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MEMORANDUM

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BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Trade War Update: Two Courts issued decisions striking down the IEEPA-based tariffs imposed by President Trump; Entry Deadline for Exclusion from Reciprocal Tariffs Extended; USTR Extends Section 301 Exclusions; Trump Says Section 232 Tariffs on Steel and Aluminum to Double on June 4; Domestic Industry Requests Expansion of Section 232 Tariffs on Steel and Aluminum Derivatives to Include Many Additional Products.

Last week, two courts weighed in on the legality of tariffs imposed by President Trump under the International Emergency Economic Powers Act (IEEPA). These rulings mark significant developments in the ongoing debate over executive authority in trade policy.

The decisions reflect differing interpretations of the scope and limits of presidential power under IEEPA, with implications for industries impacted by these tariffs. Businesses navigating the evolving trade landscape should closely monitor how these rulings may influence future enforcement and regulatory actions.

For further analysis on how these decisions may affect your operations, please reach out to our team. We're here to provide insights and strategic guidance as the legal landscape continues to evolve.

In addition to these significant developments, CBP extended the entry deadline for the exclusion from reciprocal tariffs previously provided for goods that were in transit at the time they were imposed, and the USTR extended the remaining exclusions from the Section 301 China tariffs imposed in the first Trump administration (which had been scheduled to expire May 31). Finally,

President Trump announced on Truth Social that the 25% Section 232 tariffs on steel and aluminum will be doubled to 50% effective June 4th; however, an Executive Order has not yet been released to implement this announcement. This announcement follows requests filed by numerous domestic parties for the expansion of the list of derivative articles subject to the 25% Section 232 tariffs on steel and aluminum products to include many additional goods.

1. **Court of International Trade (CIT) Decision Striking Down IEEPA-Based Tariffs as to All Importers**

On May 28, the U.S. Court of International Trade (CIT) issued a decision striking down the IEEPA-based tariffs imposed by President Trump. Specifically, the tariffs that the CIT struck down are:

(1) the reciprocal tariffs (10% baseline tariffs and higher country-specific tariffs, currently on a 90-day pause);
(2) the 25% IEEPA/fentanyl tariffs imposed on Canadian- and Mexican-origin products; and
(3) the 20% IEEPA/fentanyl tariffs imposed on Chinese-origin products.

The decision was accompanied by an order in which the CIT directed the Government to revoke the reciprocal tariffs and the fentanyl tariffs on Canada, Mexico, and China, and set a 10-calendar-day deadline—until June 7—for the Government to effectuate the order's provisions. This decision applies to all importers, not just the plaintiffs which filed the CIT lawsuit.

While this decision provides the first significant potential check on the President's authority to impose tariffs under IEEPA, it is far from the final word, as the Government swiftly appealed the decision to the U.S. Court of Appeals for the Federal Circuit (CAFC) and filed a motion to stay the CIT order (i.e., to allow the tariffs to continue being collected) for at least seven days, allowing time for the CAFC to consider the appeal. On May 29, 2025, the CAFC granted the Government's request for a temporary stay "until further notice," while the Court considers the motion papers. Plaintiff-appellees are required to respond to the Government's motion to stay by June 5, with the Government's reply due by June 9.

Basis of the CIT's Decision

The CIT held that the reciprocal tariffs are unlawful because they "exceed any authority granted to the President by IEEPA to regulate importation by means of tariffs." President Trump's emergency declaration justifying the reciprocal tariffs is based on the need to address the unbalanced trade deficit and unfair trade practices. The Court found that because Congress enacted Section 122 of the Trade Act of 1974 specifically to address "international payment problems," including "large and serious balance-of-payment deficits," tariffs levied in response to such issues must comply with the limits proscribed by Section 122, where tariffs must be no higher than 15%, imposed for a maximum of 150 days. The Court, in dicta, explained that Section 122 removes the President's power to impose remedies in response to balance-of-payments deficits, and specifically trade deficits, from the broader powers granted to a president during a national emergency under IEEPA by establishing an explicit non-emergency statute with greater limitations. The Court found the reciprocal tariffs imposed are instead "unbounded" by "any limitation in duration or scope." Therefore, the CIT held that they exceed whatever tariff authority is delegated to the President

under IEEPA because trade deficits issued are with the authority granted under Section 122.

