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CAFC Opts to Immediately Send IEEPA Tariff Cases to CIT Over Objections From US

The U.S. Court of Appeals for the Federal Circuit on March 2 granted a motion for the immediate issuance of the mandates in the lead cases on the legality of tariffs imposed under the International Emergency Economic Powers Act over objections from the government. While the U.S. urged CAFC to wait the ordinary amount of time before issuing its mandates or stay the matter to give Congress a chance to come up with a solution on tariff refunds, the Federal Circuit rejected such a move, signaling its appetite for a speedy refund process (*V.O.S. Selections v. Donald J. Trump*, Fed. Cir. # 25-1812).

Concurrently, the court issued its mandate, officially sending the cases back to the Court of International Trade.

On Feb. 20, the Supreme Court said IEEPA doesn't confer any tariff authority, teeing up the question of how importers who paid IEEPA tariffs will get their money back (see ITT 02/24/2026). In the wake of the decision, counsel for the lead plaintiffs, a group of five importers, asked the CAFC to immediately issue its mandate instead of waiting for the mandate to be issued in the ordinary course (see ITT 02/24/2026).

Typically, the Federal Circuit waits until the Supreme Court sends down its judgment, which occurs either within 32 days or after the court denies a request for rehearing. However, the importers urged the CAFC to forgo this period, arguing that it's not barred from doing so and that acting quickly is needed to facilitate the process of issuing refunds, which is crucial for the importers and the over 900 other lawsuits contesting the tariffs.

In response, the U.S. said the appellate court should stay the course or pause the issuance of the mandate until Congress has time to act. The government argued that the importers failed to argue they would suffer irreparable harm without immediate action and that counsel for the importers himself told the Supreme Court the high court could stay its ruling to give Congress time to act or offer only prospective relief.

The government's pleas fell on deaf ears with all of CAFC's active judges—Judges Kimberly Moore, Alan Lourie, Timothy Dyk, Sharon Prost, Jimmie Reyna, Richard Taranto, Raymond Chen, Todd Hughes, Kara Stoll, Tiffany Cunningham and Leonard Stark—voting to immediately issue the mandate. The move now lets the question of refunds hit the trade court. — ***Jacob Kopnick***

USTR: Tariffs Will Increase to 15% 'Where Appropriate' in Coming Days

U.S. Trade Representative Jamieson Greer said Feb. 25 that a proclamation will be issued "in coming days" that will raise the Section 122 tariff to 15% "where appropriate."

He declined to say whether any countries would stay at the 10% rate, but he noted that a lot of countries were at 10% under the reciprocal tariff regime.

Greer said during the Bloomberg TV interview that once the proclamation comes out, it will be very clear "how that might accommodate other countries where there's a deal."

"We're looking at how to implement the 15% that the president indicated," he said.

Under Section 122, the same rate is supposed to apply to all countries subject to the action. It says that "import restricting actions proclaimed pursuant to subsection (a) shall be applied consistently with the principle of nondiscriminatory treatment."

It does allow the president to decide that one or a few countries "having large or persistent balance-of-payments surpluses" are the only targets and to "exempt all other countries from such action."

Greer noted that some countries with particularly large trade deficits had agreed to tariffs at 18%, 19% or 20%. "At

least temporarily, it's better than the deal that they had," he said, referring to a 15% tariff.

He was asked about how the EU would see it, since a 15% tariff that is added to most-favored-nation rates would make all products that were not duty-free before land above the 15% all-in that the EU agreed to.

"We gave them a good rate on cars, that remains the same," he said. He also compared this temporary change in rate to the fact that the EU has not lowered its tariffs on U.S. products yet, as they promised to do in the deal last summer.

"Just like Brussels hasn't fully implemented its deal, the U.K. hasn't fully implemented its deal," he said. Because of the Supreme Court ruling, "we're just going to have a couple, three months to make sure that we rejigger the tariffs in a way that [makes them] comply with our end of the deal. And we expect the EU and the U.K. to hold up their end of the bargain, too. " — ***Mara Lee***

USTR Suggests Section 301 Tariffs Higher Than Announced Deals Unlikely

U.S. Trade Representative Jamieson Greer said that the administration is trying to replicate the previous tariff scope under IEEPA as best it can. He said businesses want to know what the plan is, and that the administration is "following as closely as we can to prevent disruption."

Maria Bartiromo on Fox Business News asked him if imports from some countries will end up facing higher tariffs after Section 301 remedies than were agreed to in reciprocal trade deals.

"I guess there's a world where that could happen, but I think that would only happen if countries reneged on their deals or doubled down on their unfair practices," Greer said Feb. 25.

