NEWSLETTER

NISHIMURA & ASAHI

The U.S. Supreme Court Invalidates Tariffs Imposed Under IEEPA

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On 20 February 2026, the U.S. Supreme Court struck down tariffs imposed by President Donald J. Trump under the International Emergency Economic Powers Act ("IEEPA"). In a 6 to 3 ruling, the Supreme Court held that the powers conferred on the President under IEEPA do not extend to the power to impose tariffs. In this newsletter, we analyze the opinion itself, the impact of the ruling on importers' ability to obtain refunds, the steps already taken by the White House in response, and the effect that the ruling will have on reciprocal tariff agreements between the U.S. and partner countries.

(1) IEEPA does not authorize tariffs

Chief Justice Roberts, writing for the majority, found that the term "regulate" as used in IEEPA does not encompass the power to impose tariffs. The majority opinion is based on a lengthy analysis which invokes textual interpretation and numerous constitutional issues, not least the "major questions doctrine," which precludes Congress from delegating "major questions" to the Executive Branch without explicit statutory language. Over 100 pages of the Court's 170 page opinion, including concurring opinions from four of the Justices, pertain to these key constitutional issues. But the bottom line for importers here is simple and unequivocal – the President can no longer rely on IEEPA to impose tariffs.

The broad nature of the Court's finding is a positive result for importers. When duties under IEEPA first went before the Court of International Trade ("CIT"), the Court found that each of the duties imposed under IEEPA were inconsistent with the statute, but not that the tariffs are categorically unlawful under IEEPA.[1] The Supreme Court's holding goes a step further, and considerably restrains the President's tariff authority.

(2) The Supreme Court declines to rule on refunds

But while the Supreme Court significantly clarified the scope of IEEPA, it left open the question of how duties which were unlawfully collected will be refunded to importers. In fact, refunds are only mentioned at all in Justice Kavanaugh's dissenting opinion. Disputes related to refunds will now return to the Court of International Trade, which the Supreme Court held has exclusive jurisdiction over IEEPA-related matters, and where issues related to refunds will continue to be litigated. For further information and guidance on this issue, please see our newsletter of 8 January 2026.

In short, securing refunds will likely be a difficult and drawn-out process for importers. This is reinforced by the initial statements made by White House officials and by the Court itself. In his dissent, Justice Kavanaugh echoed the view that refunds in this case will be "a mess". The President, in his press conference following the Court's ruling and

[1] For instance, the Court of International Trade, in the predecessor case, held that while IEEPA authorizes tariffs, the specific tariffs imposed by the President were not permitted by the statute.

opined that the matter will "end up being in court for the next five years." Treasury Secretary Bessent has already characterized refunds as "the ultimate corporate welfare." This is a clear indication that the White House may not be willing to facilitate a smooth refund process, and that refunds will have to be secured *via* litigation at the CIT.

(3) The White House imposes duties under Section 122

The White House, likely anticipating that IEEPA tariffs would be reversed, has already announced measures under a different tariff authority. Tariffs under Section 122 of the Trade Act of 1974 were imposed on 12:01 AM EST on 24 February 2026, and will continue through 12:01 AM EST on 24 July 2026. This is a statutory authority that permits the imposition of tariffs of up to 15% on a uniform basis for 150 days, following the declaration of a balance-of-payments emergency. The tariffs announced by the president have been set a flat 10% rate,[2] with exceptions for certain products and for imports from Canada and Mexico. For certain U.S. trading partners, most notably the United Kingdom (which had already obtained a 10% reciprocal tariff rate), Section 122 duties actually represent a negative outcome. This is because Section 122 duties will now "stack" with normal MFN customs duties, whereas before the U.S. would apply the higher of the two duties.[3]

Further, the Office of the U.S. Trade Representative has announced that it will be initiating expedited Section 301 investigations on most trading partners. Section 301 of the Trade Act of 1974 is a statutory authority that allows for the imposition of duties in order to secure the removal of laws or practices by foreign governments that violate international laws or burden U.S. Commerce.[4] In this regard, the objective of a Section 301 investigation is very similar to the issues which the President intended to address using IEEPA. As such, it is possible, if not likely, that the President will reimpose the unlawful IEEPA tariffs under Section 301. The distinction between the two statutory bases though is that Section 301 requires the President to undergo certain procedures, namely an investigation of unfair trading practices by partner countries, prior to imposing duties. Still, there is no restriction *per se* on the level of duties that can be imposed under Section 301. Further, the President's authority to impose duties under both Section 301 and Section 122, owing to their inherently greater restraints on presidential power, are less susceptible to legal challenge.

(4) Reciprocal trade agreements may be in flux

As we noted in our 19 November 2025 newsletter, a reduction in the amount of duties imposed by the President under IEEPA was the primary concession made by the United States in negotiating many of its "reciprocal trade agreements" with partner countries. With those duties now deemed unlawful, the driving impetus behind these agreements has been removed. Still, it remains to be seen how trading partners of the U.S. will react to this new landscape.

No country has indicated yet that they intend to renege on the obligations agreed to in their reciprocal tariff agreements with the U.S., and the U.S. has already stated that it expects countries to honor those agreements. Countries who do renege on their agreements run a major risk, and could ultimately receive a higher duty rate in an eventual Section 301 investigation. With that being said, countries who are looking for a reason to backtrack on their obligations certainly have one now. And given the Section 301's procedural limitations, duties imposed under that provision may prove to be a less effective negotiating tactic than duties under IEEPA. Whether a U.S. trading partner is willing to take such a risk is yet to be seen.

(5) Conclusion

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2 The President has suggested on his social media account that the 10% tariff will be increased to 15%; however, as of today, no official announcement has been made.

3 The EU, Switzerland, Japan, Korea, and Taiwan had also included a similar provision in their reciprocal trade agreements.

4 Section 301 investigations are already underway on a number of countries, including China and Brazil. See here for a full list of ongoing investigations.

While the Supreme Court's decision is unquestionably a win for U.S. importers, the ability of the President to impose duties under alternative statutory provisions means that importers will get very little reprieve from tariffs. Moreover, the murky status of duty refunds and reciprocal tariff agreements means that the situation remains far from clear. We will continue to monitor these matters as they progress.

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