

Cheat Sheet: (some) tariffs overturned, what's next?

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Note: The Trump administration is in the process of responding, so please use this memo as a cheat sheet to understand an evolving situation. Our team is always ready to discuss the latest.

The Supreme Court ruled that President Trump's use of emergency tariff powers is unconstitutional but did not deal with refunds.

President Trump's use of the International Emergency Economic Powers Act (IEEPA)¹ to levy global reciprocal tariffs and fentanyl tariffs on Canada, Mexico, and China has been overturned. The decision affirmed a prior decision by the U.S. Court of Appeals for the Federal Circuit in *Trump v. V.O.S. Selections*. The Supreme Court also clarified that the U.S. Court of International Trade maintains jurisdiction.

During an early afternoon press conference, the President spun the decision to affirm that he maintains powerful tariff tools...just not under IEEPA. He announced a global 10% baseline tariff using Section 122, which is limited to 150 days unless extended by Congress. He indicated that it would likely go into effect in three days — clarity will likely come with the issuance of executive orders late Friday. President Trump also reiterated that all that existing Section 232 and 301 tariffs remain in effect and indicated that additional investigations would be announced.

This suggests that the Trump administration is taking this opportunity to back off high tariffs, keeping affordability and the midterm elections in mind. President Trump could have announced higher Section 122 tariffs up to 15%, but he held back at 10%. He also could have announced immediate increases and expansions of Section 232 sectoral tariffs but did not.

Remaining questions:

- **What will additional Section 232 and Section 301 investigations look like?** U.S. Trade Representative (USTR) Jamieson Greer indicated that more details will be forthcoming in the “days and weeks ahead.”
- **How does this affect President Trump's trade agreements and ongoing negotiations?** We do not anticipate major changes to the existing agreements, though implementation may slow. We'll be watching a key vote in the European Parliament scheduled for February 24. Given that President Trump has refrained from levying the full 15% rate under Section 122 authority, this vote may actually be easier.
- **Will President Trump show strength in other ways?** He has used tariffs for non-trade foreign policy goals, so other major foreign policy reactions are on the table.

¹ The International Emergency Economic Powers Act (IEEPA) allows the president to “investigate, regulate, or prohibit” certain economic transactions in response to a declared national emergency.

- **Will there be refunds? If so, when?** The Supreme Court did not rule on refunds but instead upheld the Circuit Court ruling. The Federal Circuit Court ruled against the use of IEEPA for tariffs but remanded the question on the universal injunction back to the Court of International Trade (CIT). We defer to legal counsel on the next steps within the courts, but CIT specializes in trade issues and will likely order refunds.
- **How does this affect other IEEPA tariffs?** IEEPA was used separately to levy tariffs on Brazil, but those are likely to be overturned quickly by lower courts. IEEPA also underlies EOs that threaten tariffs on countries doing business with Iran and Cuba, but those tariffs have not been implemented.
- **How does this affect the de minimis exemption for low-value shipments?** IEEPA was leveraged to remove this exemption, forcing importers to pay duties on shipments valued at \$800 or less. Detroit Axle challenged this use of IEEPA in *Axle of Dearborn, Inc. v. Department of Commerce*. This case has been pending the resolution of *V.O.S. Selections* by the Supreme Court and will now move forward, though there remains a chance that it will be upheld. We are happy to discuss this issue in-depth separately.

President Trump will quickly roll out a combination of existing tariff tools, and most reciprocal trade framework deals will not be meaningfully affected.

Foreign negotiators are unlikely to renege on the deals struck with the Trump administration in 2025. Plenty of leverage remains, and IEEPA was never a viable long-term enforcement mechanism for complex commitments. In 2025, USTR rolled out a Section 301 investigation on China's implementation of a previous trade deal, potentially serving as a model for longer term enforcement. That said, combined with the aftermath of U.S. rhetoric about Greenland, this could fuel the politicization of the trade deal in Europe. If the new rate holds at the reduced 10%, it may make a planned vote on Feb 24 by the European Parliament's International Trade Committee on the EU-U.S. trade deal easier.

See below for a cheat sheet on tariff authorities.

The President will respond with a show of strength, but several factors are shaping the impact of new tariffs in the short and medium term.

- **President Trump's style:** It's no secret that the President favors strength and speed. Shortly after the initial ruling against the IEEPA tariffs, he hiked tariffs on steel and aluminum to 50% with only a few days' notice. However, his reaction on Friday has been rapid, but muted, spinning the decision to reinforce his ultimate tariffing power while keeping actions limited.
- **Consumer and market sentiment:** With midterm elections coming, the administration is sensitive to consumer frustration. In November, they unilaterally reduced tariffs on many consumer items, and in December, they chose to defer tariffs on Chinese chips until June 2027 and delayed planned tariff increases on furniture and cabinets until January 2027. Tariffs on new derivatives for steel and aluminum and on new auto parts have also been delayed, and there are hints that some may be rolled back.

