

CAPITOL STREET

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Appeals Court Rules IEEPA Tariffs Unconstitutional

Tariffs Remain Until Oct. 14, SCOTUS Review Up Next While
Pharma 232 Unaffected

Relevant Companies



»» Our Take & Next Up

The US Appeals Court for the Federal District on Aug. 29 upheld a lower court's ruling that President Trump's IEEPA tariffs are unlawful ([here](#)), as we expected ([here](#)). In a 7-4 decision, the Appeals Court found that country-specific tariffs, including those targeting Canada, Mexico, China, as well as global and reciprocal tariffs, exceed the President's legal authority.

The ruling doesn't go into effect until Oct. 14 ([here](#)), which gives the Administration time to appeal to the Supreme Court (SCOTUS). The Trump Administration and Justice Department announced plans to appeal the ruling to the Supreme Court. The legal challenge does not impact pending Sec. 232 pharma tariffs. In our view, SCOTUS may uphold the decision to strike down the IEEPA tariffs, but the Trump Administration would utilize another legal authority to implement them (see below).

»» Key Points

The Appeals Court decision finds every tariff enacted by Trump under the International Emergency Economic Powers Act (IEEPA) illegal. The ruling affects tariffs targeting Canada, Mexico, and China (which cited fentanyl and illegal immigration), as well as global and reciprocal tariffs (which cited trade imbalances). We note that the reciprocal tariffs went into effect on Aug. 7, but IEEPA tariffs were delayed for Mexico (until Oct. 29) and China (until Nov. 9).

This ruling does not include Sec. 232 pharma tariffs. Sectoral tariffs on steel, aluminum, and pharma are unaffected by the legal challenge as they fall under Section 232 authority rather than IEEPA authority. Additionally, IEEPA tariffs on Canada and Mexico exclude USMCA-compliant goods, including medical technology and pharmaceutical imports. We note the USMCA (US-Mex-Can) agreement is up for renegotiation in 2026 ([here](#)).

Domestic manufacturing, tariffs & MFN are highly interrelated. As a reminder, drug manufacturers have until September 29 to agree to MFN commitments per Trump's letters (our analysis [here](#)). Trump's 'art of the deal' continues to play out, as he pounds the table on moving pharmaceutical manufacturing to the US, requests

'EU pricing' or DTC programs that benefit all Americans (and eliminates the middleman), noting that (separate Sec. 232) punitive pharma tariffs will go into effect after 1.5+ years, should domestic onshoring not take place. We should hear more on pharma tariffs later this month.

NOW WHAT?

The Appeals Court stayed its ruling until Oct. 14 ([here](#)), which means the government can continue to collect tariffs while seeking an appeal to the Supreme Court (SCOTUS). We believe the case will be heard by SCOTUS due to its economic impact and high-profile nature. While the exact timing of SCOTUS oral arguments and ruling is unclear, the court's opening conference is Sept. 29 and sessions typically go through the end of June 2026 ([here](#))

In our view, SCOTUS is more likely to restrict the use of IEEPA authority to impose tariffs. Despite the high court's 6-3 conservative majority, we believe SCOTUS may determine that congressional approval is needed to impose tariffs under IEEPA (see CRS report [here](#) for more background). While there are several potential outcomes following SCOTUS review ([here](#)), we believe the plaintiffs made several compelling arguments, which swayed the lower courts (our take [here](#)).

- **Limits of IEEPA:** This argument contends that the International Emergency Economic Powers Act (IEEPA) was never intended to authorize tariffs. It has traditionally been used to freeze assets or regulate financial dealings in response to national emergencies.
- **Nondelegation Doctrine:** This argument is that allowing broad tariff powers under IEEPA would unconstitutionally give too much legislative power to the president.
- **Major Questions Doctrine:** This argument contends that major economic decisions (such as broad tariffs) need clear approval from Congress.
- **Questioning the National Emergency Justification:** This argument questions whether trade imbalances or drug trafficking should count as 'unusual and extraordinary threats' under IEEPA.

In the meantime, the Appeals Court decision may weaken the administration's negotiating leverage to reach trade agreements with individual countries, in our view. While the ruling doesn't immediately unwind existing trade deals, countries may also seek to pull out of these deals should SCOTUS rule against the IEEPA tariffs.

- A trade deal with the European Union caps tariffs at 15% for most products including pharmaceuticals (our take [here](#)). Generic drugs are excluded, taking into account potential drug shortages.
- Trade deals with Japan and South Korea stipulate that they will not be treated any worse than any other country on pharmaceuticals (currently 15% tariff).
- In a US-UK trade deal, both sides agreed to work toward preferential treatment for UK-made drugs and ingredients, contingent on Sec. 232 results and the UK meeting certain supply chain security rules.
- Other trade deals have been reached with Indonesia, the Philippines and Vietnam, but do not appear to have carve-outs for pharmaceuticals.

The Trump Administration can utilize other legal authorities to implement tariffs if the SCOTUS rules against IEEPA tariffs.

- **Section 122 of the Trade Act of 1974 ([here](#)).** This provision could be utilized to impose country-specific tariffs, but they would be limited to 15% and last only 150 days under this authority.

- **Section 301 of the Trade Act of 1974 ([here](#))**. This was used during Trump's first term to implement tariffs on China for unfair trade practices, but this authority requires formal investigations.
- **Section 232 of the Trade Expansion Act of 1962 ([here](#))**. Section 232 tariffs are unaffected by the legal challenge and were used to authorize sectoral tariffs on steel, aluminum, and pharma. However, new investigations would be required to authorize 232 tariffs on other products.
- **Section 338 of the Trade Act of 1930 ([here](#))**. Although never used, this statute could allow the president to impose tariffs up to 50% on countries that unfairly target U.S. trade.

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