The CIT also held that the IEEPA/fentanyl tariffs on Canada, Mexico, and China exceed President Trump's authority under IEEPA because they do not directly "deal with" the stated emergency basis for those tariffs – a requirement stated in IEEPA in order for the President to take action to regulate imports. The Court found that while the tariffs were meant to pressure those countries to adopt measures preventing the flow of fentanyl to the U.S., exerting leverage is not the same as "dealing with" the flow of fentanyl itself.

Therefore, the CIT vacated President Trump's executive orders imposing the reciprocal and IEEPA/fentanyl tariffs and permanently enjoined the Government from continuing to collect the tariffs; it also directed the Government to implement the halt in collections within 10 days from the date of the decision.

When Will the CIT's Decision Go Into Effect?

Notwithstanding the CIT's decision, collection of the reciprocal and IEEPA/fentanyl tariffs remains in effect today and we believe will likely continue for the foreseeable future. As noted above, the Government has appealed the decision to the Federal Circuit, which has granted the Government's motion for a temporary stay of the CIT's decision "until further notice" while it considers whether to grant a stay which lasts until the Federal Circuit issues a decision on the merits of the Government's appeal. While it is impossible to predict with certainty, given the potential for upheaval if the CIT's decision enters into force now (including the impact on the Government's ongoing trade negotiations arising from the reciprocal tariffs).we believe the CAFC will likely grant the stay throughout the duration of the appeal.

If a stay is indeed granted, it may continue in force for some time. Ultimately, we expect that whichever party loses at the CAFC will almost certainly appeal the decision to the Supreme Court. It is impossible to predict what the Court might do with any certainty at this point.

Does the CIT's Decision Impact Other Tariffs Imposed by President Trump?

The CIT's decision only covers tariffs imposed by President Trump based on IEEPA as the statutory authority (i.e. the reciprocal tariffs and IEEPA/fentanyl tariffs). It does not impact the tariffs imposed on steel, aluminum, derivative articles of steel or aluminum, automobiles, and automobile parts, all of which were imposed under Section 232 of the Trade Expansion Act of 1962 (a different statutory authority). It also does not impact the China tariffs imposed in the first Trump administration under Section 301 of the Trade Act of 1974, nor does it impact the tariffs imposed on solar cells and panels under Section 201 of the Trade Act of 1974. All of those tariffs remain fully in effect.

Could Trump Reimpose the Reciprocal and Fentanyl Tariffs Under Other Statutory Authorities?

Suppose the Government loses its appeal of the CIT's decision (either at the CAFC or at the

Supreme Court). In that case, President Trump may try to reimpose the reciprocal and/or fentanyl tariffs using statutory authorities other than the IEEPA. The administration may also impose "stopgap" worldwide tariffs under Section 122 while the appeal(s) are pending. Also being considered are tariffs under certain authorities that require procedural steps beyond IEEPA (such as agency investigation and opportunity for public comment; for example, Section 301). While Section 122 does not require any agency investigation prior to presidential action, its authorized actions are significantly more limited than the reciprocal tariffs and fentanyl tariffs as noted above.

What Should Importers Do Now to Protect Their Right to Possible Refunds?

The CIT's decision did not address the availability of refunds for reciprocal tariffs and IEEPA/fentanyl tariffs paid to date.

As noted above, the CAFC has currently stayed the enforcement of the decision. So long as the stay continues, importers are not able to file for refunds unless and until the plaintiffs ultimately prevail on their appeal. In its motion to stay the enforcement of the CIT's decision, the Government stated that it will not oppose reliquidation of any entries of goods subject to IEEPA duties paid by the plaintiffs in the litigation if the duties are ultimately found to be unlawful. It is not clear at this time, however, whether the Government would extend this representation to all importers which have paid reciprocal or fentanyl tariffs, or whether instead it would take the position that importers which are not plaintiffs were required to take action to protect their right to refunds (such as filing their own CIT actions or filing protests as the entries on which they deposited IEEPA tariffs liquidate).

