

# Supreme Court overturns IEEPA tariffs.

## What now?

### Transcript

#### DAVID SITES

Welcome to the D.C. Dispatch. I'm David Sites, National Managing Partner of Grant Thornton's Washington National Tax Office. The D.C. Dispatch provides quick insights on how D.C. policy developments and business strategy are intersecting in our fast-paced global environment. We take a forward-looking view through topical discussions with thought leaders aiming to help listeners uncover opportunities and expose risks so business leaders can thrive in this dynamic environment.

Today, we're going to delve into the Feb. 20 Supreme Court decision that invalidated President (Donald) Trump's so-called IEEPA tariffs, finding that Congress and not the president holds the authority to impose tariffs, and finding that the IEEPA tariffs imposed by the Trump administration are not valid, leaving open questions about refunds and the future of tariff policy under the Trump administration.

Joining me today from Grant Thornton is Colin Wilhelm, a D.C. Dispatch veteran and a manager on our Tax Legislative Affairs team. Colin came into his role after a number of years in journalism, covering Capitol Hill for a variety of news outlets and has spent significant time following global trade developments.

I'm also joined today by Jonathan Stoel and Josh Kurland, partners at Hogan Lovells. Jonathan and Josh are both partners in Hogan's International Trade and Investment practice. Based in Washington, D.C., they advise companies and governments on complex international trade, investment and dispute resolution matters, including proceedings before U.S. trade agencies and international tribunals.

Jonathan, Josh and their team at Hogan Lovells have been tremendous partners to us as we advise our clients on complex international trade matters, which have become more and more common in today's global trade upheaval.

Jonathan, Josh, thanks for being with us today. There's been a lot of commentary around this case already, but in practical terms, can you walk us through ... what did the court decide in this matter and what, if anything, stood out to each of you?

### JONATHAN STOEL

Hey, good morning, David. This is Jonathan Stoel. Great to be here with you and my partner, Josh Kurland. Really honored to have the chance to be with you and your colleagues today.

Yeah, I think this is a ... probably a very, very important decision. It's not very often that the court hears trade matters, but I think it's very important. Also that this is the first time, really, in the second Trump administration that we see the Supreme Court being willing to put some limits around the scope of presidential authority.

And specifically, to answer your question, the court did find directly that the president's IEEPA tariffs – International Emergency Economic Powers Act tariffs – are unlawful, contrary to the president's authority. And they really grounded the decision in the statute itself, saying that the president had exceeded his authority, saying that Congress had certain authorities that he had taken steps beyond where he could go, encroaching on Congress's authority.

It was also interesting to see that you had, you know, justices who were appointed by the president in his first term, specifically justices (Amy) Coney Barrett and (Neil) Gorsuch, finding that the president's power was limited, along with the Chief Justice who, of course, is also a Republican, kind of point to justice. But the fact that you have this very strong six-justice majority being willing to speak up on a trade matter and to find the president's authority is limited in invalidating, really, his signature economic act, I think it's a very significant development only for, sort of, in the legal realm, but more importantly for the country's policy and sort of boundaries as well. Let me throw it over to Josh for his comments.

### JOSHUA KURLAND

Well, thanks, Jonathan, and thanks everyone. It's really lovely to be here. As Jonathan was starting to say, it was quite interesting to see the split among the six-justice majority where you had the three more conservative justices who were

prepared to validate the tariffs, relying on the major questions doctrine and basically saying if we look at the statute, that's not enough. We need the extra oomph of this doctrine in order to come to the conclusion that the president lacks this tariff authority.

Whereas Justice (Elena) Kagan, writing for the three more liberal justices on the court, came to the conclusion that she was prepared to invalidate the tariffs based solely on traditional tools of statutory construction. So we don't need to go beyond the statute. So at least, at least for lawyers and Supreme Court watchers, that split was very interesting, and frankly, a lot of the pages in the 170-page opinion were taken up among the justices discussing and sometimes disagreeing with each other about the application of the major questions doctrine, I think.