He also described how the Section 301 process would be conducted. He said the first *Federal Register* notices launching Section 301 investigations already have been prepared, and "they should be launched over the next few days and weeks."

"With Indonesia, for example, we'll run an investigation. We'll look at industrial excess capacity. We'll look at what they're doing in fishing and that kind of thing, and we'll run that investigation, and then we'll bump it up against what they've agreed to do and what we think the problem is. Then, we make a determination on what kind of tariff should apply," he said.

The tariff will be based on USTR's calculation of the economic harm from the unfair trade practices, but will only be imposed if the trading partners don't address the problems.

Greer said it's possible tariffs could be less than was agreed to in the reciprocal deals because those deals "tend to address at least some of these issues." He added that while the promises are important, "we have to make sure they do it; we have to make sure we have an enforcement mechanism."

Bartiromo asked Greer whether Section 338 could be another way for the administration to impose higher tariffs, as it allows for a 50% rate. He said it would only work if the target country was treating the U.S. worse than other countries, and that in most cases, trade barriers apply to many partners, not just the U.S.

"We think it could be helpful in certain circumstances," he said.

Bartiromo also asked him about IEEPA refunds.

"Those claims are proceeding, the courts will deal with that, they'll tell us the time, place and manner of any type of refund," he said. — ***Mara Lee***

Report: New Derivatives Approach Will Tariff Entire Value; Six New Investigations Pondered

The Wall Street Journal reported that unnamed sources said the Commerce Department is considering new Section 232 investigations on large-scale batteries, cast iron and iron fittings, plastic piping, industrial chemicals, and power grid and telecom equipment.

A White House spokesperson didn't respond to an *International Trade Today* request for comment on the story.

The story was mentioned by a trade lawyer and former Commerce official at the Washington International Trade

Conference. It also cited anonymous sources who said the administration probably will lower the Section 232 tariff rate from 50% for metal derivatives, but apply that lower rate to the entire value of the item. Currently, importers are supposed to report what the cost of the metal in the good is and apply 50% tariffs to that portion.

How to calculate those values has been murky, especially for items that are all steel or all aluminum, but still covered by the derivatives executive order.

Brenda Smith, former CBP executive assistant commissioner for trade, in response to a question from *International Trade Today* at the conference, said the new approach described in the *WSJ report* would be an improvement.

"One of the biggest challenges we see with administering derivatives, from the importer perspective, is finding the data associated with the value [of the metal], the country of origin [of the metal], all of that," she said. Tariff rates for aluminum from Russia are higher than aluminum from other countries.

"If that requirement was removed, it would streamline things. I think that would be an easier process, and probably more enforceable and administratable." — ***Mara Lee***

Bangladesh's US Textile Deal Sets New Tariff Benchmark, Panelists Say

Bangladesh's new trade agreement with the U.S. introduces a novel reciprocal tariff approach for textiles and apparel that former trade officials say could shift competitive dynamics across South and Southeast Asia and pressure other partners to seek similar terms.

Under the agreement, outlined in a Feb. 9 joint statement, the U.S. will reduce the reciprocal tariff rate to 19% for originating goods from Bangladesh (see ITT 02/09/2026) and establish a mechanism allowing a specific volume of textiles and apparel shipments to enter at a zero percent rate.

The volume will be tied directly to the amount of U.S.-produced cotton and man-made fiber textiles Bangladesh imports. The relief applies only to reciprocal tariffs imposed under recent executive orders, and most-favored nation duties remain unchanged.

During the Washington International Trade Association's Friday Exchange podcast on Feb. 12, panelists said the textile provision is the most consequential element for Dhaka.

Moderator Joe Damond, former deputy assistant USTR for Asia, noted that apparel accounts for over 90% of Bangladesh's exports to the U.S., making the tariff mechanism "a critical issue" for the country.

But the initial scope of the zero-tariff benefit may be modest, he said.

"Their imports of things like textiles from the U.S. are about 7% of what they export to the U.S.," Damond said. As a result, the qualifying volume "would be limited—not nothing, but limited."

Even so, the structure gives Bangladesh a relative advantage over regional competitors, said Mark Linscott, former assistant U.S. trade representative for South and Central Asia.

"The headline piece of that agreement … is a special deal on textiles, which is huge for Bangladesh," he said.

Because reciprocal tariffs operate on a relative basis, "now Bangladesh has its own competitive advantage, at least compared to the nations of South Asia and Southeast Asia," he said.

