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Government Investigations & White-Collar Defense Alert

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Appeals court finds sweeping Trump tariffs unlawful

By Joseph B. Maher

A federal court recently ruled against key Trump tariff orders—here's what it means for businesses.

What's the impact?

- The Federal Circuit found unlawful Trump's tariff orders under IEEPA, citing lack of clear congressional authorization; however, the Supreme Court is expected to review the case, delaying immediate impact but leaving major constitutional questions in flux.
- Businesses should consider current and future contract implications while preparing to adapt to future decisions regarding tariffs.

Tariff-related litigation currently working its way through the courts presents issues of immense business and constitutional significance. This litigation will not only have a trillion-dollar impact on businesses and consumers globally, but also presents questions concerning the division of powers between the president and Congress under the Constitution. On August 29, 2025, the US Court of Appeals for the Federal Circuit (Federal Circuit) ruled against the president's tariff orders and concluded that some of his most significant tariff measures are unlawful.

Although the conclusion of this litigation will have a massive impact on global trade, there will be no immediate impact from the court's ruling because litigation is likely to continue. We predict that the Supreme Court will agree to hear the case and rule on it in the coming months. As described below, however, companies can take actions now to best position themselves for a final ruling.

Tariff changes trigger legal challenges

Several companies and states filed suit to challenge the legality of President Trump's tariffs announced via executive orders that adjusted the rates of tariffs for almost all goods coming into the United States from almost every country in the world. One executive order imposed a 25% tariff on certain imports from Canada; another imposed an additional 25% tariff on certain goods from Mexico; and a third imposed an additional 10% tariff on goods from China. The so-called "Reciprocal Tariff" executive order imposed a baseline tariff of 10% on goods from almost every country in the world and added additional tariffs for specific countries and the European Union. Finally, later executive orders suspended some tariffs, increased tariffs dramatically for China (up to 125%) and then lowered them, all at various points over the past two months. All of these tariff changes have caused thousands of US companies to pay billions of dollars in tariffs during the several months after issuance of the executive orders.

As authority to impose these tariffs, President Trump relied upon the [International Emergency Economic Powers Act] (IEEPA), which authorizes the president—under certain national emergency conditions—to "regulate . . . any . . . importation . . . of . . . any property in which any foreign country or a national thereof has any interest . . ." The federal courts presented with the litigation had to answer whether this statutory authority to "regulate" includes the authority to impose and adjust tariffs up and down. Courts were also presented with the question of whether the Constitution's separation of powers would allow Congress to give the president this authority.[1]

The ruling

The Federal Circuit ruled that "IEEPA's grant of presidential authority to 'regulate' imports does not authorize the tariffs imposed by the [e]xecutive [o]rders." The appeals court heard the case *en banc* before 11 judges. A seven-judge majority concluded that terms, context, and history surrounding the statutory provisions at issue did not provide President Trump with authority to impose such sweeping tariffs. The majority opinion was careful not to decide whether any less-sweeping tariffs would be authorized, but four of the judges voting in the majority wrote separately to make clear that they thought IEEPA provides *no* authority to impose tariffs.

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[1] Although there are multiple cases in which companies are making these same challenges, the case before the US Court of Appeals for the Federal Circuit has been the first to receive a ruling from an appellate court, and that particular appellate court has special jurisdiction related to customs and tariff cases.

The Federal Circuit based its ruling on the text of IEEPA, the manner in which Congress has previously delegated tariff authority to the president, and the lack of a clear congressional authorization needed to give effect to such a massive assignment of power to the president. The court's reasoning starts by noting that the Constitution gives Congress the authority to "lay and collect Taxes, Duties, Imposts and Excises" and to "regulate Commerce with foreign Nations." When Congress has decided to delegate some of that authority to the president under other statutes (aside from IEEPA), Congress has done so in restrictive ways and has imposed procedural requirements prior to use of the authority. The fact that IEEPA does not include those guardrails, and that Congress did not use the term "tariff" or "duty" in the statute, led the Federal Circuit to conclude that Congress did not intend for the terms of IEEPA to convey the authority necessary for President Trump to issue the challenged executive orders.

Moreover, the court pointed out that the transfer of such substantial authority from Congress to the president would require a "clear congressional authorization." Anything less than a clear authorization would not satisfy the Supreme Court's "major questions doctrine." Under that doctrine, statutory language must be clear in granting the authority asserted by the Executive Branch when that authority involves vast "economic and political significance." In short, the appeals court concluded that the "Executive's use of tariffs qualifies as a decision of vast economic and political significance, so the Government must 'point to clear congressional authorization' for its interpretation of IEEPA." Using the terms "regulate . . . importation," without any reference to "tariffs" or "duties," does not satisfy the need for a clear authorization.

Although the Federal Circuit's ruling affirmed that the executive orders are "invalid as contrary to law," the court made two decisions that delay the effect of its ruling. First, the court directed that the mandate in the case be withheld either until the Supreme Court declines to hear the case or, if the Supreme Court decides to hear the case, until the Supreme Court issues its judgment. Issuance of the "mandate" is the official manner for the appeals court to have its ruling take effect, so withholding the mandate effectively pauses the case pending action by the Supreme Court.

Second, the appeals court instructed the lower court to reconsider the injunction it issued. Under the lower court's earlier decision, the Executive Branch would be prohibited from applying the tariffs to any parties (i.e., the injunction was universal). The Federal Circuit instructed the lower court to consider additional factors and caselaw that could cause the legal injunction to apply to a narrower set of parties or only to past (and not future) conduct in administering the tariffs.

How should companies respond to the tariff ruling?

Companies can take proactive steps to best position themselves for the eventual results of this litigation:

MONITOR TARIFF LITIGATION BEFORE SUPREME COURT

Companies should continue to monitor the specific way in which the courts rule. If the Supreme Court agrees with the Federal Circuit's conclusion that challenged executive orders are unlawful, companies should pay attention to the Supreme Court's direction on how to structure relief. This will determine whether and how it affects their business. For example, if the Supreme Court decides that the ruling should only apply to the parties in the case before it—rather than applying the ruling to restrict any use of these tariff mandates to any party—companies may need to file their own lawsuits to seek relief for the money they have already paid under the unlawful tariff orders. Alternatively, the Executive Branch could set up a new administrative process to allow less formal reclamation of the tariffs paid.

ASSESS HOW TARIFF CHANGES MAY AFFECT CONTRACTS

Companies involved in importing goods (whether as the importer or as a buyer from the importer) should protect their interests in contracts involving the imported goods. If the government is forced to return tariffs unlawfully collected, that money will flow to the importers that paid the tariffs. Whether any other parties would need to be reimbursed for flow-down costs associated with the tariffs will be governed by the terms of commercial contracts. Companies should ensure that those terms are acceptable if a ruling against the government is sustained by the Supreme Court.

PRIORITIZE COMPLIANCE WITH ACTIVE TRADE REGULATIONS

Companies should not lose sight of the enhanced enforcement that is coming. The fact that certain tariffs were issued without proper authority by the government does not negate the prohibition on false statements to the government, nor does it remove any legal obligations that exist under other, remaining tariff orders. The president has instructed US Customs and Border Protection to strictly enforce penalties for customs violations, and the federal enforcement agencies have already dedicated new resources to enhancing their enforcement efforts. This means that companies need to remain vigilant in their compliance with tariffs and other customs rules so that they do not incur substantial penalties. The conclusion of the litigation in *V.O.S. Selections, Inc. v. Trump* will not negate the administration's aggressive enforcement posture.

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