And I know this is probably much of what we'll talk about today: the other really practical, interesting part of the opinion for folks in the trade community was that the majority opinion really didn't address the issue of what happens next or more succinctly of refunds. And so it leaves questions going forward about, well, what's going to happen going forward?

And the dissenting opinion by Justice (Brett) Kavanaugh did touch on these issues and suggested that the president would be able to replace the IEEPA tariffs, invoking other authority and harkening back to the argument said that the refund process could be, "a mess." And essentially the majority said, "You know, we're not here to decide that. We're just here to decide the legality of the president's invocation of IEEPA." And so that leaves us in a very interesting place going forward in terms of those who paid the tariffs, trying to figure out how they get their money back.

## COLIN WILHELM

So, turning to those refunds, what does this decision mean for importers who paid IEEPA tariffs? You know, where do we potentially go from here in terms of, you know, if or when people get their money back?

## JOSHUA KURLAND

Excellent question. And I guess I would say that despite what I just explained about the court not being clear in light of the Supreme Court invalidating the tariffs, there

is, I think, a reasonably high likelihood that companies, or importers more specifically, who paid the tariffs, have a pretty strong chance of getting money back in one way or another. What is somewhat uncertain in the wake of the decision is precisely how that's going to happen or what that's going to look like.

Prior to the decision coming out, there had already been right around 2,000 lawsuits filed at the U.S. Court of International Trade seeking refunds of the tariffs. And it's also worth noting that one other important aspect of the Supreme Court's decision was that the court held that the appropriate jurisdiction for lawsuits seeking a tariff refund is at the Court of International Trade.

You may recall that the case actually consisted of two combined lawsuits, one from the Court of International Trade and one that had been brought in U.S. District Court, and the court held that it was the Court of International Trade case that was appropriately filed in the correct court. And so that's going to be the venue going forward for any lawsuits challenging the tariffs.

## DAVID SITES

So there's been a lot of questions out there. President Trump made some comments about how this could be a long, drawn-out process. And I want to talk a little bit about what could the administration do, if anything, to slow or block refunds?

## JOSHUA KURLAND

Well, it's not clear entirely how the administration is going to react. Thus far, they have been ... other than the president's initial press conference and some relatively circumspect statements from some of the officials, like the U.S. Trade Representative and the Treasury Secretary ... they have been not out front, but have indicated that they will follow court orders if they're ordered to make refunds. And that's largely consistent with what the civil servants within the U.S. government have represented to the court in these trade lawsuits that were filed leading up to the decision.

You know, there are some various "in the weeds" wrinkles involved in those cases and the representations that the government has made have not addressed kind of every little wrinkle, every little factual wrinkle that could occur.

But in the main, the government has said that if the court orders us to pay refunds, we do not intend to challenge the court's authority to do so and would obey the court. And the court, in turn, has seized upon those statements and indicated that the government would be estopped – which just means prevented from taking a different position if it changed its mind down the road.

So that creates a pretty decent likelihood that if the court orders the government to provide refunds in the cases that have been filed, that it will do so. But not every factual wrinkle has necessarily been explored in those cases.

## JONATHAN STOEL

Yeah, I would I think, I would just add to Josh's comment by being pretty direct on this, which is it's rare that a Supreme Court case doesn't change much as a practical matter. But that's really where we are today. I actually don't see the situation for most importers being much different than it was before the Supreme Court decision.

We know that just like the two courts before, the Supreme Court agreed that the tariffs are illegal. That was the status quo before. And we know that the government has said, at least nominally, that it's willing to give the money back.

At the same time, the government has also suggested, including several cabinet officers, that getting the money back is not going to be easy. So our advice to clients – and frankly non-clients alike – is that if you think you have significant tariff monies at risk and you're concerned about, you know, what customs might do with those monies, you should file a lawsuit. That's the best way to protect your rights.

It may be that the lawsuit turns out to be unnecessary. That was true before, and it's true now. But if you have significant monies at stake and you're concerned about whether or not they'll be returned to you, it makes sense to prepare and file a lawsuit in order to preserve your rights.

