CAPITOL STREET

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SCOTUS Strikes IEEPA: Refunds Due & Tariff Alternatives Coming

Decision Breathes New Life Into Sec 232s: Pharma & Med Tech Updates

Relevant Companies: ALL HEALTHCARE

Our Take & Next Up

The Supreme Court (SCOTUS) today issued a 6-3 ruling blocking the use of IEEPA tariffs (here), leaving Pharma and MedTech in the same position with Sec. 232 tariffs still at the Administration's disposal (our take here and here). We had expected this action, or a more limited strike as also being possible, despite the high court's 6-3 conservative majority (our take here) given that there is nothing in statute providing tariffs as an emergency measure, doable by the President. The Trump Administration will likely utilize other legal authorities to implement tariffs, with an announcement probable within hours and days (our take here), as the State of the Union looms Feb 24.

Now what? A food fight over refunds, as Sec 232s become the focus. The ruling sets up a dispute in the coming hours and days over roughly $175 B importers will try to get refunded (here). The majority opinion does not address refunds, despite the possibility of using other tariff authorities in the future instead of IEEPA.

Key Points

SCOTUS ruled (6-3) that congressional approval is needed to impose tariffs under IEEPA (here). In a 6-3 decision (Thomas, Alito, Kavanaugh dissent), the court affirmed the Federal Circuit's decision that IEEPA tariffs are unlawful (V.O.S. Selections), while remanding another case (Learning Resources) for lack of jurisdiction. The decision was written by Chief Justice Roberts who notes, "IEEPA does not authorize the President to impose tariffs." Roberts further notes, "IEEPA… contains no reference to tariffs or duties… until now no President has read IEEPA to confer such power."

The Trump Administration will likely attempt to utilize another legal authority to implement tariffs, with an announcement probable within 24 hours.

- **Sec. 122 of the Trade Act of 1974 (here).** Country-specific tariffs could be levied, 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 ruling (but would not have stacked on top of IEEPA tariffs). There is no duration limit or percentage cap.

- **Sec. 301 of the Trade Act of 1974 (here).** Trump used this authority during his first term to implement tariffs on China for unfair trade practices, but this requires formal investigations. The duration limit is usually four years and there is no percentage cap.
- **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. There is no specific duration limit.

MedTech impact? The Medtech 232 report is due to the President by June and Trump has to take action by the end of August, if not earlier. Industry will be subject to notice and comment and will most definitely step up their game to avoid Sec 232s. We have said that DME/medical consumables would be the focus (our take here).

Pharma impact? A Sec. 232 investigation was initiated for Pharma on April 1, 2025 (16 co's w/ MFN agreements are exempt). The investigation included finished generic and brand drugs, active pharmaceutical ingredients (APIs), key starting materials, and derivative products. We note that the Secretary of Commerce must submit their 232 report within 270 days (by Jan.11, 2026). These tariffs may materialize in 2026 and continue to pose a risk to pharma companies.

The SCOTUS ruling won't unwind existing trade deals, but it will likely complicate efforts to finalize current and future trade deals. Striking IEEPA tariffs weakens the administration's negotiating leverage to reach trade agreements with individual countries, in our view. In his dissenting opinion, Justice Kavanaugh notes, "Because IEEPA tariffs have helped facilitate trade deals worth trillions of dollars—including with foreign nations from China to the United Kingdom to Japan, the Court's decision could generate uncertainty regarding various trade agreements."

- **United Kingdom (Dec. 1, 2025):** Exempts British drugs and MedTech from Sec. 232 tariffs in exchange for lower NHS rebates.
- **Switzerland (Nov. 14, 2025):** Grants Swiss pharma preferred Sec. 232 tariff treatment, capped at 15%.
- **European Union (Aug. 21, 2025):** Caps most tariffs, including pharma, at 15%; generics are excluded to mitigate shortage risks.
- **Japan and South Korea (Late 2025):** Pharma tariff treatment no worse than other countries, currently 15%.

PHARMA & MEDTECH

Sectoral tariffs on Pharma and MedTech are unaffected by the ruling as they fall under Sec. 232 authority rather than IEEPA authority. We have said that 232 investigations on Pharma and MedTech, particularly the latter, likely serve as a hedge should IEEPA tariffs be struck down by SCOTUS (our take here and here). The administration may be more aggressive in advancing 232 tariffs as a result of this decision.

Sixteen (16) drug manufacturers secured most-favored nation (MFN) agreements (3 years) with the Administration to avoid Sec. 232 tariffs, but what happens to other manufacturers? And those with deals after 3 years? Most deals include MFN price commitments in Medicaid and establishment of TrumpRx for DTC discounts, in exchange for a 3-year grace period from a 100% pharma specific tariff that was set to start on Oct. 1, 2025, but was delayed (our take here). We note that the tariff relief is limited to a 3-year period and the administration is looking to codify the agreements longer term.

- **For companies without MFN deals, 232 tariffs and MFN demos present continued headwinds despite the SCOTUS decision.** We expect additional MFN agreements (mid-sized biopharma & others)

may be announced in 2026.

- **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. Comments were due by May 7, 2025.

Separately, the Trump administration previously stated they plan to launch a Sec. 301 investigation to aid pharma companies in negotiating higher prices abroad. The investigation would focus on whether any US trading partners are underpaying for drugs. Under Sec. 301, the administration has relatively broad authority to levy tariffs (particularly against other countries and for sectors of importance for those countries). These tariffs are not necessarily limited to the product under investigation and intended to target specific countries to address certain foreign trade practices.

A 232 report on MedTech is due May 30, 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.

BACKGROUND

SCOTUS justices questioned the constitutionality of IEEPA tariffs during oral arguments on Nov. 5, 2025 (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). 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.

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