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Court of Appeals Rules Certain Tariffs Exceed Presidential Authority — What this Means for Duty Refunds

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Hours before the start of the Labor Day weekend, the U.S. Court of Appeals for the Federal Circuit issued its ruling affirming a decision by the Court of International Trade (CIT) setting aside five Executive Orders that imposed tariffs of unlimited duration on virtually all products from virtually every country in the world on the basis that the tariffs were not authorized by the International Emergency Economic Powers Act (IEEPA).

Three of the five challenged Executive Orders were based on a national emergency declared by President Trump regarding the trafficking of fentanyl/opioids into the country and the alleged failure by Mexico, Canada, and China to meaningfully address that threat. The Executive Orders, following modifications, imposed 20% ad valorem duties on all products of China, 25% ad valorem duties on all products of Canada, and 25% ad valorem duties on all products of Mexico. These tariffs have been referred to by various names, including “Trafficking Tariffs.”

The other two Executive Orders imposed “Reciprocal Tariffs” on virtually every country with which the U.S. has any significant trade relationship. The Executive Orders first imposed a baseline tariff of 10% ad valorem duties on all imports from trading partners, with additional ad valorem duties ranging from 11% to as high as 50% to be imposed on a per-country basis. Reciprocal Tariffs on products of China reached higher percentages due to the ongoing retaliation by China and adjustment of its own tariff rates on U.S. goods. In imposing both the Trafficking Tariffs and Reciprocal Tariffs, President Trump invoked his claimed authority under IEEPA, as well as the National Emergencies Act (NEA) and Section 604 of the Trade Act of 1974.

Five small businesses and a coalition of 12 states brought suit at the CIT regarding the legality of the challenged Executive Orders. On May 28, the CIT issued a ruling permanently enjoining the Reciprocal Tariffs and Trafficking Tariffs on the basis that the Executive Orders exceeded the Presidents authority under IEEPA. The Administration appealed and the Federal Circuit paused the injunction while it reviewed the case.

The Federal Circuit affirmed the CIT's decision largely on two key grounds. First, although IEEPA grants the President with authority to, among other things, regulate importation, it does not use the words "tariffs," "duties" or any similar terms like "custom" or "taxes." Thus, IEEPA does not explicitly include the power to impose tariffs, duties, or the power to tax. The statute also does not contain clear procedural safeguards that limit the President's power to impose tariffs, as with other statutes that delegate power to the President.

Second, there are other statutes (Section 338 of the Tariff Act of 1930, Sections 201 and 301 of the Trade Act) that provide the President with the authority to impose or modify tariffs in certain circumstances, and Congressional delegation in this regard includes well-defined procedural and substantive limitations.

The Federal Circuit affirmed the CIT's decision that the Executive Orders exceeded the President's authority and also granted the declaratory relief that the Executive Orders were "invalid as contrary to law." The court, however, vacated the universal injunction granted by CIT based on the Supreme Court decision in *Trump v. Casa*, 145 S. Ct. 2540 (2025) (regarding birthright citizenship) and sent the issue back to the CIT to reevaluate the propriety of granting injunctive relief and the proper scope of that relief.

Takeaways

The decision will not take effect until October 14, giving the Administration time to request review from the Supreme Court. Thus, the tariffs remain in place for the moment.

If the Supreme Court affirms the CIT and finds these tariffs were indeed improper, billions of dollars in collected Trafficking Tariffs and Reciprocal Tariffs would likely need to be refunded to businesses and trade deals struck by the Administration with other nations will likely be thrown into question. In response, the Administration would likely try to impose new tariffs under different authorities, which have their own requirements and limitations on what the rate may be and for how long it can stay in place.

If the Supreme Court's ruling addresses refunds of tariffs, the process for requesting a refund would have

to be addressed by U.S. Customs and Border Protection (CBP). It's likely that CBP would not issue automatic refunds, instead requiring businesses to comply with any process set out by CBP. For example, in May, CBP began processing refunds tied to overpaid duties resulting from tariff "stacking" —where multiple overlapping tariffs were applied to the same import entry. Those refunds pertain to Section 232 auto and auto parts tariffs, Section 232 aluminum and steel tariffs, and IEEPA-based Trafficking Tariffs on imports from Canada and Mexico. CBP released a notice providing guidance for importers seeking refunds for tariffs that were previously "stacked."

The Federal Circuit's ruling does not cover all tariffs imposed by the Trump Administration. For example, additional tariffs on steel, aluminum, and automobiles imposed since the start of 2025 remain unaffected, as they relied on other statutory authority.

To determine whether any tariffs you have been issued might be eligible for refunds, please reach out to the authors or your regular Kilpatrick contact.