And then frankly, the queue is growing longer and longer, day by day. Thousands and thousands of cases have now been filed. We expect that will continue. So you'll put yourself in a long queue, but at least you'll be in the queue and you can point to that as evidence that you are strongly interested in getting your money back.

And to that point, the government has before said that administrative means would not be a way to get your money back. They have not come back since the law ... since the Supreme Court decision and suggested that was erroneous. So at this time, the lawsuit is still the best way to put yourself in in the queue.

## COLIN WILHELM

Other than filing suit, what are some best practices that you're telling companies if they want to preserve their possible refund claims? And then, I guess, just a slight follow-up to that. What's also your sense of timing for when the Court of International Trade might make a decision on refunds?

## JOSHUA KURLAND

Sure. Well, I think one key factor for us when we talk to clients about these issues is to focus on upcoming liquidation dates and whether clients or prospective clients have substantial amounts of entries, or substantial value of duties, that they've paid that are going to liquidate in the coming weeks.

Just to unpack that technical term, liquidation is the final settlement of duties that people owe. It's basically the government doing the accounting to decide what the final bill is on an entry of imports into the U.S. And the liquidation is, in many ways, supposed to be kind of a final calculation. There are administrative actions one can potentially take within a limited period after liquidation.

But without getting too far afield, one of those wrinkles that I talked about earlier that the court hasn't gotten into is whether it has the power to, so to speak, re-liquidate entries not when the liquidations occur after a lawsuit has been filed, but to do so retroactively before a lawsuit has been filed.

And so a lot of clients have been concerned about getting their lawsuits in prior to substantial liquidation dates so that they're on record and on file asking for a refund before those entries liquidated, which pretty clearly falls within the ambit of what the court has said it believes it has the authority to do, and kind of avoids the issue of someone's arguing about whether entries have liquidated prior to the date the lawsuit is being filed.

Of course, at the same time, it also means that companies, even if they don't need to do so simply to get on file at court, they obviously will need to have robust records of their entries and the duties that they paid. You can imagine that CBP (U.S. Customs and Border Protection) is not going to be taking people's word for it that, "Oh, I paid, you know, \$100,000 in tariffs. Where's my money?"

So eventually, whether through CBP's system or through some process that hasn't been announced yet, companies are certainly going to have to establish that they have paid these tariffs and have the records of their entries, just to be able to verify the information in order to get a refund. It's not necessarily a hard thing to do. One can pull data from CBP's ACE (Automated Commercial Environment) system. One can work with customs brokers. But it's important to have that data. And again, that's the best way to keep track of the liquidation dates.

Liquidation is generally 314 days, or 10 months, after the entry was made into the United States of the goods. And once liquidation occurs, there's a pretty strict statute of limitations-type deadline where one cannot file an administrative protest until after 180 days from the liquidation date.

So again, at this point, CBP and the administration haven't announced that they would even accept protests. They earlier were saying it's not appropriate to protest. But that's still an important day to keep track of for purposes of kind of taking a "belt-and-suspenders" approach. You don't want to let those protest dates pass without considering what to do.

## DAVID SITES

Just for the listeners, just to pull off that thread a little bit. So the first IEEPA tariffs were in the spring of 2025. So the liquidation date on those, you said, would be like 314 days, and then there's a 180-day period after that that they have for administrative protest. Is that what I heard?

## JOSHUA KURLAND

That's correct. So the earliest liquidation dates, well, in the main ....

## DAVID SITES

Not to pin you down, but in general ... in the main, yeah.

## JOSHUA KURLAND

In the main, because there could be reasons why people's entries have liquidated earlier, which is why they need to kind of keep track of these things. But if you know on the generic track, if you consider that the initial tariffs on Canada, Mexico and China were implemented in February of 2025, the earliest liquidation dates for those entries would be around the middle of December 2025. And so if you then go out 180 days from there, it's about six months. For entries that liquidated in December, you would have until approximately mid-June to, at the very least, to protest.

