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**Trump Tariffs on Trial:
Constitutional Questions,
Supreme Court Challenges,
and What Trade Compliance
Professionals Need to Know**

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IEEPA Background

- Trading with the Enemy Act (TWEA) (1917)
 - Initially wartime focused, sanctions, seizing assets, financial restrictions, limiting foreign direct investment
 - U.S. v. Yoshida Int'l, 526 F.2d 560 (C.C.P.A. 1975)
 - Pre-IEEPA case interpreting Presidential emergency powers to apply temporary import tariff

IEEPA Background

- International Emergency Economic Powers Act (IEEPA) (1977), 50 USC s. 1701 et seq.
 - Regulates/restricts financial transactions upon national emergency.
 - Sanctions, export controls, restricted transactions
 - Measures in response to Iran hostage taking in 1979
 - “to deal with any unusual and extraordinary threat” from outside the U.S.
 - President may “investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation ...”

IEEPA For Tariffs

- Policy reasons for using IEEPA:
 - Immigration concerns
 - Fentanyl trafficking
 - Trade imbalance
 - Raising revenue
 - Leverage for making policy deals
 - (Executive action without Congress)

Key Dates of IEEPA Tariffs

- Issued February 1, 2025
 - President Trump first invoked IEEPA based on fentanyl trafficking to impose tariffs on Canada, Mexico and China
- Reciprocal Tariffs April 2, 2025
 - Rose Garden announcement
 - Trade deficit reasons cited for tariffs
- Country-specific tariffs
 - Not Section 232 on steel, aluminum or other products
 - Not the China Section 301 tariffs

Country	Tariffs Charged to the U.S.A. Including Currency Manipulation and Trade Barriers	U.S.A. Discounted Reciprocal Tariffs
China	67%	34%
European Union	39%	20%
Vietnam	90%	46%
Taiwan	64%	32%
Japan	46%	24%
India	52%	26%
South Korea	50%	25%
Thailand	72%	36%
Switzerland	61%	31%
Indonesia	64%	32%
Malaysia	47%	24%
Cambodia	97%	49%
United Kingdom	10%	10%
South Africa	60%	30%
Brazil	10%	10%
Bangladesh	74%	37%
Singapore	10%	10%
Israel	33%	17%
Philippines	34%	17%
Chile	10%	10%
Australia	10%	10%
Pakistan	58%	29%
Turkey	10%	10%
Sri Lanka	88%	44%
Colombia	10%	10%

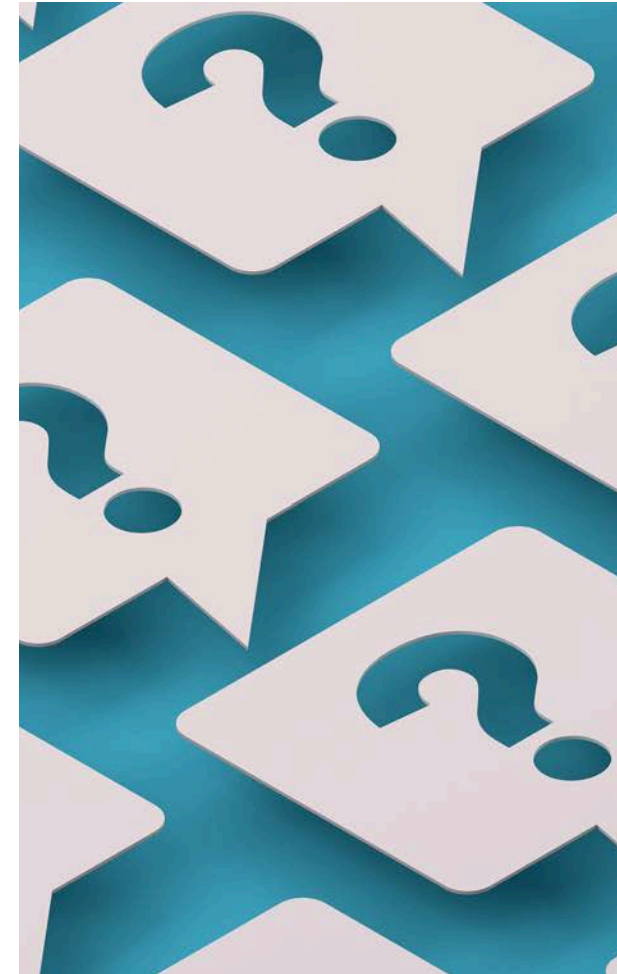
The Trial Level Cases

- *V.O.S. Selections, Inc. v. Trump*
 - Five small businesses (wine, plastic pipe, fishing tackle, women’s apparel)
 - Threat of bankruptcy
 - Filed in U.S. Ct. of Int’l Trade, Three-Judge Panel
- *Learning Resources*
 - Educational toy companies facing massive tariff increases
 - Filed in U.S. District Ct. for D.C.



