Policy Backgrounder

The Tariff Rulings: Implications and Next Steps

In a unanimous ruling, a panel of the U.S. Court of International Trade invalidated and permanently enjoined most tariffs the Administration has imposed, including the “Liberation Day” tariffs and those related to the national emergency on fentanyl. The Court of Appeals for the Federal Circuit then put that decision on hold, with a briefing schedule through June 9 – one month before the current 90-day pause is scheduled to end.

Key Insights

- The Court of International Trade ruled that the International Economic Emergency Powers Act (IEEPA) does not give blanket authority to impose tariffs and that the 10% universal tariff could not be valid under IEEPA because it was intended to reduce trade deficits, beyond the scope of IEEPA’s grant of emergency powers.
- The appeals court will receive motions and hear arguments until June 9. Given the importance of the issue and the impending deadline, the court is expected to rule quickly after that.
- Whatever the ultimate decision of the appeals court, some questions remain: notably, this decision could accelerate the imposition of tariffs (for instance on semiconductors and related products; pharmaceuticals, precursor chemicals, and related products: and critical minerals) for which the Administration has begun investigations under Section 232 of the Trade Expansion Act of 1962. Those investigations could lead to the imposition of tariffs up to 25% on the products, justified on national security grounds and would likely be on firmer legal ground (though plaintiffs could still sue alleging the tariffs exceed a reasonable justification).

Background: National Emergencies and IEEPA

The International Economic Emergency Powers Act of 1977 (IEEPA) gives the President authority to take certain steps to restrict commerce upon the declaration of a national emergency under the National Emergencies Act of 1976 pursuant to those declarations. IEEPA authority is broad: it may be invoked "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy" of the US once the President has made an emergency declaration. In particular, IEEPA permits the President to "regulate" certain economic activity, including imports. This is typically used, for instance, to impose sanctions or to ban most or all transactions with a country, as when Iraq invaded Kuwait in 1990 or when Russia launched the second invasion of Ukraine in 2022.

But until now, there had been no definite answer as to whether the President can use this authority under IEEPA to "regulate" commerce simply to impose tariffs. (President Nixon had used the authority of the former Trading with the Enemy Act of 1917 to impose a 10% universal tariff in 1971.)

The President used IEEPA authority in February to declare a national emergency with respect to fentanyl and used this authority to impose tariffs on China, Mexico, and Canada (in the case of Canada, regulating the tariffs by imposing a lower tariff on Canadian energy imports). Similarly, on April 2, the President declared a national emergency with respect to large US trade deficits in goods and imposed the "Liberation Day" tariffs, both a universal 10% tariff on all imports and country-specific tariffs (later suspended on April 9 for 90 days).

Litigation and the Court of International Trade Decision

Twelve states and five private sector importers brought suit alleging that the imposition of these tariffs exceeded the President's powers under IEEPA and caused "direct financial harm." An amicus brief from 148 Members of the US House of Representatives supported the plaintiffs. In particular, plaintiffs argued that 49 years of US trade deficits in goods could not be seen as an "emergency" within the meaning of the relevant Acts, and the President could only have authority to impose these types of tariffs using non-emergency powers.

A three-judge panel of the Court of International Trade, including judges appointed by President Trump, President Reagan, and President Obama, agreed, writing in its decision that Congress' grant of power to the President in IEEPA did not include power to "impose unlimited tariffs on goods from nearly every country in the world." As such, the "Liberation Day" tariffs were invalidated and permanently enjoined. (As a related point, the retaliatory tariffs imposed on China subsequent to the Liberation Day tariffs were also enjoined.)

In addition, the court enjoined the tariffs imposed under the national emergency related to fentanyl that affect China, Mexico, and Canada (20% for China and 25% for covered goods from Canada and Mexico).

Finally, the court also stated that the relief granted would apply to all importers on the ground that if they are "unlawful as to Plaintiffs, they are unlawful as to all," citing the provision of the Constitution that "all Duties, Imposts, and Excises shall be uniform throughout the United States" (Article I, Section 8, clause 1).

The court's decision notes that the tariffs did not comply with the Act's requirement that actions regulating commerce "deal with an unusual and extraordinary threat" but were rather intended to "create leverage" against foreign governments. As such, the decision gets to the heart of much of the Administration's tariff strategy.

Sectoral Tariffs

The decision did not, however, invalidate the sectoral tariffs on steel, aluminum, and autos and auto parts that had been imposed using different authority, Section 232 of the Trade Expansion Act of 1962. Those tariffs were imposed on the basis of an investigation conducted under the law rather than using emergency authority.

Therefore, it is likely this decision could accelerate the imposition of tariffs (for instance on semiconductors and related products; pharmaceuticals, precursor chemicals, and related products: and critical minerals) for which the Administration has begun investigations under Section 232 of the Trade Expansion Act of 1962. Those investigations could lead to the imposition of tariffs up to 25% on the products, justified on national security grounds and would likely be on firmer legal ground (though plaintiffs could still sue alleging the tariffs exceed a reasonable national security justification).

Next Steps

The Administration appealed the decision, which strikes at the heart of its tariff policy. Appeals from the Court of International Trade go to the Federal Circuit and from there to the Supreme Court. On Thursday afternoon, the entire Court of Appeals for the Federal Circuit put the first ruling on hold "while this court considers the motions papers" in the appeal and outlined a briefing schedule through June 9. While it did not give reasons for putting the ruling on hold, presumably the importance of the issue encouraged the court to consider further arguments from the Administration.

White House spokesman Kush Desai responded to the decision saying "[f]oreign countries' nonreciprocal treatment of the United States has fueled America's historic and persistent trade deficits. These deficits have created a national emergency that has decimated American communities, left our workers behind, and weakened our defense industrial base – facts that the court did not dispute. It is not for unelected judges to decide how to properly address a national emergency. President Trump pledged to put America First, and the Administration is committed to using every lever of executive power to address this crisis and restore American Greatness."

Despite the pause from the appellate court, many legal observers, however, expect that the decision will ultimately be upheld.

Conclusion

The decision to use IEEPA authority to impose sweeping tariffs carried with it the risk that this authority would be tested. It is reasonable to assume that the Administration will find ways to continue its policy in favor of using tariffs to seek to reshore manufacturing. In the meantime, however, two important questions are whether foreign countries formerly subject to the tariffs will continue negotiating aggressively with the Administration for new trade deals – and whether the Administration will change its negotiating tactics in those negotiations, particularly with the uncertainty of not knowing whether it would ultimately be able to impose the tariffs it threatened to resume on July 9.

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