# The Supreme Court Decides: IEEPA Tariffs Unlawful

**By:** Arpit Bhargava

On February 20, 2026, the U.S. Supreme Court held in *V.O.S. Selections Inc. v. Trump* that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs because Congress never delegated that specific taxing power in the statute; consequently, all IEEPA tariffs were unlawful *ab initio* (from the start).

This ruling effectively dismantles the cornerstone of the administration's aggressive trade agenda, invalidating the "reciprocal" tariffs and the targeted drug-trafficking duties on imports from China, Mexico, Canada, Brazil, and India.

Other trade regimes are not affected by this decision. This includes Section 232 national security tariffs (on steel, autos, aluminum, automobiles, semiconductors, solar panels, copper, and wood), Section 301 tariffs on Chinese goods related to unfair trade practices, and standard antidumping and countervailing duties (AD/CVD).

## White House Reloaded: Section 122 Tariffs In, For Now

On February 20, 2026, President Trump invoked Section 122 of the Trade Act of 1974 to proclaim a new 10 percent global import surcharge to address "large and serious" U.S. balance-of-payments deficits. This new duty is scheduled to take effect at 12:01 a.m. EST on February 24, 2026. While classified as a "regular customs duty," it operates as an additional surcharge collected over existing normal tariffs, though it does not stack with goods already subject to Section 232 national security measures.

Goods loaded on a vessel and already in transit to the United States before 12:01 a.m. EST on February 24, 2026, and imported before 12:01 a.m. EST on February 28, 2026, are also not covered by the section 122 surcharge. Key exclusions to the section 122 surcharge include critical minerals, agricultural products, pharmaceuticals, oil, and petrochemical products etc. A full list is available in Annex I and Annex II of the executive order.

By statute, this temporary import surcharge is limited to a maximum duration of 150 days and is currently scheduled to expire on July 24, 2026, unless extended by an act of Congress. Importers should be aware that the administration must meet specific statutory requirements regarding the balance-of-payments deficit to invoke Section 122, which may face future legal challenges. For a detailed analysis of this Executive Order and its specific regulatory impact, please refer to SBA's US News page.

## Status of Injunction on IEEPA Tariffs

There is currently no active nationwide injunction from the Supreme Court as to imposing IEEPA duties, as the Court vacated the preliminary injunction initially issued by the D.C. District Court for lack of jurisdiction and remanded the *V.O.S. Selections* case back to the Court of International Trade (CIT) to reconsider the proper scope of relief as to the found illegal IEEPA tariffs. However, on February 20, 2026, President Trump issued the Executive Order "Ending Certain Tariff Actions," which formally rescinds the additional *ad valorem* duties previously imposed under IEEPA authorities. <u>This order officially directs that the collection of these invalidated duties must cease as soon as practicable. Thus, for now the collection continues and retroactive refund of prior IEEPA duties not addressed.</u>

U.S. businesses are still paying IEEPA tariffs even after the Supreme Court decision to strike down President Trump's IEEPA tariffs, until CBP advises otherwise. It could take days or weeks for CBP to officially tell importers that the IEEPA tariffs are no longer in force to be paid.

**<u>Refunds of IEEPA Tariffs and Remedies going forward</u>**

The Supreme Court did not create a special refund mechanism. Importers will need to use existing Customs and court processes to seek refunds, and the options available depend on whether entries are liquidated or unliquidated. It could be months before the lower courts or US Customs and Border Protection (CBP) establish any refund process. The U.S. Court of International Trade (CIT) is expected to oversee the refund process, which will be administered electronically by CBP once the court and/or CBP issues specific implementation orders. At least for now, the U.S. Administration is signaling that there could be years of litigation on this issue but has certainly shown that U.S. Administration policy can change rapidly.

- Importers who have already filed protective lawsuits in the U.S. Court of International Trade (CIT) are expected to have a clear path forward through court-ordered reliquidation. The CIT is well-positioned to order relief in these pending 28 U.S.C. § 1581(i) cases, and CBP has previously indicated it will not oppose reliquidation if the Supreme Court holds the tariffs unlawful.
- *Unliquidated entries (PSC route).* For entries that have not yet liquidated, the primary duty relief tool is Post Summary Correction (PSC), which allows correction of duty calculations before liquidation. PSCs generally may be filed on entries within about 300 days of importation and at least 15 days before scheduled liquidation; once an entry liquidates, PSCs are no longer available.
- *Liquidated entries (protest and litigation route).* After liquidation, refund claims shift to protests. Importers generally have 180 days from liquidation or reliquidation to file a protest. If CBP denies a protest, importers may challenge that denial at the CIT

within 180 days. Note also that as to import entries liquidated more than 180 days ago, such that cannot now protest their liquidation, as the statutory time to do so has expired, can still file a 1581(i) court case (per the first bullet point above) that covers up to two years back from the time of the court appeal as a protective measure at this point, if wish

Importers should note that when products are also subject to anti-dumping (AD) and countervailing duties (CVD), the treatment of these refunds in dumping margin calculations requires a more complex AD/CVD law specific analysis to ensure proper treatment in administrative reviews, having nothing to do with IEEPA.

*Note that most importers did not file court appeals yet as to the IEEPA tariffs. Much of Corporate America is pushing for a general refund of all IEEPA tariffs for all, which could be done if the U.S. Administration were willing to do so (so far not). With (a) impending November 2026 Congressional mid-term elections coming, (b) the huge unpopularity of the IEEPA tariffs among American voters, (c) Trump's increasing unpopularity in the U.S. with resistance to Trump growing, (d) Trump's Republican Members of Congress worried as to their own re-election in November 2026, and (e) the $140+ billion of collected IEEPA tariffs so far (with implications for the U.S. budget deficit), interesting dynamics are set into play with unclear/uncertain resolution at this point as to how it plays out.*

*Further practical next steps for importers:*

- Inventory all entries where IEEPA tariffs were paid. Confirm which entries are still unliquidated and which have liquidated, including the relevant dates, to assess best steps going forward as to above.

| **Entry Status** | **Administrative Action Required** | **Statutory Deadline** | **Expected Disbursement Mechanism** |
|---|---|---|---|
| Unliquidated | File Post-Summary Correction (PSC) via ACE | Within 300 days, up to 15 days prior to scheduled liquidation | Refunded at final liquidation via ACH |
| Liquidated | File Formal Protest (Form CF-19) under 19 U.S.C. § 1514 | Strictly 180 days from the date of liquidation. | Electronic ACH transfer (subject to CBP review) |

| Entry Status | Administrative Action Required | Statutory Deadline | Expected Disbursement Mechanism |
|---|---|---|---|
| Litigated | Adherent to CIT reliquidation implementation orders | Subject to CIT scheduling | Court-ordered reliquidation via CBP ACH system |

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The professionals at SBA have deep experience advising clients on the range of issues associated with the IEEPA tariffs, the US Customs and Border Protection's operational and administrative process for tracking and seeking refunds, and the disposition of those tariffs on appeal.

Our team includes Arpit Bhargava, Founding Partner and CEO, who is a Chartered Accountant and master's in business law with rich experience in international trade laws and practice, and Dr. Peter Koenig, who brings almost 40 years of experience in international trade regulation, including antidumping and countervailing duty proceedings, U.S. Customs, and trade policy. For more information, please contact any of the authors or another professional at SBA that you regularly work with.