## DAVID SITES

OK, that's great. So, well, obviously we're all watching with bated breath what's going to happen on this refund issue, but I want to look forward a little bit. The president immediately decided to replace these tariffs and invoked Section 122 to impose, first, 10% tariffs and then raising that to 15%. And we've got other statutes like Section 232 and Section 301 that are still in play and the president has used those in the past. Can you give us a general sense of what companies should be looking for going forward from this administration on the tariff front?

## JONATHAN STOEL

Well, I think ... this is Jonathan again, and again thanks for having us. I think the president is has been a broken record on this issue. I mean actually really going back to the 1990s, he believes in strong tariffs. He believes in having trade enforcement. We don't expect that to change whatsoever. The methods, whether you agree with them or not, may change, but I think we're going to have a tariff wall here in the United States and it's going to apply to the vast, vast, vast majority of goods entering the United States.

So he's now implemented a 10% global tariff under Section 122, which deals with balance of payments. But as you pointed out, there were already very significant

tariffs under Section 232, national security tariffs. He also, in his first term, had imposed a lot of tariffs on China under Section 301, and he's used that same weapon against Nicaragua and others.

So we expect that there will be a full panoply, a full-court press, you know, on tariffs that will continue. It's the president's chosen weapon. He has even gone so far as saying – and this is important for Grant Thornton in terms of your business model – he has even gone so far as saying you don't need an income tax. We're going to use tariffs instead. So, you know, he has very strong views on tariffs. That's not going to change. His administration is very much rooted in his personal philosophy. And so we can expect, at least during the remainder of the Trump administration, that we're going to have a robust tariff regime that will cover the vast majority of products entering the United States in one way or another.

#### COLIN WILHELM

And Section 122 is temporary, it has this 150-day window. But it's also never been used before. And so is this yet another, just like IEEPA, we haven't seen this presidential authority on tariffs used before. Is this something where he could be challenged again in court and we could have another sort of refund scenario?

#### JONATHAN STOEL

Yeah. So I was actually doing a different hearing on a different kind of tariff. It's called a "safeguard tariff," earlier this week. And I was talking with one of the international trade commissioners about that particular regime. And we were saying how, when we were coming out of law school, it was like one of these things that you thought was in the history books and you never would have before.

I think a lot of people thought the same way around a lot of these different tariff regimes that have been in the books, you know, going back to 1974 or the (Section) 232 tariffs, you know, stretched back to 1962. So we thought all these things were sort of in the history books, but here they are.

And so I think, yes, this is the first time Section 122 has been invoked. That being said, it was designed to be a global tariff, so the president is correct about that. I think all of us expect, especially after what's happened with the Supreme Court, that all

these tariffs are now subject to, you know, judicial review if plaintiffs choose to bring cases. And it's prudent to expect that there will be legal challenges of various varieties to challenge them.

It's also one thing that Josh, in his very good summary of the Supreme Court decision, didn't touch upon is we now know that the Supreme Court has made very clear that the Court of International Trade is the right place to bring these types of challenges. We all, I think in the trade bar, thought that was true. But there were some challenges outside the trade area with respect to the IEEPA tariffs. The Supreme Court has now firmly grounded those cases in the CIT, so I would expect, absent some unforeseen circumstances, the future cases, likewise, will be brought in the first instance in the Court of International Trade.

And that's important because then any appeals of those cases have to go to the Federal Circuit and then ultimately, you know, if they're taken *in certiorari*, of course the Supreme Court.

I personally do not think we've seen the last Supreme Court case on these issues. Depending on how you count, there's \$130 billion in possible refunds at stake in the IEEPA situation. And if this (Section) 122 tariff moves forward, there will likewise, undoubtedly, be billions and billions at stake. When you have that kind of money at stake, I don't think it's a surprise that Supreme Court cases are likely.

Last point is, this really goes to the justices' point, the majority's point, in the *V.O.S. (Trump v. V.O.S. Selections)* decision, which is, you know, (Section) 122, it does have more robust fixtures than the IEEPA. And one of those, as you alluded to, is limited to 150 days unless – I point out – unless the Congress authorizes extensions of the tariffs.