In a related case, the Government filed a joint stipulation with the defendants discussing refunds, where the Government stipulated "that they will not oppose the Court's authority to order reliquidation of entries of merchandise subject to the challenged IEEPA duties and that they will refund any IEEPA duties found to have been unlawfully collected, after a final and unappealable decision has been issued finding the duties to have been unlawfully collected and ordering defendants to refund the duties."

We will keep track of developments on this issue and report any guidance issued. In the interim, importers should carefully monitor the liquidation status of all entries as to which they have paid reciprocal or IEEPA/fentanyl tariffs and reach out for guidance if any entries liquidate before the appeals process of the CIT decision is completed.

2. The District Court for the District of Columbia Decision Striking Down IEEPA Tariffs, But Only for the Plaintiffs Which Filed the Lawsuit

In a separate proceeding, on May 29, the U.S. District Court for the District of Columbia ruled that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs (Learning Resources v. Trump, D.D.C. #25-1248). The D.C. court decision went further than the CIT, as it categorically held that IEEPA does not grant tariff-imposing authority. However, the ruling applies only to the IEEPA tariffs, not the executive orders themselves, and enjoins tariff collection solely for the two plaintiff importers. In other words, it has no immediate

effect as to the collection of reciprocal tariffs and the fentanyl tariffs on Canada, Mexico, and China.

The Court denied the Government's motion to transfer the case to the CIT. The Court stayed the preliminary injunction for 14 days to allow the government to appeal, which it did immediately, taking the case to the U.S. Court of Appeals for the D.C. Circuit.

3. CBP Extends the Entry Deadline for the Exception from Reciprocal Tariffs for In-Transit Goods

On May 30, CBP issued a CSMS extending the deadline by which goods must be entered to be eligible for the exception from reciprocal tariffs for in-transit merchandise. Previously, goods were required to be entered for consumption or withdrawn from warehouse for consumption prior to 12:01 am EDT on May 28, 2025 to qualify for the exception. Under the extension, goods must now be entered for consumption or withdrawn from warehouse for consumption before 12:01 am EDT on June 16, 2025.

The extension in the entry date cut-off does not change the requirements on the "front end" of the exception, i.e., to qualify, goods must still have been loaded onto a vessel at the port of loading and in-transit on the final mode of transport to the United States prior to April 5, 2025, April 9, 2025, or April 10, 2025, as applicable.

The CSMS is silent as to whether refunds will be available for reciprocal tariffs deposited on entries made during the "gap period" between the prior expiration of the in-transit exception on May 28, 2025 and the issuance of the CSMS on May 30 extending the end date of the in-transit exception to June 16, 2025.

4. USTR Extends Section 301 Exclusions Previously Scheduled to Expire on May 31

On May 31, the USTR issued a notice extending the last remaining 178 exclusions from the Section 301 China tariffs imposed during the first Trump administration. The exclusions had been set to expire on May 31, 2025. Based upon public comments, however, the USTR decided to grant a 3 month extension through August 31, 2025. The exclusions cover a wide variety of products, including certain seafood (certain haddock, sole, flounder, and crab meat), certain motors and machinery, certain electric conductors, certain digital sound processing apparatus, and certain fabrics and infantwear. Please contact us if you have questions about a particular product.

5. President Trump Announces Section 232 Tariffs on Steel and Aluminum to Double to 50% Effective June 4

On May 30, President Trump posted on Truth Social that he will "raise the Tariffs on steel and aluminum from 25% to 50%, effective Wednesday, June 4th." Presumably, the President's post referred to an increase in the Section 232 tariffs on steel and aluminum and derivative products of steel and aluminum, currently set at 25%. However, he has not yet issued an Executive Order implementing this announcement, nor has he (or CBP) released any further details. We will closely

monitor this situation and will report all significant developments.