- **Tariff revenue:** President Trump continues to talk up the benefits of tariff revenue, including a post on January 7 claiming that tariffs will allow for an additional \$500 billion in military spending. Lower litigation risk would be beneficial at this stage, so Section 122 and Section 301 will provide that.
- **The state of trade negotiations with individual countries:** The administration could use this moment to double down on specific countries or markets by threatening country-specific levies through Section 301, which will take time to come into effect.

How do you get your money back?

The majority opinion did not grapple with refunds, but by upholding the Federal Circuit Court’s ruling in *V.O.S. Selections*, it has effectively remanded the decision on refunds down to lower courts to settle. The U.S. Court of International Trade, which initially ruled against the tariffs, has substantial experience with the refund process. Even if the administration argues against refunds, CIT will follow established precedent.

President Trump predicts years of litigation. Assuming refunds are eventually ordered, the administration could choose to automatically refund tariffs to importers, or it could require importers to undertake the formal, established processes for requesting refunds. Depending on the timeline for specific shipments, this could involve post summary corrections, formal protests, or litigation.

Refunds are a normal part of business at U.S. Customs and Border Protection (CBP), and CBP has much of the information necessary to issue refunds. While it will be complicated, especially for small importers and individual consumers who paid tariffs on e-commerce imports, most refunds do not need to be difficult to implement. In fact, CBP recently announced two system updates that will enable users to transition to a fully electronic refund process. Expect some tech hiccups, but, generally, that is remarkably good timing.

Tariff authorities: what are the differences between 122s, 338s, 232s, and 301s?

Authority	Pros & Cons
<p>Section 122 of the Trade Act of 1974</p>	<ul style="list-style-type: none"> • President Trump chose this as the lead replacement tool, announcing a global 10% tariff. • Limited to 15% and 150 days unless extended by Congress. If this is formally implemented in February, it would expire in late July. • Congress could pre-emptively provide an extension during the appropriations process to avoid a battle closer to the election, but majorities are extremely thin, and many Republicans disagree with tariffs. Could there be a compromise on the Hill to give him some limited tariff power for negotiations while reining in other uses? • Focuses on “large and serious balance-of-payments deficits,” so it is appropriate to address trade deficits. • Litigation risk is lower, so it is a dependable, but temporary revenue source. Will there be litigation over tariffs on countries where the U.S. has trade surpluses?

	<ul style="list-style-type: none"> • Implemented by presidential proclamation, with no investigation or comment period. Most efficient method of immediately replacing IEEPA tariffs up to 15%.
<p>Section 338 of the Tariff Act of 1930</p>	<ul style="list-style-type: none"> • President Trump mentioned this power in passing but did not announce that he would use it. • “Long forgotten.” The current iteration has not been used, so litigation risk is believed to be higher than Section 122. • Presidential determination based on “unreasonable” action or discrimination, with tariffs allowed up to 50% with no expiration date. • This could have been used to replace all current IEEPA tariffs, but it is riskier and labor intensive. It could be an effective means to “top up” tariff rates beyond 15% for markets like India, Canada, Mexico, and ASEAN nations while slower Section 301 investigations are prepared. However, he is not pursuing this option at this time,
<p>Section 232 of the Trade Expansion Act</p>	<ul style="list-style-type: none"> • President Trump reminded all that existing Section 232 tariffs remain in place. He stated: “we are also initiating several Section 301 and other Investigations,” so Section 232 may fall into the “other” category. • Managed by Commerce and focused on national security. • Low litigation risk. • Investigations can be long or short, with notice and comment periods. • Once in place, flexible. • These tariffs are currently applied to steel and aluminum (50%); autos and parts (25%); copper (50%); timber, lumber and derivatives (10-25%); and trucks (10-25%). Given consumer sentiment, there is little appetite to further increase these rates and there are hints that levies on steel and aluminum derivatives may be reduced soon. • On Jan 14, the results of the investigations into semiconductors and critical minerals were released. No tariffs were levied on critical minerals and virtually no tariffs will be applied to U.S.-based end users of semiconductors. • The results of several investigations have not yet been announced: pharmaceuticals and ingredients; aircraft and parts; polysilicon; drones; wind turbines; robotics and industrial machinery; and medical equipment. • Rapidly increasing tariffs on several of these sectors would create other challenges for supply chains, manufacturing, and affordability, without effectively replacing the current IEEPA-based leverage.
<p>Section 301 of the Trade Act of 1974</p>	<ul style="list-style-type: none"> • Stay tuned over the next “days and weeks” for more Section 301 investigations to be announced. • Managed by USTR and focused on “unfair” trade practices. • Low litigation risk. • Notice and comment periods slow down implementation, enabling the private sector to plan ahead. • The higher IEEPA tariffs on China and Brazil could be replaced fairly rapidly with tariffs based on existing Section 301 investigations. The most recent investigation focuses on China’s implementation of commitments under the Phase One Agreement during the first Trump term and could serve as a model for enforcing the framework agreements over the medium/long term.

	<ul style="list-style-type: none">• Investigations on other markets could be implemented over time, first to top up the tariffs for countries that exceed 15%, and then to replace the Section 122 tariffs on other countries. This would be labor-intensive for USTR.
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