

APPLETON LUFF

INTERNATIONAL LAWYERS

What Comes After the IEEPA Tariffs?

Now that the Supreme Court has ruled (6-3) against President Trump's imposition of tariffs pursuant to the International Emergency Economic Powers Act (IEEPA), any business hoping for refunds should be asking: 1) how do I get them and 2) what about new tariffs?

Obtaining Refunds of IEEPA Tariffs

Refunds are not likely to be issued automatically or immediately. A lingering question exists concerning whether the U.S. Court of International Trade's (CIT) remedy is universal or is limited to the litigants who were before it. Resolving that issue will take time and could involve appeals all the way back up to the Supreme Court. Businesses who have already filed "me too" claims at the CIT may have a faster track to refunds than companies waiting on the sidelines because companies that have filed their own lawsuits should not have to wait for a final decision on the nature of the CIT's injunction. We have filed claims for numerous companies and would be happy to assist your business in filing a claim.

What About New Tariffs?

President Trump and members of his administration have made clear that they will immediately move to reinstate the tariffs using a combination of other statutory tools: including Section 122 of the Trade Act of 1974, Section 301 of the Trade Act of 1974, Section 232 of the Trade Expansion Act of 1962 and Section 338 of the Tariff Act of 1930. Sections 232 and 301 have been used repeatedly but they have targeted specific products or industry segments and both require an investigation. Section 122 allows the President to impose 15 percent tariffs (maximum) and could be implemented fairly quickly but there is a limit on the duration unless Congress extends the tariffs.

Section 338 is a little known but possible alternative that authorizes the President to impose tariffs on countries that discriminate against U.S. commerce. A number of questions exist about what the use of Section 338 might look like, including whether there will be an investigation, whether the International Trade Commission will play a role, and whether interested parties will be required to file petitions seeking relief.

The trade experts at Appleton Luff will be monitoring developments closely and posting updates to keep you informed. In the meantime, please do not hesitate to contact any of us for assistance.