Linscott said the approach mirrors elements of recent U.S. agreements with Malaysia, Cambodia, El Salvador and Guatemala, but with a standout textile component that he believes other trade partners will quickly take notice of.

"I can imagine this kind of approach being one that other trading partners are wanting to get into their agreements," he said.

Panelists said India may feel the pressure most immediately, especially since New Delhi announced a framework for its own interim agreement with the U.S. just a week earlier.

Wendy Cutler, former acting deputy USTR, asked whether the Bangladesh outcome was "a real blow to India," given domestic criticism of India's concessions.

Linscott said India's negotiators are "pretty savvy," but acknowledged they may now seek similar textile provisions.

"I can imagine India wanting to introduce this kind of concept into the benefits it gets out of the [interim] agreement," he said.

Chris Padilla, former undersecretary of commerce for international trade, said the Bangladesh model reflects a more realistic U.S. strategy for the apparel sector.

"The idea that we were going to repatriate apparel manufacturing … was not very realistic," he said.

Tying tariff relief to the use of U.S. textiles—a macro-scale version of the "yarn forward" rule used in the Dominican Republic-Central America FTA (CAFTA-DR)—"helps our textile industry and helps consumers," Padilla said. "That's a win-win."

Vietnam, another major apparel exporter, "will be interested in seeing if they can replicate something like what Bangladesh got," Damond said.

But he warned that the agreement's economic-security language, requiring coordination with the U.S. on actions targeting unfair trade practices by third countries, remains politically sensitive.

The Bangladesh text is "pretty darn vague," and many implementation details are still "TBD," Damond said.

As the Trump administration continues to roll out reciprocal tariff agreements, panelists said the Bangladesh model could become a template, but only after the Office of the U.S. Trade Representative clarifies how the new textile mechanism will work in practice. **— *Roseanne Gerin***

Bipartisan Bill Introduced to End First Sale

Two members of the Senate Finance Committee have introduced a bill that would end the practice of using first sale to reduce duty exposure.

Sens. Bill Cassidy, R-La., and Sheldon Whitehouse, D-R.I., are calling it the Last Sale Valuation Act, and the bill says: "The term 'sold for exportation to the United States', with respect to imported merchandise, means— '(i) in the case of a transaction involving one sale, the price actually paid or payable by the buyer in the United States to the seller located in another country for the merchandise; and '(ii) in the case of a transaction involving a series of sales, the price actually paid or payable by the buyer in the United States for the merchandise in the last sale that introduces the merchandise into the United States.'"

In a Feb. 11 release, Cassidy said, "In America, we celebrate hard work—not exploiting the system."

Whitehouse said in his office's press release, "Multinational corporations and bad actors shouldn't be able to fill their coffers by exploiting loopholes that give them an unfair advantage over small businesses. Closing the 'first sale' loophole will boost businesses that play by the rules, while helping law enforcement crack down on illicit trade."

CBP tried to promulgate regulations to end first sale almost 20 years ago, and, according to longtime government affairs professional Nicole Bivens Collinson, also tried to convince members of Congress to introduce a bill that would end the practice.

Instead, in the 2008 Farm Bill, Congress told CBP not to try to end the practice, and directed the International Trade Commission to gather information about how first sale is used.

The resulting ITC report found it was used less than 3% of the time in late 2008 and the first three quarters of 2009. "In terms of import value, of the $1.635 trillion in total U.S. imports over the period, $38.5 billion was imported using the First Sale rule, or about 2.4 percent of total U.S. imports," the report said, and about 8.5% of all importers used it at least once.

Bivens Collinson said it's wrong to call first sale a loophole. "This is not duty avoidance, it is just reducing the total duty."

She questioned the argument that companies that use first sale don't play by the rules—in order to prove to CBP that the manufacturer's sale price to the middle man was an arm's length transaction, there is a great deal of paperwork that is required, which gives CBP greater visibility into importers' supply chains.

"They are the most compliant companies in the United States," she said of first sale filers.

Bivens Collinson said she and others in the trade need to launch an education effort on Capitol Hill.

"It's easy to say this is a loophole," she said, and since it's a technical valuation matter, a little harder to explain. But, she noted, this bill would not end the ability of importers to reduce duty liability by listing the wholesale price paid to the manufacturer. She noted that CBP allows non-resident importers to bring goods into the U.S.

She asked: "What's preventing my middleman from being the importer of record?"

Bivens Collinson said that first sale was little used 17 years ago because few products, mostly apparel and footwear, faced double-digit tariffs at the time.

