SQUIRE PATTON BOGGS

Supreme Court to Take Up Tariff Case on Expedited Timeline

Oral Arguments Expected in Early November

US – September 2025

On August 29, 2025, the Court of Appeals for the Federal Circuit (the Federal Circuit) issued its long-awaited opinion in *VOS Selections v. Trump* and *Oregon v. Trump*, two related cases that are leading challenges to the president's reciprocal and fentanyl/border-related tariffs imposed pursuant to the International Emergency Economic Powers Act (IEEPA).

The Federal Circuit agreed with the lower court, the Court of International Trade, that the tariffs are unlawful. The judges, in a 7-4 *en banc* opinion, narrowly held that "Congress, in enacting IEEPA, did not give the president wide-ranging authority to impose tariffs of the nature of the Trafficking and Reciprocal Tariffs," but refrained from holding more broadly that IEEPA does not authorize any tariffs in any circumstances. Despite this ruling in favor of the plaintiffs, the Federal Circuit also vacated the lower court's injunction in light of *Trump v. CASA*, a recent Supreme Court case that sharply limited the availability of universal injunctive relief as the Court of International Trade had provided before *CASA*. The Federal Circuit remanded the issue of injunctive relief back to the lower court to reconsider the question of relief in light of *CASA*.

The Federal Circuit stayed the effectiveness of its decision to allow the administration to seek review at the Supreme Court. The Supreme Court granted *certiorari* on September 9, and expedited the timeline for hearing the case, setting the case for argument in the first week of November. Given the expedited timeline, a decision before the end of the year is possible, although it is impossible to predict when the court will issue a decision after argument. The Federal Circuit's decision will remain stayed until the Supreme Court issues a decision.

August 29 – The Federal Circuit finds the challenged IEEPA tariffs unlawful, vacates universal injunction blocking tariff implementation and remands back to lower court issue of injunctive relief, but holds on implementing to give the government time to appeal.

September 3 – The Solicitor General files petition for writ of *certiorari* with the Supreme Court appealing the Federal Circuit's decision and seeks expedited review.

September 9 – The Supreme Court grants *certiorari* and sets an expedited timeline.

September 19 – Deadline for submission of the government's opening brief on the merits.

October 20 – Deadline for submission of response briefs by petitioners in *Learning Resources* and respondents in *VOS Selections*.

October 30 – Deadline for submission of the government's reply brief.

First Week of November – Oral argument at the Supreme Court.

What Comes Next? Looking Past the Supreme Court

The outcome at the Supreme Court is impossible to predict. While the administration lost at the Federal Circuit, the decision did not fall cleanly across party lines – there was a strong dissent from the Obama-appointed Judge Taranto, joined by Judges Chen (Obama), Moore (W. Bush) and Prost (W. Bush). In their view, IEEPA "embodies an eyes-open congressional grant of broad emergency authority in this foreign-affairs realm." Both the majority and dissenting opinions are complex and take nuanced legal positions that are not completely favorable to either side. The administration could possibly win five votes at the Supreme Court. If it does, that will largely conclude the matter in all courts, although changing circumstances will inevitably spawn more legal challenges under different fact patterns.

Even if the administration loses, that does not mean that the tariffs are immediately suspended. The Federal Circuit affirmed the lower court's primary holding that the tariffs are unlawful, but held that recent Supreme Court precedent CASA required vacating the universal injunction that blocked every application of the tariffs. Thus, on remand, the Court of International Trade would have to reconsider the scope of its relief. And so even if the Supreme Court holds the tariffs unlawful, the Court of International Trade will have to conduct more proceedings to determine how broadly it should provide relief. That timeline is similarly impossible to predict, but that is a serious issue that the administration would no doubt vigorously contest. We could see another series of injunctions and emergency stays in Round 2 at the Court of International Trade and the Federal Circuit.

Bottom line: a lasting and certain decision on the tariffs is likely a long way off, no matter what happens.

Refunds – The 200 Billion Dollar Question

The federal government has been collecting the challenged tariffs all this time and will continue doing so. By the time the Supreme Court weighs in, several hundred billion dollars will have been collected. In the usual case, the government would voluntarily cease imposing the tariffs and issue refunds for tariffs already paid, if the court held the tariffs unlawful. But here, there is a real risk that the government would not do so, instead forcing importers to file lawsuits seeking refunds. Those suits would be comparatively quick, but they are obviously undesirable. Companies should continue to preserve their rights by, for example, filing protests to preserve their ability to pursue such refund litigation. In addition, the administration may try to retroactively justify the tariffs on some other basis. That approach would be legally dubious, but if the government tries it, that could tie up refund litigation for another period of time.

It is possible that the administration will try and continue to impose the tariffs even if the Supreme Court ruled them unlawful. This, too, makes it imperative that companies take all feasible steps to preserve their ability to seek refunds, if and when, the time comes.

Finally, we note that only some of the president's IEEPA-based tariffs and actions are the subject of this current litigation. The extra 40% Brazil and 25% India tariffs announced in August were also imposed pursuant to IEEPA, but their status would depend heavily on the outcome of the Supreme Court's review and how narrowly, if at all, the justices draw the line on future use of IEEPA to impose tariffs.

Tariffs Coming and Going

If the president's authority to use IEEPA to impose tariffs is limited, or struck down, do not expect it to be the end of tariff uncertainty. While IEEPA offered a swifter and more direct path, the US Congress has delegated the authority to the president to impose tariffs under several statutes. Some, like Section 301, require an investigation first. Some, like Section 232, allow for tariffs on specific sectors from anywhere in the world. Both of those mechanisms have been triggered this year and have, since his first term, survived most major legal challenges. The landscape is complex and constantly changing, but tariffs are here to stay in one form or another.

Select Tariff Authorities

- **Section 122 of the Trade Act of 1974** – Permits the president to impose import measures, including an import surcharge, to address a balance of payment deficits between the US and other countries.
- **Section 201 of the Trade Act of 1974** – Permits the president to impose temporary duties to address a substantial cause or threat of serious injury to a US industry.
- **Section 232 of the Trade Expansion Act of 1962** – Empowers the president to act if certain imports threaten to impair US national security.
- **Section 301 of the Trade Act of 1974** – Allows the president to restrict imports if a foreign country violates any trade agreement or burdens or restricts US companies.
- **Section 337 of the Tariff Act of 1930** – Seeks to address unfair trade practices, particularly intellectual property infringement, in the importation or sale of goods in the US. Protects domestic industries by issuing exclusion or cease-and-desist orders against violative imports.
- **Section 338 of the Tariff Act of 1930** – Authorizes the president to impose new or additional duties against imports from countries that discriminate against US commerce.

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