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Federal Circuit Affirms That IEEPA Tariffs Are Unlawful

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On Friday, August 29, the U.S. Court of Appeals for the Federal Circuit issued a decision striking down the global reciprocal tariffs ("Reciprocal Tariffs") and the fentanyl-related tariffs on Canada, Mexico, and China ("Trafficking Tariffs") imposed under the International Emergency Economic Powers Act (IEEPA). *V.O.S. Selections, Inc. v. Trump* (Fed. Cir. Aug. 29, 2025). The full 127-page opinion can be accessed here and the order can be found here.

The decision, which was heard *en banc* by the eleven active Federal Circuit judges, affirms the U.S. Court of International Trade's (CIT) holdings on the plaintiffs' standing, the question of the CIT's jurisdiction to hear the case,[1] and the unlawfulness of the two sets of tariff actions as exceeding Presidential authority under IEEPA. The court, however, vacated the universal permanent injunction imposed by the CIT and remanded that aspect of the case to the lower court for further evaluation. In this advisory, we provide a summary of the Federal Circuit's decision, the impact of its decision to dissolve the CIT's nationwide injunction, and explore what could be next for any company affected by the Reciprocal and/or Trafficking Tariffs.

How Did We Get Here?

On May 28, 2025, in two consolidated cases brought by several private companies and twelve states, respectively, a three-judge panel of the CIT held that President Trump's recent imposition of tariffs pursuant to IEEPA is unlawful. In so holding, the CIT vacated the Reciprocal and Trafficking Tariff executive orders and permanently enjoined their operation. Our earlier summary of the decision on standing, jurisdiction, and the merits of the tariff actions' legality can be found here.

The United States appealed the CIT's judgment (the same day as the opinion issued) to the Federal Circuit and moved to stay the injunction pending appeal. The Federal Circuit granted the motion to stay pending resolution of the appeal and expedited briefing and oral argument. Oral argument took place on July 31, 2025.

The Federal Circuit Held the Tariffs Exceed Presidential Authority Under IEEPA.

The Federal Circuit sustained the CIT's order in a 7 to 4 vote that the tariff actions are "invalid as contrary to law." The court made clear that it only addressed the question of whether the Reciprocal and Trafficking Tariffs in particular were authorized by IEEPA – with the answer being "no" – and did *not* decide "whether the President's actions should have been taken as a matter of policy" or "whether IEEPA authorizes any tariffs at all."

The court first discussed the history of tariff authority under U.S. law, observing that until the mid-

twentieth century, the power to levy and adjust tariffs was held solely by Congress. Even after that point in time, including with the Omnibus Trade and Competitiveness Act of 1988, through which Congress enacted the Harmonized Tariff Schedule of the United States (HTSUS), the authority delegated to the president was limited to reducing or increasing (within certain confines) tariff rates through international agreements.[2]

In reviewing the statutory text of IEEPA, the Federal Circuit observed that "the statute bestows significant authority on the President to undertake a number of actions in response to a declared national emergency, but none of these actions explicitly include the power to impose tariffs, duties, or the like, or the power to tax," nor does the law include "a residual clause granting the President powers beyond those which are explicitly listed."

The court's decision largely relied on this absence of statutory tariff authority under IEEPA – including in contrast to other trade laws such as Section 232 of the Trade Expansion Act of 1962 (tariffs to address threats to national security) and Section 301 of the Trade Act of 1974 (tariffs to respond to unfair trade practices). This is because "the core Congressional power to impose taxes such as tariffs is vested exclusively in the legislative branch by the Constitution," and the delegation of such authority to another branch must be clear and unambiguous. The authority granted to the president by IEEPA to "regulate . . . importation" does not "in and of itself imply the authority to impose tariffs," nor do other statutes or judicial decisions support that interpretation, as unsuccessfully argued by the United States.[3]

While the Federal Circuit sustained the CIT's legal conclusion, it vacated the CIT's grant of a universal permanent injunction precluding enforcement of the Reciprocal and Trafficking Tariffs. The court remanded the case to the CIT to reevaluate the scope of the relief flowing from the plaintiffs' success on the merits, given the Supreme Court's intervening decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540 (2025), discussed further below.