"When the average tariff was 2.3% ... there was not an incentive to use a first sale program," she said. Now that there have been tariffs of 50%, 39%, 20% on top of most-favored nation rates, companies are looking for any legal way they can to reduce duties owed.

Kelly Nelson, a managing director for tax in the customs practice at KPMG, said that in 2025, more companies that have never used first sale before asked the firm to help establish a program. She said she's seen a company save $50,000 annually through the use of first sale, and seen one save $400 million.

Peter Navarro, the most prominent trade hawk in the Trump administration, lent his support to the bill in Cassidy's release, arguing that the president's tariffs are meant to bring manufacturing to the U.S., "yet sophisticated global supply chains—aided by K Street law firms openly marketing 'tariff mitigation' services—are exploiting the First Sale rule to artificially lower declared customs values and erode the effectiveness of those tariffs."

Navarro called on the leaders of the Senate Finance Committee and House Ways and Means Committee "to move swiftly and on a bipartisan basis to slam shut a structural loophole that drains U.S. tariff revenue, weakens the incentive to invest in American factories, and ultimately costs American jobs."

Nelson said his critique is unfair. The price of the import "is not artificially low if you make sure you're meeting the requirements," she said.

Harris Sliwoski, an international law firm begun in Seattle, wrote last year that "the First Sale Doctrine is a viable strategy in only about 50% of the cases our tariff lawyers evaluate."

Nelson and Bivens Collinson agreed that sometimes companies that consider trying first sale find it doesn't make sense.

Nelson said higher volume importers are more able to make the numbers work.

Bivens Collinson agreed, though she said a smaller business might choose to use first sale if they work with one vendor for $100,000 in annual imports.

She said there are many reasons it might not make sense: you might not have a strong enough relationship with the middleman company to convince them to reveal what they pay to the manufacturer. You might source from too many vendors at a low enough volume that it's going to cost more to implement it than you'd save. You might learn that the profit margin the middle man is taking is so slim that the cost would outweigh the savings. And, she said, sometimes Sandler Travis attorneys have found that the foreign companies just don't have the capacity to document the sales records well enough to satisfy CBP.

This is not the first time there has been legislative language introduced to end first sale, but a previous bill, introduced by Sen. Tom Cotton, R-Ark., would only have ended the practice for Chinese goods.

The National Council of Textile Organizations also announced its support of the bill, calling first sale "a harmful CBP rule that significantly lowers duties paid by importers on textile and apparel goods and disadvantages U.S. textile manufacturers in favor of countries that often employ predatory trade practices and fail to provide reciprocal market access."

The principle of first sale was actually established by the U.S. Court of Appeals for the Federal Circuit in 1988, over the objections of CBP, which did not want to allow that price to be used as the basis of duties. — ***Mara Lee***

White House Proposes Fees on Foreign Vessels in Maritime Action Plan

The Trump administration has proposed a universal fee on all foreign-built vessels entering U.S. ports as well as a land port maintenance tax to prevent cargo carriers from avoiding paying the Harbor Maintenance Fee, the White House announced in its Maritime Action Plan, released on Feb. 13.

The plan would establish a "universal fee" on foreign-built commercial vessels, "to be assessed on the weight of the imported tonnage arriving on the vessel." It didn't specify an amount, but said that a fee of 1¢ per kilogram would yield "roughly $66 billion" over 10 years and a 25¢ fee would yield $1.5 trillion, "which could be used for the Maritime Security Trust Fund."

The plan also envisioned a "Land Port Maintenance Tax (Fee)" that would "directly" address the "diversion of cargo" from U.S. ports to avoid the Harbor Maintenance Tax. This fee appears to be a new form of the service fee proposed in last year's executive order to address the same issue (see ITT 04/09/2025). The new fee would be "equivalent to the existing Harbor Maintenance Tax," and would be "a modest tax" of 0.125% of the value of the merchandise. The funds collected under the fee "will be deposited into the newly established Land Port Maintenance Trust Fund" to be used for land port infrastructure.

Additionally, the plan proposed a "United States Maritime Preference Requirement" that would require "high-volume exporting economies" to transport a "gradually increasing percentage" of their cargo on U.S. vessels, but didn't specify a mechanism to punish carriers who fail to do so.

The plan provided a brief survey of the dueling trade measures between the U.S. and China last year that were eventually withdrawn during a rapprochement (see ITT 10/30/2025), concluding with a conciliatory plan to "consult with China on shipbuilding capacity issues."

Finally, the administration said it would "work towards" digitization for import systems, promising to update CBP's "data-reporting requirements to enhance cargo safety and security while minimizing disruption to commerce." — ***Oren Dennett***

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