And so that's important. It says, consistent with what the Supreme Court said in *V.O.S.*, it's not that you can't impose tariffs, Mr. President, it's that you have to recognize that there are bounds and the limits of when you can do that and how you do that. And you have to go to the Congress and seek its approval when you want to do some certain things that are beyond what the statutory authorities give you. So I think, very much aligned with that, and we'll see where we go from here. Fascinating times ahead.

## COLIN WILHELM

And (Section) 122 is seen as this bridge to potentially more (Section) 301 action. Is there a possibility that any of the dormant (Section) 301 investigations from the first Trump term, or even maybe from the Biden administration, are revived as a way of maybe speeding up the usual investigatory process that is associated with those 301s?

## JONATHAN STOEL

Well, so first of all, I think just to, you know ... I don't claim to have all the answers to what the wizards are planning in the administration, but they have been planning for this. I was talking to a USTR (U.S. Trade Representative) colleague yesterday and you know that they've been game planning for this. It's not as if this is something that they had not thought of. So there is a plan.

How well the train runs, I think, is another question. But there is a plan to maintain, as I said, as many of these tariffs as possible. I think you will see expedited or advanced, you know, (Section) 301 proceedings to keep the tariffs in place. Again, we have already (Section) 232 tariffs, national security tariffs on a number of products, but the (Section) 301 can be directed against particular countries, which is important given the various tariff levels that were previously put in place on IEEPA. To answer your question, look, I think, and I respect the administration for saying this, I think all cards are on the table. If the administration believes that, for example, certain foreign taxes ... which is again, I'm just thinking about Grant Thornton's business ... certain foreign taxes are inconsistent or incompatible with U.S. policy and U.S. goals, I think they could bring back (Section) 301 on those particular taxes. I also think ... and this will be very interesting and I'll then I'll stop and let Josh talk ... you know, one that we haven't talked about is the agreements with other countries that the administration reached. Obviously, the administration has said those agreements remain in force. There's a question given that some of those agreements were grounded in IEEPA: whether or not those agreements can or should remain in force.

And then certain of our trading partners, including our European friends, have frankly been dragging their heels on entering into agreements. And so I would not be surprised if certain agreements are either not kept or if certain agreements cannot be finalized that the administration has the (Section) 301 tool ... they had it before ... and this decision by the Supreme Court only enforces why it might be a tool to be used to cajole trading partners as the administration sees fit.

So I'll stop there. Toss it over to Josh.

#### JOSHUA KURLAND

So a couple different thoughts here. On the agreements, I think that it's, I mean it's interesting, because the administration has made various statements that I'll just paraphrase as saying, "We're going to continue to abide by the agreements that have been reached," particularly the ones that have been signed with many countries in Asia and a number of others in South America, Central America. And so, the administration has said we expect the counterparties to abide by these agreements, and we continue to do so as well.

It's hard to see a great incentive in those cases for people to walk away from the agreements. I mean they agreed in the first place, and as a result the Supreme Court decision, they would be only getting a better deal on the U.S. side because the tariffs, at least for the time being, would be capped at either 10% or 15%, depending on how the president ultimately constructs the Section 122 tariffs, which to be clear today are 10%, but the president has indicated at some point may rise to 15%.

#### COLIN WILHELM

Right. True, social posts are not presidential proclamations necessarily, but they can turn into them.

#### JOSHUA KURLAND

That's right, that's right. We have not seen an executive order from the president and CBP, in fact, as these Section 122 tariffs are going into effect, issued instructions saying these are going into effect at 10%.

So, but getting back to the agreements, the administration has, I think, clearly

implied at least, that if folks or other countries renege on those agreements that they will become targets for the trade actions that are following under Section 301 and otherwise. And so I think that's how they hope to keep the agreements in force and we'll have to see what happens. But the administration doesn't seem to be walking away from the agreements as a result of this decision.

As Jonathan mentioned, the EU is kind of a different story in part because they did not actually get to the point where the agreement was finalized. They don't have a signed agreement. They have a framework, and the European Parliament was getting ready to vote on that agreement.