6. Domestic Industry Petitioned Commerce to Add Many Products to the List of Goods Subject to Section 232 Tariffs on Derivative Articles of Steel and Aluminum

President Trump's announcement follows closely on the heels of domestic industry's requests to Commerce to add a wide variety of new products to the list of goods covered by the Section 232 tariffs on derivative articles of steel and aluminum. In addition to expanding the list of goods subject to Section 232 tariffs on derivative articles of steel and aluminum, a pair of Executive Orders issued by President Trump on February 10, 2025, also directed the Department of Commerce to set up a process for domestic aluminum and steel producers or industry associations to request that Commerce include additional derivative articles if imports of those products have increased in a manner that threatens to impair national security or otherwise undermine the objectives of the Section 232 investigations. Subsequently, Commerce established this process, and more than 40 companies filed requests for the inclusion of hundreds of additional products on the list of derivative articles of steel or aluminum subject to Section 232 tariffs. The requests cover a wide range of products, including aluminum containers used by the food and pharmaceutical industries, aluminum aerosol containers imported filled with food, pharmaceutical, and personal care products, aluminum auto parts, steel hand tools, steel heavy equipment, steel boilers, pumps, and racking.

Comments on the request for inclusion of these products are due by June 4. Commerce will then decide whether to include these goods within 60 days.

The previous memoranda sent discussing presidential actions regarding these fast-moving trade developments are:

1. American First Trade Policy, Jan. 20, 2025
2. U.S. Imposes Tariffs on Mexico, Canada, and China, Feb. 2, 2025
3. Update: U.S. Imposes Tariffs on Mexico, Canada, and China, Feb. 3, 2025 (Canadian/Mexican tariffs suspended; Effective date of 10% tariff on products of China and Hong Kong)
4. Update on Trade War, Feb. 5, 2025(China's Response to New U.S. Tariffs, Impacted Industries, Potential Forthcoming U.S. Trade Activity, and Tariff Mitigation for Machinery and Parts of Machinery for Agricultural and Horticultural Use)
5. Update on Trade War: U.S. Imposes Tariffs on Steel and Aluminum, Response from Targeted Countries, and China Imposes Retaliatory Tariffs, Feb. 12, 2025
6. Update on Trade War: U.S. Releases Lists of Additional Derivative Articles of Steel and Aluminum Which Will be Subject to Section 232 Tariffs, and Issues a Presidential Memorandum on Reciprocal Trade and Tariffs, Feb. 17, 2025
7. Update on Trade War: U.S. to Move Forward with 25% Tariffs on Mexico and Canada Products and Double Tariff on Chinese-Origin Products to 20%; Section 232 Investigation on Copper Imports; USTR Requests Comments, Feb. 28, 2028.

8. Trade War Update, U.S. Tariffs on Canadian and Mexican Origin Goods; Increase in U.S. Tariffs on China; New Section 232 Tariffs on Derivative Articles of Steel and Aluminum Go into Effect; Tariff Investigations on Timber, Mar. 4, 2025.
9. Trade War Update: New Section 232 Tariffs on Derivative Articles of Steel and Aluminum Go into Effect Today – March 12, 2025.
10. Trade War Update: U.S. Imposes Automotive Tariffs; "Secondary Tariffs" on Countries Importing Oil or Gas from Venezuela; CBP Issues FAQs on Steel and Aluminum Derivatives; April 2 Reciprocal Tariff Actions; and Anticipated Sectoral Tariffs on Pharmaceuticals and Lumber, March 29, 2025.
11. Reciprocal Tariffs and other tariff actions taken on Tariff Liberation Day, April 3, 2025.
12. Section 232 on Pharmaceuticals, Semiconductors, Critical Minerals, Electronic goods, FAQ; April 17, 2025.
13. Stacking Tariffs, De Minimis Changes, Auto Tariff Adjustments, Section 232 Inclusion Process, CBP's IEEPA FAQ Update, CBP Summit, and Potential 100% Tariff on Films May 7, 2025.
14. 90-Day Pause for 125% IEEPA China Tariff UK-US Fair Trade Deal, and Trade Negotiations with other Nations, May 12, 2025.

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We will continue to monitor this situation closely and will report all significant developments. In the interim, please do not hesitate to reach out to us with questions or requests for additional information at Jessica Rifkin (jrifkin@ofwlaw.com) or Denise Calle (dcalle@ofwlaw.com).