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MEMORANDUM

February 21, 2026

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Supreme Court Strikes Down IEEPA Tariffs

Yesterday (February 20), the Supreme Court issued a 6-3 decision striking down the IEEPA-based reciprocal tariffs on all countries and the fentanyl-based tariffs on Canada, Mexico, and China. The Court held that the power to impose tariffs could not be read into IEEPA's grant of authority to the President to "regulate . . . imports" in times of national emergency, and that Congress would not have been likely to used such vague and open-ended language to delegate its constitutional power to levy taxes to the President. The Court further held that the tariffs ran afoul of the "major questions" doctrine, under which Congress is not considered to have granted agencies power to take actions with major economic and political significance unless it clearly and explicitly states that it has done so.

Therefore, the Court affirmed the U.S. Court of Appeals for the Federal Circuit's earlier decision striking down the reciprocal and fentanyl tariffs (although we note that the Supreme Court's decision appears to sweep more broadly than the CAFC's: while the CAFC stated that its decision was limited to the tariffs before it, the Supreme Court held that "IEEPA does not authorize the President to impose tariffs," without any limitation in its language as to the specific tariffs before it). The Court also (correctly) held that the CIT has exclusive jurisdiction over the issue of the lawfulness of IEEPA tariffs and therefore vacated a separate District Court decision that had similarly held that the tariffs were invalid.

Finally, the Court was silent on the critical issue of whether refunds of past IEEPA tariffs paid will be available and if so, the proper mechanism to claim them. (Justice Kavanaugh made the sole

reference to refunds in his dissent, noting that the potential refund process had been called a "mess" in oral argument before the Court.)

WHAT SHOULD IMPORTERS KNOW AND DO NOW?

IEEPA Tariffs Remain in Place Until CBP Implements Supreme Court Decision

Most immediately, importers should be aware that until the Supreme Court's decision is officially implemented, IEEPA reciprocal and fentanyl tariffs remain in effect. This means that these tariffs must continue to be deposited on entries on a go forward basis until CBP amends its system to remove them (which we believe will happen shortly). Importers can file post-summary corrections (PSCs) to obtain refunds of these tariffs deposited on entries made yesterday (the date of the Supreme Court decision) and later.

Late in the day on Friday, President Trump took a key first step by issuing an Executive Order declaring that the Executive Orders imposing IEEPA-based tariffs are no longer in effect. Consistent with the sweep of the Supreme Court's decision, the Order includes not only the reciprocal and fentanyl tariffs which were before the Court, but also all other IEEPA-based tariffs, including the 40% tariffs on Brazil and the Russian Oil tariffs. The Order further directs the heads of all relevant agencies to take all necessary steps to terminate collection of the IEEPA tariffs "as soon as practicable."

Also at the end of the day on Friday, CBP issued a operational guidance, CSMS # 67823350, stating that it is working with other government agencies "to fully examine the implications of the SCOTUS decision," and that it will provide further information and technical guidance "as soon as it becomes available."

De Minimis Treatment Remains Suspended

Trump also issued an Executive Order continuing the suspension of treatment of de minimis entries (entries below $800 in value), notwithstanding the fact that the suspension was originally contained in Executive Orders imposing IEEPA-based tariffs.

Trump Issued an Executive Order Imposing New 10% Section 122 Tariffs on the Goods of All Countries, Effective 12:01 a.m. EST on February 24th

In the lead up to yesterday's decision, President Trump had announced that if the IEEPA tariffs were struck down, he would impose tariffs to replace them under various alternative statutory authorities.