There are also some tricky issues with the UK and the EU in terms of the tariff rates. Similar but separate, the UK framework agreement was for 10% rather than 15%. And as we said earlier, these Section 122 rates are supposed to be uniform throughout the world in general. So it's not clear what would happen if the president were to raise the rate universally to 15% or whether he would try to somehow exempt, for example, the UK.

And then in the EU, the (Section) 122 rates, as I understand it, stack on the existing most-favored nation tariff rates. And so in some cases it means that the rates would end up higher than 15% on the EU, which is what the framework agreement ... essentially higher than the rates that the U.S. and EU agreed to in their framework agreement. And so I've seen some rumblings out of the EU side of the deal that they want to see how these issues are going to be handled before they're prepared to continue moving forward with finalizing the agreement.

## DAVID SITES

Yeah. So on the topic of trade agreements, one that we get a lot of questions about is USMCA (United States-Mexico-Canada Agreement). Obviously USMCA is still protecting a lot of trade from tariffs, and the administration said it possibly wants to renegotiate or maybe even break up USMCA. So any thoughts or insights as to what the future for USMCA might look like?

## JONATHAN STOEL

Yeah, let me let me take that one, if that's OK. I think ... but first of all, you know, a

little bit about Hogan Lovells. Our roots in these agreements goes back, hard to believe now, almost, you know, 45 years. My former colleague, and now deceased, Ambassador (Clayton) Yeutter, was USTR during the lead-up in the negotiations of the U.S. Canada Free Trade Agreement, and then was also in the George H.W. Bush cabinet as in the lead-up to NAFTA (North American Free Trade Agreement), which is the predecessor of USMCA.

So just being honest, we're huge supporters of USMCA. We think it's good for America. We think it's good for North America. We have very significant offices in Mexico City, and we think it's good for economic growth as a whole. So we're big supporters and we don't shy away from that.

I think like any agreements there are certainly improvements on USMCA that could be made. But the president, of course, touted it during his first administration as one of his big triumphs. And so I think all of us are hopeful that the agreement will be maintained.

In terms of the way the agreement works, then-Ambassador (Robert) Lighthizer, you know, inserted into the USMCA essentially a renewal clause such that after eight years – which is hard to believe for those of us who lived through the negotiation with the USMCA now during the first administration – you know, he inserted a renewal clause such that July 1st, 2026, is a key date as to whether or not the agreement will be renewed. And so the three countries have to agree together to continue the agreement.

And then the real question right now is not so much whether the agreement or, we hope as much, whether the agreement will continue, but what form of reviews of the agreement and its substance will occur moving forward. And so the U.S. business community certainly has been very loud and very clear that they want the agreement to continue.

That being said, there are always improvements to be made. Thousands and thousands of comments were submitted to USTR, United States Trade Representative, for consideration. And certainly there's going to be robust negotiations among the three countries to see how USMCA continues.

But, very important issue, I think very critical for the North American economy that we continue to have rules that govern over North America and certainly something

that will play out, you know, over the remainder, I think, certainly of this coming year, as I just said, with this July 1 date. But I would say actually, really, over the remainder of the Trump administration will be how this agreement continues in what form moving forward.

#### DAVID SITES

All right. Well, I think we're going to have to wrap it up there. Colin, Josh, Jonathan, really appreciate the time and your insights and I appreciate all of our listeners being here with us today. Thanks.

#### JONATHAN STOEL

Thanks so much for having us, David. Great job, Josh. Thank you. Bye.

#### COLIN WILHELM 30:11

Thank you all.

#### DAVID SITES

Thank you, Colin, Jonathan and Josh, for your insights and thank you all for listening. If you have questions or want to learn more about how your business might be impacted by anything we discussed today, please visit [grantthornton.com](http://grantthornton.com) and be sure to follow our D.C. Dispatch for timely updates on legislative and regulatory developments that matter. Jonathan and Josh's contact information can be found on the Hogan Lovells website, and we appreciate their participation in today's podcast.

Until next time, thanks for listening to the D.C. Dispatch Podcast.