It is worth noting that while the decision was issued *per curiam*, meaning it was attributed to the entire court and not any individual judge, several judges did issue additional and dissenting views. Four judges (Cunningham, Lourie, Reyna, and Stark) joined the majority opinion in full, but offered additional views to make clear their conclusion that "IEEPA does not authorize the President to impose *any* tariffs" (emphasis added) – a question that the majority opinion left open. In reaching this conclusion, the judges expressing such views relied on the plain text of the IEEPA statute and the assessment that the United States' interpretation of the statute to contain such broad authority "would render it an unconstitutional delegation" of Congress's Article I taxation authority.

Four other judges (Taranto, Prost, Chen, and Chief Judge Moore) issued a dissenting opinion agreeing with the majority on standing, jurisdiction, and reconsideration of the equitable remedy, but disagreeing on the question of the tariff actions' legality under the IEEPA statute. In particular, while the majority rejected the Government's position that the President's authority to "regulate" trade included the unrestricted use of tariffs, the dissent concluded that "IEEPA's language, as confirmed by its history, authorizes tariffs to regulate importation" when other preconditions have been met (*e.g.*, "unusual and extraordinary threat, having foreign sources, to the national security or foreign policy or economy of the United States, the threat declared as a national emergency . . ."). With respect to the Trafficking Tariffs in particular, the dissent found that IEEPA does not require that the imports covered by the tariff action at issue be the source of the threat, nor does the statute prohibit action "reasonably designed to work as leverage." For the dissent, the question of whether IEEPA would ever authorize the imposition of tariffs (versus *these* specific tariffs) was not "squarely" addressed by the majority, but is relevant to whether plaintiffs have met their burden to prevail on

summary judgment (which, in the dissent’s view, they have not).[4]

On Remand, Can the CIT Issue Another Nationwide Injunction After the Federal Circuit Vacated That Remedy? Maybe.

The scope of relief will be a – if not *the* – critical question surrounding the IEEPA tariff actions going forward. Notwithstanding affirmation of the CIT’s decision on the merits, the Federal Circuit dissolved the CIT’s injunctive remedy and remanded the case for reevaluation of the relief granted – namely, a universal (or “nationwide”) permanent injunction on enforcement of the tariffs as to *all* parties, not just those involved in the litigation – in accordance with the Supreme Court’s decisions in *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), and *CASA* earlier this year.

Why does this matter? The case on appeal from the CIT involves five individual plaintiffs (U.S. importers) and twelve states. As noted above, the nationwide injunction issued by the CIT prohibited the enforcement of the tariff actions with respect to everyone, not just the parties to the case. Any narrower relief raises significant questions regarding the effect of the tariffs, and potential refunds of duties paid, for *all other entities that are not parties*. The potential impact of a narrower remedy cannot be overstated.

In granting a universal permanent injunction at the trial level, the CIT explained that it did so “on account of Plaintiffs’ success on the merits and the unavailability under the Uniformity Clause of a complete legal remedy in the form of piecemeal duty refunds to specific plaintiffs,” and considering “the compelling public interest in ‘ensuring that governmental bodies comply with the law’ . . . and the lack of any cognizable hardship borne by the United States in the form of its non-enforcement of orders,” in accordance with its authority to issue equitable (*i.e.*, non-monetary) relief. The CIT grounded its rationale in the four factors that a plaintiff must establish to secure a permanent injunction under the *eBay* standard.[5]

The Supreme Court’s recent decision in *Trump v. CASA* is also relevant here according to the Federal Circuit. That case turned on the question of district courts’ authority to issue nationwide injunctions, but did not announce a rule. Instead, the Court declined to take up substantive arguments regarding the scope of relief in the first instance, instead directing that “lower courts should determine whether a narrower injunction is appropriate.”