Making good on this threat, Trump issued a Proclamation late in the day on Friday imposing a 10% tariff on imports from all countries under Section 122 of the Trade Act of 1974, which allows the President to impose tariffs for up to 150 days to address balance of payment issues. Trump based the new 10% tariffs on his determination that the United States has a "large and serious balance-of-payments deficit," and that these tariffs are necessary to address it. Consistent with the limitations of Section 122, the new tariffs will be in effect for 150 days from February 24 (i.e.,

through 12:01 a.m. EST on July 24, 2026). The Proclamation states that the effective period of these tariffs (characterized as "surcharges") may be extended by an Act of Congress. (We also note speculation among some commenters that Trump could allow these tariffs to expire on July 24th, and then simply impose a new round of Section 122 tariffs under his own authority for another 150 days shortly thereafter.)

The Proclamation exempts a variety of goods from the new Section 122 tariffs (these exemptions largely mirror current exemptions from the reciprocal tariffs). The Section 122 exemptions include:

- Certain critical minerals;
- Metals used in currency and bullion;
- Energy and energy products;
- Natural resources and fertilizers that cannot be grown, mined, or otherwise produced in the US or not produced in sufficient quantities to meet US demand;
- Certain agricultural products, including beef, tomatoes, and oranges;
- Certain pharmaceuticals and pharmaceutical ingredients;
- Certain electronics;
- Passenger vehicles, certain light trucks, certain medium and heavy duty vehicles, buses, and certain automotive parts;
- Certain aerospace products;
- All articles that are currently subject to Section 232 tariffs or that later become subject to Section 232 tariffs (if Section 232 tariffs apply only to part of an import, the Proclamation specifies that the Section 122 tariff will apply to the part of the import which is not subject to Section 232 tariffs);
- Articles that qualify for USMCA preferential tariff treatment;
- Textile and apparel articles that qualify for DR-CAFTA preferential tariff treatment; and
- Informational materials, donations, and accompanied baggage.

Importers should carefully look through the Annexes to Trump's Proclamation, which provide additional details as to the exempted products such as HTSUS provisions.

The Proclamation also includes a limited exemption for in-transit merchandise. Specifically, goods which were: (a) loaded onto a vessel at the port of loading and in transit on the final mode of transit prior to entry into the United States before 12:01 a.m. EST on February 24, 2026; and (b) are entered for consumption, or withdrawn from warehouse for consumption, before 12:01 a.m. EST on February 28, 2026 are exempt from the tariffs. Although the Proclamation is silent on this point, CBP will presumably apply the same limitations regarding intermodal shipments and feeder vessels here as it has applied to previous exemptions for in-transit merchandise.

Finally, the Proclamation requires merchandise subject to the Section 122 tariffs which is admitted to a FTZ on or after 12:01 a.m. EST on February 24th to be admitted in privileged foreign status

(meaning it will be subject to the Section 122 tariffs if it is subsequently withdrawn for consumption entry into the US).

Other Tariff Actions

In addition to the new Section 122 tariffs, Trump announced that he has directed the USTR to "use its section 301 authority to investigate certain unreasonable and discriminatory acts, policies, and practices that burden or restrict U.S. commerce." While Section 301 tariffs are not subject to the same limitations on amount and duration as Section 122 tariffs, they may only be imposed after the USTR conducts a formal investigation and makes formal findings as to unfair trade practices. Although these formal requirements should give a greater lead time than was provided by the IEEPA tariffs, we note that the USTR is capable of moving quickly.

Late in the day on Friday, USTR Greer issued a statement providing additional details as to these new Section 301 investigations. Greer stated that he expects the investigations to cover "most major trading partners," and to address the following "areas of concern:"

- Pharmaceutical pricing practices;
- Practices related to the trade in seafood;
- Practices related to the trade in rice;
- Forced labor;
- "Industrial excess capacity;"
- Discrimination against U.S. technology companies and digital goods and services;
- Digital services taxes; and
- Ocean pollution.

Greer stated that the USTR expects to conduct these investigations on an "accelerated timeframe."