The Trial Level Cases

- Exclusive jurisdiction question: which court?
- 28 U.S.C. s. 1581(i)
 - “the Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—
 - **(A)** revenue from imports or tonnage;
 - **(B)** tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;”



Holdings

- *V.O.S. Selections*
 - IEEPA tariffs exceeded delegated authority under 50 USC s. 1702
 - Does not authorize broad, permanent tariffs to address trade imbalances
 - Tariffs must “deal with the unusual and extraordinary threat with respect to which the national emergency has been declared”
- *Learning Resources*
 - Denied government motion to transfer and granted preliminary injunction
 - Power to regulate is not power to tax

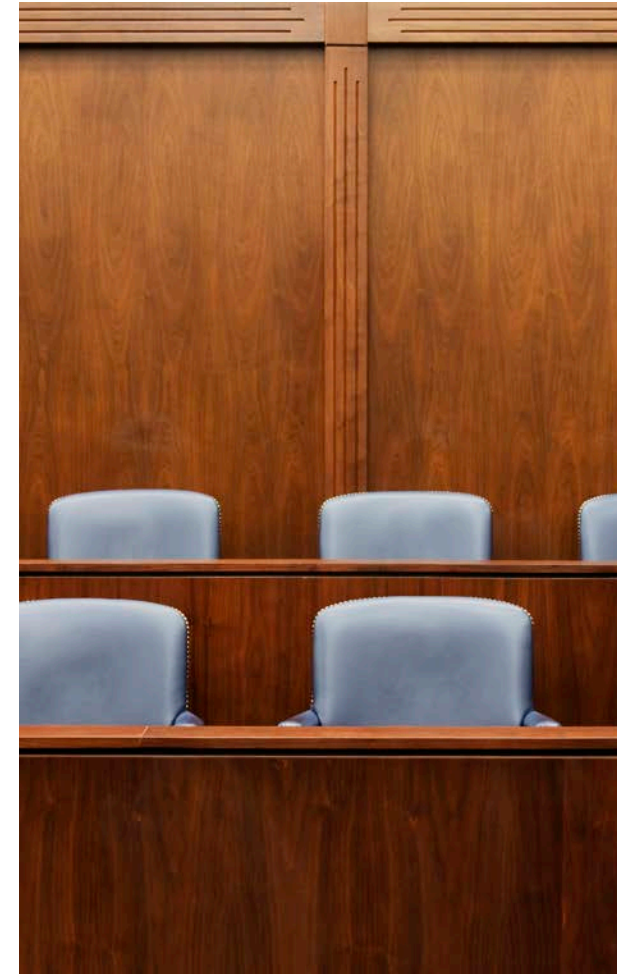


Appeal

- U.S. Court of Appeals for Federal Circuit
- *En Banc* review
- *Affirmed*
 - Major questions doctrine, scale of tariffs
 - Statutory authorization (“regulate ... importation”) under IEEPA inadequate
- Dissent
 - “regulate importation” ≠ tariffs?
 - Emergency powers of President, requirements to inform Congress

Supreme Court Hearing

- Delegation of authority: sanctions statute intended to implement tariffs?
- Do tariffs “deal with” the emergency or create diplomatic leverage?
- “Regulate” — how broad a power to tax?
- Trade can be blocked or banned, but it cannot be tariffed?
- Refunds ... a “mess”?



Handicapping The Court



What happens next?

- Scope of the Supreme Court decision
 - All IEEPA tariffs? Including Brazil?
 - Prospectively vs. retroactively?
 - Plaintiffs vs. importers?
 - Consumers who paid duties?



The Debate About Refunds

- 28 U.S.C. s. 1581 Court of International Trade Jurisdiction
 - (a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.
 - (i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)–(h) ... any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for—
 - (A) revenue from imports or tonnage;
 - (B) tariffs, duties, fees, or other taxes on the importation of merchandise for reasons other than the raising of revenue;



The Debate About Refunds

- Timing in relation to liquidation
- Procedure
 - Protest?
 - Protest and 1581(a) lawsuit challenging denial of protest?
 - Only 1581(i) lawsuit?
 - All of the above?



The Debate About Refunds (cont.)

- *The “Costco Effect”*
- *AGS Company Automotive Solutions v. CBP*
(Dec. 15, 2025)
 - Three-judge USCIT panel
 - Seeking injunction to prevent liquidation and potential risk of loss of refunds
 - Fear that liquidation could not be protested
 - Holding: *injunction not necessary.*
(*But is a lawsuit necessary?*)



The Debate About Refunds (cont.)

- Protest challenge always unconstitutional?
- What grounds (constitutional? statutory?) for Supreme Court decision?
- Any remedy guidance from Supreme Court?
- Does the timing of the refund claim matter?



The Debate About Refunds (cont.)

- Is CBP's decision "ministerial"?
Always?
- Does the government's representation to respect court decisions for reliquidation extend to all cases?
- Even those yet to be brought?



Practical Considerations For Importers

- Entry timing
- Liquidation status
- Prematurely liquidated entries
- Refund pathways
- Contractual considerations
 - Price adjustment clauses
 - Pass-through of refunds?

What Happens To The President's Trade Deals?

- Trade deals based on IEEPA authority
 - Will countries honor the deals?
 - Does it matter?
- Subsequent wave of protests and litigation?



What Tariffs Are Coming Next?

- More Section 232 cases?
 - Could a Supreme Court decision lay the groundwork for a Section 232 challenge?
- What is Section 122 and how might it be implemented?
- Other tariff alternatives?
- Congressional action to address tariffs?



Questions?

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