

# Publications

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## Court Strikes Down Fentanyl and Reciprocal Tariffs, but Appeals Court Temporarily Stays Impact

### Key Takeaways

- The U.S. Court of International Trade struck down President Trump's fentanyl and reciprocal tariffs imposed under the International Emergency Economic Powers Act of 1977 (IEEPA), ruling the statute did not authorize such broad actions.
- The court's order halts future tariff collection, requires refunds of duties collected since February 2025, and has nationwide impact across all U.S. importers and ports.
- The government has appealed the decision and requested a stay of the court's order, which the Federal Circuit granted. This temporary stay pauses the unwinding of the tariffs, resulting in continued tariff collection in the interim and delayed refunds to importers.
- The ruling is limited to IEEPA-based tariffs and does not affect existing or future tariffs imposed under Section 232 or Section 301 authorities.

On May 28, 2025, the U.S. Court of International Trade (USCIT) struck down the earliest and broadest of President Trump's second term tariff actions: the tariffs imposed against Canada, Mexico and China starting in February and March (the fentanyl tariffs) and the tariffs imposed against nearly all other countries in early April (the reciprocal tariffs). These actions, together as subsequently modified, subjected most U.S. imports to additional import duties of between 10% and 25%. The court's order wipes those executive tariff impositions off the table, eliminating prior and prospective collection, including the planned increase of the 10% reciprocal tariffs later this summer. If the opinion and order stand, all fentanyl and reciprocal duties collected since February 2025 will be refunded. The court's order does not impact tariffs imposed under other tariff authorities like Section 232 or Section 301.

The court's opinion, issued on May 28, impacts multiple tariff executive orders issued by the President invoking the IEEPA. The court specifically found that that statute did not authorize the President "to impose unlimited tariffs on goods from nearly every country in the world."

On February 1, President Trump first invoked IEEPA to announce tariffs imposed on U.S. imports from Canada, China and Mexico intended to address the flow of fentanyl and its

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precursors from those countries crossing the U.S. border; the actions against Canada and Mexico were also intended to address migration flows from those two countries. The tariffs, set to take effect on February 4, were ultimately deferred with regard to Canada and Mexico until early March. Since that time, these tariffs have been revised on several occasions, for example, exempting U.S. imports eligible for preferential treatment under the U.S.-Mexico-Canada Agreement (USMCA) from the fentanyl tariffs.

Later, on April 2, President Trump announced 10% tariffs on the vast majority of imports from the vast majority of countries, effective April 5; these tariffs were intended to rebalance U.S. trade flows and achieve “reciprocal” trading treatment. For certain countries, those 10% tariffs briefly increased to higher country-specific rates at 12:01 am ET on April 9, 2025. That same date, however, President Trump paused the increase in reciprocal duty tariff rates for those countries with enhanced rates above 10% for all countries other than China, with the higher rates deferred for 90 days (to July 8, 2025). With regard to shipments from China, President Trump announced escalating tariff rates peaking at 125%. The 125% tariffs were subsequently temporarily decreased to 10%, effective May 16, 2025, following productive negotiations between the U.S. and China; higher rates previously in effect are expected to be reimposed effective August 12.

The court’s action from May 28 eliminates the entire IEEPA tariff framework, ordering U.S. Customs and Border Protection to refund the fentanyl and reciprocal tariffs collected and cease collection of new duties. This order has national effect, thereby impacting across all U.S. importers and ports.

Although the court invalidates the tariffs and orders that the tariffs be unwound within 10 calendar days of its opinion’s issuance, the government has already appealed the court’s ruling to the U.S. Court of Appeals for the Federal Circuit and has sought a stay of the court’s order pending resolution of the appeal, which the Federal Circuit granted. This temporary stay pauses the unwinding of the tariffs, resulting in continued tariff collection in the interim and delayed refunds to importers. Whichever party prevails on appeal before the Federal Circuit will have an opportunity to seek further review by the U.S. Supreme Court.

The USCIT’s judgment is limited to the IEEPA-based tariff regimes and does not impact tariffs imposed under other legal mechanisms, for example, tariffs imposed to date or potentially imposed in the future on certain sectors under national security investigations conducted under Section 232 of the Trade Expansion Act of 1962 (such as on steel, aluminum or autos) or under Section 301 of the Trade Act of 1974 (as imposed by President Trump during his first term against certain imports from China and expanded during the Biden Administration). This opinion also does not impact future potential Section 232 actions, such as those that may be taken for pharmaceuticals, critical minerals, semiconductors and heavy trucks following the outcome of those investigations.

If your business needs strategic legal guidance or anticipates potential impacts resulting from these announcements, contact Deanna Okun, Lydia Pardini, Polsinelli’s Executive Action Working Group or your Polsinelli contact.