

Instant Insight: Trump Tariff Agenda in Legal Jeopardy

MAY 29, 2025



The U.S. Court of International Trade (CIT) at Foley Square, New York City. (Photo: Wikimedia Commons)

Key Takeaways

- **On May 29, the U.S. Court of Appeals for the Federal Circuit stayed a May 28 decision issued by the U.S. Court of International Trade (CIT)** that would have vacated President Trump's IEEPA-related tariffs imposed under the 1977 International Emergency Economic Powers Act (IEEPA). The appellate court will now consider the Trump administration's emergency stay motion of the CIT ruling. **The stay is expected to remain in effect through mid-June.**
- The legal status and operational future of President Trump's IEEPA-based U.S. tariffs—which are the centerpiece of his “reciprocal” and “universal” tariff approaches—remains in question. **The CIT judges found that most of President**



Trump's sweeping tariffs on U.S. trading partners lacked sufficient legal authority under IEEPA.

- **The impact on ongoing tariff negotiations may vary by trading partner.** Most Asian nations are likely to continue negotiating but may feel that they have enhanced leverage. The original CIT ruling would have reversed the 10 percent universal tariff on all countries, along with the additional 20–50 percent reciprocal tariffs, and the fentanyl tariffs on Canada, China, and Mexico. However, **the CIT did not address** Section 232 sectoral tariffs or the ongoing Section 301 probes. This means that some countries like Japan and South Korea—whose top industries are significantly vulnerable to those measures—will continue to face considerable negotiating challenges.
- **Despite the legal uncertainties, the Trump administration is trying to take a business-as-usual approach, continuing scheduled negotiations and reminding trade partners that it has other tools at its disposal.** Still, some U.S. trade partners may drag their feet as they wait for more clarity.

What Happened

- **IEEPA Tariffs Ruled Unlawful But Sectoral Tariffs Not Addressed.** The CIT on May 28 **struck down** most of the tariffs imposed by the Trump administration. The court's three-judge panel affirmed Congress's exclusive power to regulate commerce with other nations and found that Trump's reciprocal tariffs as well as the tariffs imposed on Canada, Mexico, and China over illicit fentanyl trade exceeded his authorities under IEEPA. Had the CIT ruling sustained, the administration would have had to issue new orders reflecting the permanent injunction within 10 days. Sectoral tariffs (such as those on steel, aluminum, and auto imports) imposed under Section 232 and the Section 301 tariffs remain in effect.
- **Appeals Court Halts CIT Ruling.** The White House rejected the court's decision and immediately asked the Federal Circuit to pause enforcement of the ruling while the administration pursued a formal appeal. On the afternoon of May 29, the U.S. Court of Appeals for the Federal Circuit **temporarily paused** the CIT ruling while weighing a longer lasting hold. The administrative stay is reportedly expected to remain in effect through mid-June.



Further Recourse

The administration may consider leveraging several other tools to maintain tariff pressure on U.S. trade partners. These authorities are separate from IEEPA, but require more rigorous and time-intensive processes compared to sweeping provisions announced through Executive Orders citing IEEPA.

- **Expanded Use of Section 232 (Trade Expansion Act of 1962):** The administration could initiate investigations into additional industries for national security concerns beyond ongoing probes into chips, pharmaceuticals, critical minerals, copper, commercial aircraft, and lumber.
- **Expanded Use of Section 301 (Trade Act of 1974):** The Office of the U.S. Trade Representative could initiate additional investigations into unfair trade practices by specific countries, as it did with China.
- **Use of Section 122 (Trade Act of 1974):** The White House could attempt to replace the 10 percent global tariffs with import levies under Section 122, which authorizes the president to impose quotas or tariffs up to 15 percent for up to 150 days in response to “large and serious United States balance-of-payment deficits.” Any extension beyond 150 days would require Congressional action.
- **Dusting Off Section 338 (Trade Act of 1930):** The administration could also turn to this Great Depression-era provision, which authorizes the president to impose “new or additional duties” of up to 50 percent on countries in response to discriminatory behavior.

Implications for Ongoing Tariff Talks

- **Although the future of reciprocal tariffs faces uncertainty, trade negotiations are likely to stay the course.** Multinational firms should expect the administration to take a business-as-usual approach to ongoing trade talks. U.S. negotiators will likely emphasize that this legal process is far from over and that the United States has other trade tools even if the case does not resolve in the administration’s favor. Discussions with Japan, Malaysia, the European Union, and others scheduled for this week remain ongoing. There is currently little incentive for the Trump administration to change the July 7 negotiating deadline, and some countries (particularly those more directly affected by sectoral tariffs) may see benefit in continuing to pursue negotiations regardless of the legal determinations.



- **A successful appeal would mean a return to the pre-decision status quo.** The United States would continue leveraging reciprocal tariffs in trade negotiations to extract concessions on tariff and non-tariff barriers, solicit purchases of U.S. energy, defense platforms, agricultural products, and other goods, and incentivize foreign investment in key sectors. The ruling would also set a precedent for authorized use of IEEPA, significantly increasing the power of the executive to utilize tariffs for the purpose of narrowing the U.S. trade deficit.

Watchpoints for Business

- **What happens at U.S. ports of entry:** Thus far, U.S. Customs and Border Protection officials have said there would no changes to its inspection and protocols until the appeal runs its course. Refunds will reportedly be issued post-hoc and with interest only if the appeal is unsuccessful. Given the complexity of the appeals process, which could drag on for some time, businesses should expect reciprocal tariffs will continue being charged and plan accordingly.
- **Other court cases:** The CIT's ruling could influence the outcome of other cases linked to Trump's tariffs; by some estimates, there are at least six other suits filed by both states and businesses. In a separate ruling unveiled today, a second federal judge granted a preliminary injunction on IEEPA-linked tariffs petitioned by family-owned businesses. The situation remains fluid and further rulings could add additional pressure on the Trump administration to leverage alternative tariff tools.
- **The impact on U.S.-China trade talks:** China is likely to proceed cautiously and adopt a "wait and see" approach since it has little incentive to act first while the situation evolves. The CIT ruling comes amid several other challenges to the fragile U.S.-China trade truce, including but not limited to chip export control enforcement guidelines on Huawei; reported orders that U.S. chip design software suppliers cease sales to China; and the Department of State's recommendation that Chinese student visas be reviewed and revoked.

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