CAPITOL STREET

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SCOTUS Decision on IEEPA Tariffs Could be ASAP - Scenario Analysis

MedTech and PhRMA Trades Recommend Changes to USMCA (2026)

Relevant Companies: ALL HEALTHCARE

Our Take & Next Up

We believe the Supreme Court (SCOTUS) may limit the use of IEEPA tariffs, with a decision likely coming between December and February. SCOTUS officially has until the end of June to make a decision. The Trump Administration could utilize another legal authority to implement tariffs (our take here). For example, 232 investigations on Pharma and MedTech could serve as a hedge should IEEPA tariffs be struck down (our take here and here). IEEPA tariffs on Canada and Mexico *exclude* USMCA-compliant goods (including MedTech and Pharma); however, a similar carve-out appears unlikely for Sec. 232 tariffs (here).

Separately, trade groups for branded pharmaceuticals (PhRMA) and medical technology (AdvaMed) shared policy priorities for the renewal of the USMCA (US-Mex-Can) trade agreement during a Dec. 3 meeting of the US Trade Representative (USTR). The three-day meeting (here) was intended to engage the public ahead of the mandatory joint review of the USMCA, scheduled for July 1, 2026. We have said that reauthorization of the USMCA may be complicated by fentanyl-related (International Emergency Economic Powers Act) tariffs on Mexico (25%) and Canada (35%) with our take here. President Trump has also said he's willing to reopen USMCA and possibly split it into separate deals with Canada and Mexico (here), which is a potential headwind.

Key Points

IEEPA TARIFF SCENARIO ANALYSIS

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 will likely determine that congressional approval is needed to impose tariffs under IEEPA (see CRS report here for more background). However, there are several potential outcomes following SCOTUS review (here):

- **Uphold.** If SCOTUS upholds the lower court's ruling, the Trump Administration would likely need to explore other tariff authorities and may need to provide refunds for IEEPA tariffs.
- **Reverse.** If SCOTUS reverses the lower court's ruling, the White House would be given broad presidential power to continue IEEPA tariffs.
- **Punt.** SCOTUS could remand the case back to a lower court or issue a narrow ruling leaving IEEPA tariffs in place. Under this scenario, plaintiffs would likely need to start over, potentially delaying a final decision until 2027-2028.
- **Split decision.** SCOTUS could uphold one ruling but reverse another, which would further complicate the issue.

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

- **Sec. 122 of the Trade Act of 1974 (here).** This authority could be utilized to impose country-specific tariffs, but they would be limited to 15% and last only 150 days.
- **Sec. 232 of the Trade Expansion Act of 1962 (here).** Sec. 232 tariffs are unaffected by the legal challenge and were used to authorize sectoral tariffs on steel, aluminum, and Pharma (delayed). However, new investigations would be required to authorize 232 tariffs on other products.
- **Sec. 301 of the Trade Act of 1974 (here).** This authority was used during Trump's first term to implement tariffs on China for unfair trade practices, but it requires formal investigations. Sec. 301 tariffs are likely in the works to advance the administration's international pricing "equalization" MFN priorities.
- **Sec. 338 of the Trade Act of 1930 (here).** Although never used, this authority could allow the president to impose tariffs of up to 50% on countries that unfairly target U.S. trade.

Recall, SCOTUS justices questioned the constitutionality of IEEPA tariffs during oral arguments on Nov. 5 (our take here). IEEPA tariffs include those targeting Canada, Mexico, and China (fentanyl and illegal immigration), as well as global and reciprocal tariffs (trade imbalances). We note that reciprocal tariffs went into effect on Aug. 7, but higher IEEPA tariffs on Mexico were delayed on Oct. 29 (here) and halved from 20% to 10% for China, effective Nov. 10 (here). Sectoral tariffs on Pharma and MedTech are unaffected by the legal challenge as they fall under Sec. 232 authority rather than IEEPA authority.

We believe the plaintiffs made several compelling arguments, which swayed the lower courts (our take here).

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

Restricting IEEPA tariffs may weaken the administration's negotiating leverage to reach trade agreements with individual countries, in our view. While a SCOTUS ruling likely wouldn't immediately

unwind existing trade deals, countries may seek to pull out of such deals should the high court rule against IEEPA tariffs.

