



ieepa tariffs overturned

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As has been reported even in the general press, on Friday, February 20, 2026, the U.S. Supreme Court ("Court") struck down the IEEPA tariffs related to fentanyl on China, Canada and Mexico, and the reciprocal tariffs imposed on most countries based on their balance of trade with the U.S. The **Learning Resources - Vos Decision** is lengthy because different judges had different reasons for overturning the tariffs. Plus, the dissent is over sixty (60) pages! However, the decision itself tells us little beyond the 6-3 majority overturned the tariffs. The only other point of interest is the case filed in the district court (i.e., Learning Resources) was vacated as the Court held the Court of International Trade ("CIT") was the correct venue. The case brought by Vos and other plaintiffs, along with various U.S. states, was held properly filed at the CIT.

The case was not, for example, remanded to the CIT to require CBP to establish a refund procedure. There was, in fact, nothing said about refunds. So, this leaves the trade wondering what will happen next? We perhaps have as clear a statement as we are going to get, in that Treasury Secretary Scott Bessent stated to CNN the question of the refunds will be left to the courts to decide!

The initial response CBP issued on Friday said nothing more than CBP is aware of the decision and is consulting with other agencies. See **CSMS 67823350**. Later in the day on the 20th, President Trump held a news conference and announced he would replace the IEEPA tariffs with 10% tariffs imposed under Section 122 of the Trade Act of 1973 (19 U.S.C. 2132). These tariffs are valid for 150 days. However, stating the tariffs will be imposed or issuing a post on Truth Social is not enough. So, by the end of the day, an **Executive Order** ("EO") was issued. Make sure to review the annexes for which links appear at the end of the EO. There is a clause which defines in-transit goods as those 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United States, before 12:01 a.m. eastern standard time on February 24, 2026; and (ii) are entered for consumption, or withdrawn from warehouse for consumption, before 12:01 a.m. eastern standard time, February 28, 2026.

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[emphasis added.]"

The next step is for the Section 122 tariffs to be published in the Federal Register. After that, we still need to hear from Customs and Border Protection ("CBP"). So, even while the new tariffs follow the process to become binding, it really does all come down to what CBP has to say. Assuming CBP authorizes refunds, which now seems in serious doubt, be prepared to follow whatever procedure is established.

While Friday's Executive Order calls for a 10% tariffs, on Saturday, February 21st, Pres. Trump announced the tariff would be raised to **15%**. It seems likely either a new Executive Order or a revision to the existing one will be issued early in the week to facilitate the increased percentage.

The next steps by CBP could be a choice from many options, and this list is not complete:

- CBP and the Department of Justice could decide that since refunds are not mentioned in the Supreme Court decision, none will be issued! This now appears to be the option selected, but we have to wait and see what is officially published.
- In any case, CBP should quickly reprogram its computer to eliminate the IEEPA assessments and stop collecting the tariffs, but how long will that take?
- CBP could also identify the relevant chapter 99 tariff provisions and issue automatic refunds. However, this is not in accord with the general approach of this Administration to make things difficult for the importing community.
- CBP could also require individual importers to file claims, whether that means via protests or 1581(i) (residual) jurisdiction, depends on what CBP has to say. So, now it seems 1581(i) lawsuits may be the only option.

The first and only step for importers right now is to run an ACE report that shows all of the fentanyl-related tariffs paid on goods from China, Canada, and Mexico, and also any reciprocal tariffs paid (for all countries of origin). Regardless of what CBP decides, a master list against which to track any refunds is necessary as a means to support all refunds being received.

Second, when the time comes and this fits the process CBP dictates, to the extent the entries are not yet liquidated, in concert with their trade advisors, post-summary corrections should be filed. The ACE system only accepts these claims from customs brokers. As such, importers are going to have to decide whether to ask their customs broker or their other trade advisors to prepare the legal argument(s) which is/are filed.

There is no mandate referring the case back to the CIT. So, that raises the question of whether filing the usual protest post-liquidation will be legally sufficient. Alternatively, importers may have to decide whether mirroring the existing lawsuits already on file is the appropriate remedy as seems to be the way things are developing.

Again, regardless of the option CBP chooses, the process will likely be detailed and require a lot of effort on the part of importers and their trade advisors, but in the end, these monies should be refunded. At the same time, importers need to be sure they have arranged for any refunds which are due to be received through ACH, which



is something their brokers can arrange. CBP now insists all refunds will be paid through the ACH system.

The existing 232 and 301 tariffs remain in effect. Importers can likely also expect additional 232 and 301 cases to be initiated on whatever expedited basis the Administration can find. So, it is entirely possible new 232 and/or 301 cases could be implemented and decided by the time the 150-day tariff under Section 122 expires. One other open issue is when are the Section 122 tariffs effective?

As such, the way forward is anything but clear. Beside getting your ACE report and clarifying the data, the only option is we really must wait to see what CBP dictates in order to determine how best to obtain the refunds which should follow, so please stand by.

Updates: See the links below for new documents published following the Supreme Court's February 20, 2026 decision.

Section 122 Executive Order

Annex I to the Section 122 Executive Order

Annex II to the Section 122 Tariffs

FedEx Complaint

V.O.S. Selections Inc., et al.'s Motion for Preliminary Injunction

*For more real-time updates on the IEEPA Tariffs and other International Trade news, follow Su Ross on LinkedIn. See Su's profile **HERE**.*