Before the Supreme Court in *CASA* were emergency applications from three separate cases involving constitutional challenges to the President’s executive order restricting birthright citizenship. In each suit, the district court issued a universal injunction prohibiting enforcement of the order against anyone, not just the plaintiffs in each case. The Supreme Court observed that such universal injunctions “likely exceed the equitable authority that Congress has granted to federal courts” pursuant to the Judiciary Act of 1789, which grants federal courts the authority to issue equitable relief (and nearly two centuries of case law in which universal injunctions were non-existent). The Court also rejected the plaintiffs’ arguments that a nationwide injunction is consistent with “the principle that a court of equity may fashion a remedy that awards complete relief.” According to the Court, “‘{c}omplete relief’ is not synonymous with ‘universal relief’” and, instead, relates only to whether complete relief is offered “*to the plaintiffs before the court*” rather than to “*everyone* potentially affected by an allegedly unlawful act.”

Because the Supreme Court remanded the question of the scope of the remedy to the lower courts rather than directly resolving the issue, a practice has subsequently developed whereby reviewing courts have remanded to trial courts to consider in the first instance whether pronounced universal

injunctions comport with the considerations raised by the Supreme Court. The Federal Circuit here has followed suit, remanding to the CIT "to reevaluate the propriety of granting injunctive relief and the proper scope of such relief, after considering all four *eBay* factors and the Supreme Court's holding in *CASA*."

On remand, the CIT will hear merits-based arguments on the appropriate equitable relief, and how broadly or narrowly such relief should (or must) be drawn. Importantly, the Supreme Court's decision in *CASA* does not preclude a trial court from finding nationwide relief to be appropriate, but does cast significant doubt on the likelihood of such an outcome. Moreover, the CIT's exercise of discretion to grant an equitable remedy remains subject to appellate review. Thus, neither the substantive decision nor timing of final resolution on this critical question are certain.

What's Next for Companies?

The Federal Circuit's ruling will not take effect until October 14, 2025, giving the Trump Administration time to appeal the decision to the Supreme Court. If the United States (or any party) files a petition for writ of *certiorari* with the Supreme Court before that date, the CIT is precluded from taking any further action pending (1) the Supreme Court's denial of certiorari, or (2) a judgment of the Supreme Court if certiorari is granted.

We do, in fact, expect the Administration to appeal to the Supreme Court – as top officials already signaled over the weekend – which would effectively stay the Federal Circuit's decision pending further resolution (either by denial of the petition for writ of *certiorari* or with a merits decision from the Supreme Court).

The several possible outcomes makes a timeline for final resolution somewhat difficult to predict. If the Supreme Court denies *certiorari*, the Federal Circuit's order will take effect and the CIT will be tasked with revisiting its remedy decision – likely involving additional briefing and oral argument by the parties, even if on an expedited basis. If the Supreme Court takes up the case (which is anticipated) and affirms the Federal Circuit's judgment, the case will also go back to the CIT for a decision on the scope of relief in that event, albeit at a later date. If the Supreme Court disagrees with some aspect of the lower courts' holdings, however, the future of the tariff actions is even less predictable, depending on the details of the Supreme Court's findings and instructions, if any, for further review by the CIT on remand.

For companies not parties to the underlying litigation, close attention will have to be paid to a number of possible refund scenarios. If, on remand, the CIT imposes narrow injunctive relief to apply only to the parties – which could be the individual plaintiff companies, or the companies and others present in the states that are parties to the suit (as suggested by the United States in *CASA*) – there may be limited (or no) remedy available to non-parties. Companies should consider whether it is feasible to request extended liquidation and/or file protests on affected entries to preserve rights at the administrative level to seek refunds from U.S. Customs and Border Protection (CBP). Yet, even before the onset of this legal morass, importers have experienced inconsistency and some degree of difficulty in correcting or amending CBP duty assessments in this high tariff environment with numerous overlapping tariff regimes and complex reporting requirements.

While an extended liquidation/protest approach would be reasonable, it must be balanced against the reality that such actions may also be premature. For example, as an administrative matter, protests denied before the litigation is finally resolved are only addressed through appeal to the CIT. That could be costly and there is no guarantee that any appeal would be stayed or synched up in

timing with the IEEPA litigation. As a legal matter, it is also possible that the CIT – assuming the case is ultimately returned to it – will articulate a justifiable basis for a universal permanent injunction that would apply to everyone (and that is subsequently upheld presuming such a decision is appealed).