- **United Kingdom.** On Dec. 1, Trump announced a trade deal with the U.K., exempting British drugs and MedTech from Sec. 232 tariffs in exchange for lower NHS drug rebates.
- **Switzerland.** On Nov. 14, Trump announced a trade deal with Switzerland in which Pharma products will receive preferred treatment on 232 tariffs (capped at 15%).
- **European Union.** On Aug. 21, Trump announced a trade deal with the EU that caps tariffs at 15% for most products, including Pharma (our take here). Generic drugs are excluded, taking into account potential drug shortages.
- **Japan and South Korea.** In late July, Trump announced trade deals with Japan and South Korea, which stipulate that they will not be treated any worse than any other country on Pharma (currently 15% tariff).

CURRENT STATUS OF PHARMA & MEDTECH 232 INVESTIGATIONS

Action on Sec. 232 investigations on Pharma and MedTech has been slow-moving, but drug manufacturers have been able to avoid tariffs via MFN agreements. Recent deals with PFE and others include MFN price commitments in Medicaid and establishment of TrumpRx for DTC discounts, in exchange for a 3-year grace period from 100% pharma tariffs that were set to go into effect on Oct. 1, 2025 (our take here). The administration on April 1, 2025 initiated a 232 investigation on Pharma. The investigation included finished generic and brand drugs, active pharmaceutical ingredients (APIs), key starting materials, and derivative products.

A 232 report on MedTech is due May 6, 2026 – high-volume & commoditized products (PPE & medical consumables) are likely most at risk. Also likely at risk, in our view, are products that rely on foreign-made components such as MRI machines and other imaging equipment. Durable medical equipment intended for handicapped or disabled persons (wheelchairs, hearing aids, etc.) are typically afforded duty-free treatment under an international trade agreement known as the "Nairobi Protocol" (our take here). It appears that the Nairobi protocol would supersede Sec. 232 tariffs (here). The administration on Sept. 2, 2025 initiated a 232 investigation on personal protective equipment (PPE), medical consumables, medical equipment, and medical devices. The Department of Commerce sought comment on product demand, domestic production capacity, and dependence on foreign supply chains.

ADVAMED & PHRMA RECOMMEND POLICY CHANGES TO USMCA (2026)

PhRMA urges the US to use the USMCA review to tighten enforcement of Canada's and Mexico's IP and regulatory commitments, restore IP protections, and address Canadian pricing policies they view as unfair. PhRMA's recommendations align with its Nov. 1 comment letter to USTR (here).

- **Ensure Canada and Mexico fully implement their outstanding USMCA obligations.** Mexico has not yet implemented critical IP-related commitments, including: effective patent enforcement; patent-term adjustments for regulatory delays; protection of confidential test data; and addressing approval backlogs. Government procurement should be fair, transparent, and free from preferences tied to manufacturing investments. Additionally, Canada's approval system creates significant delays - about 25 months on average - twice as long as the EU. Its pricing policies undervalue US innovation, including by excluding US and Swiss prices from reference baskets, driving launch prices down by up to 90%.

- **Strengthen IP provisions.** Earlier drafts of USMCA included high-standard IP protections acceptable to all three countries, but many were removed in 2019. Restoring these provisions would align Canada and Mexico more closely with US standards, protect American IP, and support North American innovation.
- **Hold Canada accountable on pricing.** Executive actions from May 2025 highlight that unfair foreign pricing policies shift R&D costs onto Americans. Canada spends only 0.2% of GDP per capita on new innovative medicines, compared to 0.78% in the US. Ensuring fair burden-sharing and high-standard IP protections will strengthen North American competitiveness and innovation.

AdvaMed calls for maintaining zero tariffs, preserving rules of origin, improving customs efficiency, and reintegrating Canada into procurement rules. AdvaMed's recommendations align with its Nov. 3 comment letter to USTR (here).

- Maintaining zero-for-zero tariffs on medical technology.
- Preserving rules of origin to prevent supply-chain disruption.
- Reintegrating Canada into the procurement chapter.
- Strengthening regulatory convergence and reliance pathways.
- Modernizing customs procedures.
- Leveraging competitiveness provisions to secure critical-minerals supply chains.

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