject to 10-40% additional duties.

Another development in 2025 was the removal of duty-free de minimis treatment for certain low-value imports under the One Big Beautiful Bill and a subsequent Executive Order. However, the Court's decision does not address loss of de minimis exceptions for imports.

Q: Which tariffs fall outside scope of the decision?

A: The Court's decision does not create a zero-tariff commercial environment. Tariffs implemented under legal authorities and support outside of IEEPA will be unaffected by the decision. These remaining tariffs include ordinary rates of duty applicable to imports, the Section 301 duties applied to imports from China under the prior Trump Administration, and anti-dumping or countervailing duties applied to certain goods. Most significantly, many trade actions initiated during 2025 will remain in place because they were not initiated under IEEPA.

New sector-specific tariffs rolled out to certain industries throughout 2025 under the statute known as Section 232 are completely separate from the IEEPA tariffs. For example, prior Section 232 tariffs on steel and aluminum and their derivatives were strengthened. New tariffs were launched on automobiles and auto parts, copper products and derivatives, timber and lumber and their derivatives, semiconductors and their derivatives, and medium- and heavy-duty trucks and truck parts. Additional Section 232 investigations were launched or paused for negotiation with other countries related to pharmaceuticals, processed critical minerals and their derivatives, commercial aircraft and jet engines, polysilicon and its derivatives, unmanned aircraft systems and their parts and components, personal protective equipment and medical consumables and equipment and devices, and robotics and industrial machinery.

Q: How does the decision answer questions about payment of duties and possible refunds?

A: This is now a complex $130-170 Billion dollar question. The decision notably does not speak to continued collection of duties for IEEPA tariffs or whether, when and how refunds may be issued. The only practical impact reference was in Justice Kavanaugh's dissent where he observed the logistical challenges of accomplishing refunds and cited Justice Coney Barrett's comment during oral arguments that refunds would be a "mess" if required. These will be issues for further development by the Court of International Trade ("CIT") and implementation by U.S. Customs and Border Protection ("CBP"). The President immediately indicated that there will not be any refunds of duties collected unless those are strictly required. For now, it will be valuable for importers to, at the very least, confirm maintenance of all records supporting customs entries and duties paid throughout 2025. The precise sequence of events and action items for any recovery will emerge in time.

Two recent developments in customs law and regulation offer insight for the path forward.

First, the Government has stipulated that it will not object to tariff refunds on the technical grounds of whether and when liquidation occurred for particular entries. CIT has stated that liquidation will not affect the availability of refunds following a decision. It also stated that the Government will be judicially estopped from assuming a contrary position in the future. This is a relief to many importers who were concerned that liquidation would eliminate the availably of refunds. Liquidation occurs roughly 315 days after entry and is the moment when CBP effectively "closes the books" on the accounting of duties.

Second, CBP implemented an Interim Final Rule ("IFR") establishing a new electronic refund process effective on February 6, 2026. The process is intended to streamline customs transactions by allowing importers to manage refund claims more efficiently. Going forward, electronic ACH refunds will be deposited within 1-2 business days in the recipient's designated bank account. Public comments may still be submitted on this IFR until the March 3, 2026, deadline. This change is part of a broader modernization effort alongside a new Proposed Rule for changing customs bond practices to require electronic transmission of most bonds to CBP. That Proposed Rule is open for comment until April 14, 2026. Now it is possible that the new refund tool could be used as a platform to accomplish refund claims and issue electronic payments, if and when those become available on duties collected under IEEPA tariffs.

Q: What alternates are available to the President in implementing tariffs?

A: The White House has indicated that it has a tariff plan for immediate implementation if the IEEPA tariffs are overturned. For example, the President responded to this decision saying that he will sign a new Executive Order invoking Section 122 of the Trade Act to impose 10% tariffs related to balance of payments deficits. Section 122 of the Trade Act allows the President to unilaterally apply temporary sweeping tariffs or up to 15% import quotas for 150 days in response to a currency crisis where imports depreciate the US dollar.

It is well known that tariffs are a preferred policy tool for this Administration. A number of other alternative statutes are available for imposition on tariffs. Those alternatives are seen as having more stable legal basis for tariff activity although these alternatives often come with longer administrative review timelines.

The toolbox of tariff resources includes the familiar Section 232 and 301 tariffs. The President has also directed the Department of Commerce to initiate new anti-dumping and countervailing duties investigations for country- and product-specific import harm this year, and could continue to do so. Other alternate measures may include Section 338 of the Tariff Act for discriminatory trade practices and Section 203 of the Trade Act based on independent International Trade Commission investigations into harm on domestic industry. You can find a detailed analysis of these alternate tariff mechanisms here: Trump Administration Tariff Alternatives | Benesch, Friedlander, Coplan & Aronoff LLP.

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