Despite the clarity of the Federal Circuit's decision on the legality of the Reciprocal and Trafficking Tariffs, the impact on U.S. companies remains fraught with uncertainty. More broadly, this litigation will necessarily affect the previously negotiated and in-process deals (or disputes) that the United States has with key trading partners, all of which turn on IEEPA tariff rates as applicable to that specific country as a focal point (see, for example, our alerts here, here, here, and here).

We will continue to monitor developments related to this litigation and the underlying tariff actions in the coming weeks and months. In the meantime, please contact any member of the Kelley Drye International Trade team.

[1] The Federal Circuit unanimously agreed with the CIT (and three other district courts hearing challenges to the same tariff actions) that the CIT has exclusive jurisdiction to hear the plaintiffs' claims because "the law in question is invoked as the authority to impose a tariff for such a non-revenue raising purpose," whether or not the law, in fact, grants such authority. This ruling stands in contrast to a decision by the U.S. District Court for the District of Columbia, which concluded that the CIT does not have exclusive jurisdiction over the challenges to the President's IEEPA tariff actions because IEEPA "does not encompass the power to tariff." *Learning Resources, Inc. v. Trump* (Dist. D.C. May 29, 2025). The district court case is currently on appeal before the U.S. Court of Appeals for the D.C. Circuit.

[2] The majority also discussed litigation involving presidential tariff authority under IEEPA's predecessor statute, the Trading with the Enemy Act (TWEA). While presidents had relied on TWEA to impose sanctions and export restrictions, President Nixon's suspension of existing trade agreements (which resulted in an additional ten percent tariff not to exceed the Congressionally-set tariff schedule rate) was found to have exceeded his authority under that law. *Yoshida Int'l v. United States*, 378 F. Supp. 1155, 1175–76 (Cust. Ct. 1974) (*Yoshida I*), *rev'd*, 526 F.2d 560 (CCPA 1975) (*Yoshida II*).

On appeal in *Yoshida II*, the Federal Circuit's predecessor court found President Nixon's actions lawful due to their temporary and limited nature (*i.e.*, not exceeding tariff rates approved by Congress), and because they were consistent with Section 122 of the later-enacted Trade Act of 1974 (granting presidential authority to impose limited tariffs to address balance-of-payments deficits). In contrast, as the Federal Circuit observed in *V.O.S. Selections*, "Both the Trafficking Tariffs and the Reciprocal Tariffs are unbounded in scope, amount, and duration. These tariffs apply to nearly all articles imported into the United States (and, in the case of the Reciprocal Tariffs, apply to almost all countries), impose high rates which are ever-changing and exceed those set out in the HTSUS, and are not limited in duration. The Trafficking and Reciprocal Tariffs assert an expansive authority that is beyond the express limitations of *Yoshida II*'s holding and, thus, beyond the authority delegated to the President by IEEPA." In 1976, Congress enacted the National Emergencies Act (NEA), which "limited presidential power and placed restrictions on the use of authorities granted by TWEA."

[3] The court also rejected the United States' arguments as contrary to the major questions doctrine – a principle of administrative law requiring "clear congressional authorization" for asserted power that is of significant or transformative economic or political magnitude. Four judges issuing a dissenting opinion also discussed the major questions doctrine and reached a different result: "{W}e

conclude that the essential premise for using the major questions doctrine to reject the claimed authority for the challenged action is missing here. Congress very clearly made a broad delegation here, as in other emergency-authority delegations. Whether to provide such delegations is certainly open to policy debate . . . and such debate has occurred over the decades, but the policy debate is not for us to resolve. We do not see IEEPA as anything but an eyes-open congressional choice to confer on the President 'broad authority' to choose tools to restrict importation when the IEEPA . . . standards are met."

[4] The dissenting judges also discussed and found no violation of the constitutional non-delegation doctrine. The dissent observed as relevant that "the tariffs involve the President's role and responsibilities in foreign affairs (including national security), which has constitutional foundations (in Article II) and which Congress may help the President more effectively perform by furnishing the President with tools . . . that can be created only by Congress exercising its Article I powers."

[5] These four factors are: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay*, 547 U.S. at 391.