While Friday's announcement focused only on Section 301 investigations, Trump could also initiate new investigations under Section 232 of the Trade Expansion Act of 1962, which allows the President to impose tariffs to counter national security risks. President Trump has used this authority expansively to date to impose 50% tariffs on steel, aluminum, copper, and a wide variety of derivative products of these metals. Like the Section 301 tariffs, Section 232 tariffs are not subject to limitations in amount or time duration, but may only be imposed after the Department of Commerce investigates and makes formal findings that imports of a certain product threaten national security.

Although he did not specifically mention them on Friday, Trump could also potentially impose new tariffs under Section 338 of the Tariff Act of 1930, which permits duties of up to 50% on imports from countries which discriminate against US goods. The United States has never imposed tariffs under Section 338; some international trade lawyers observe the statute has sometimes been used as "leverage" in negotiations with other countries.

What About Refunds of IEEPA Tariffs?

As noted above, the Court did not address the issue of whether refunds of IEEPA tariffs will be available and if so, how to obtain them, leaving substantial uncertainty in this area.

It is possible that Congress could step in and direct CBP to establish a streamlined method to provide refunds, and/or that CBP could establish such a procedure. Absent such a development, however, the determination as to what happens next most likely will move to the CIT. Prior to the Supreme Court taking up this case, the CAFC had directed the CIT to consider whether it had the authority to issue a nationwide injunction against the application of the reciprocal and fentanyl tariffs to all importers (even though only a handful of importers had filed suit). That command was frozen during the Supreme Court appeal; now that the Court has affirmed the CAFC's decision, however, the CIT will most likely have to take this question up, and as part of this decision may decide whether it can order CBP to provide refunds for all importers regardless of whether they have filed suit at the CIT. In addition, the CIT must rule on the various additional suits filed seeking refunds.

Until further guidance is received, we are continuing to advise clients to follow a belt and suspenders approach. Importers should continue to monitor the liquidation status of the entries on which they have paid IEEPA tariffs, and should file protests of all liquidations within 180 days of the date of liquidation. These protests should include the additional 40% tariffs on Brazil, as well as the 25% Russian Oil tariffs on India. Pending direction from CBP, importers should also consider filing PSCs to obtain refunds on unliquidated entries. Finally, importers should continue to give careful consideration to filing "me too" suits before the CIT. Our firm is available to assist in determining the most favorable approach.

Implications for Trade Deals

Following the Supreme Court's ruling, President Trump stated that he expects "many" of the administration's already-negotiated trade deals to remain in place, while signaling that others may be replaced with new tariff measures under alternative authorities like Section 122.

U.S. trade deals with partners like the EU, Japan, Taiwan, and Indonesia explicitly tied their tariff agreements to IEEPA Executive Order 14257, now invalidated by the Supreme Court; however, the trade community expects these trade deals, and similar ones, to endure despite reduced leverage from voided tariffs. President Trump's new 10% Section 122 tariffs and launched Section 301 probes aim to maintain leverage, compelling partners to preserve the broader agreements despite the IEEPA invalidation.

Reactions by US Trading Partners

US Trading Partners reacted to with cautious optimism, citing legal clarity but uncertainty over U.S. trade deals and replacement tariffs.

- **EU**: Parliament trade chair Bernd Lange hailed it as a "rule of law" win and called an urgent February 23 meeting to assess impacts on the EU-U.S. deal; the Commission seeks clarity while prioritizing low tariffs and stability. German industry groups expect alternative U.S. tariffs and urge quick talks for business certainty.

- **UK**: Government expects its "privileged" low-tariff deal to endure; business chambers warn of uncertainty, noting Trump's other tools like the 1974 Trade Act could raise duties higher, and seek tariff reductions in steel, aluminum, and pharma.

- **Canada**: Trade Minister Dominic LeBlanc called the ruling a victory against "unjustified" tariffs, focusing on CUSMA review and Section 232 relief for steel, aluminum, and autos.

- **South Korea**: Presidential office will analyze the decision comprehensively before responding in the national interest.

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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).

OFW:jrr/dc