



**GDLSK**  
GRUNFELD DESIDERIO LEBOWITZ  
SILVERMAN & KLESTADT LLP

# Navigating Tariff Shifts: Duty Savings Strategies and the Substantial Transformation Test

Richard M. Wortman, Michele S. Lehat

June 3, 2025



# AGENDA

---

- Customs Duties 101
- America First Trade Policy
- Fentanyl IEEPA
- Reciprocal IEEPA
- Strategies for reducing tariffs
- Substantial transformation legal standard and examples
- What is happening in the courts



# CUSTOMS 101



- All imports must be declared to customs (CBP) at time of importation
- Importer of record (IOR) solely responsible for paying duty upon entry and additional duty which may be due upon liquidation (normally 314 days from entry)
- Duty due must be paid within 10 days of entry; goods can be released before payment
- Importer required to post bond as security bond amount set by customs
- Surety may demand collateral to secure bond
- First U.S. Buyer normally acts as IOR
- IOR also can be foreign seller or agent
- IOR required to exercise reasonable care in entering goods

# CALCULATION OF DUTY

---

## **DUTY IS FUNCTION OF: C + V + COO**

*C = CLASSIFICATION*

- Imports classified in one of several thousand harmonized tariff schedule (HTS) subheadings
- Duty rates depend on classification

*V = VALUE*

- Duty rates are based on value declared to CBP, which is normally the price paid by buyer to seller with exceptions and qualifications

*COO = COUNTRY OF ORIGIN*

- Duty rates depend on COO
- COO based on manufacture – not exportation
- Substantial transformation test applies to goods processed in multiple countries

# AMERICA FIRST TRADE POLICY

## Tariffs and Trade





Effective January 20, 2025


## Summary

- Tasks the Secretary of Commerce, the Secretary of the Treasury and the United States Trade Representative (USTR), with examining U.S. trade deficits, assessing implications and recommending measures like a global tariff.
- Directs the Secretaries of the Treasury, Commerce and Homeland Security to explore creating an External Revenue Service for trade-related revenues.
- Tasks the USTR to identify unfair trade practices and recommend counteractions using existing legal authorities; evaluate the U.S.-Mexico-Canada Agreement (USMCA) and provide recommendations on U.S. participation; review and revise trade agreements for reciprocal benefits and identify new agreement opportunities; and review the China trade agreement and recommend tariffs or actions against discriminatory practices.
- Requests the Secretary of Treasury review currency policies of major trading partners for manipulation or misalignment.
- Instructs the Secretary of Commerce to modify antidumping and countervailing duty policies for compliance; evaluate U.S. intellectual property rights with China for balanced treatment; and review the U.S. industrial base for national security, import measures and export controls.

# FENTANYL IEEPA

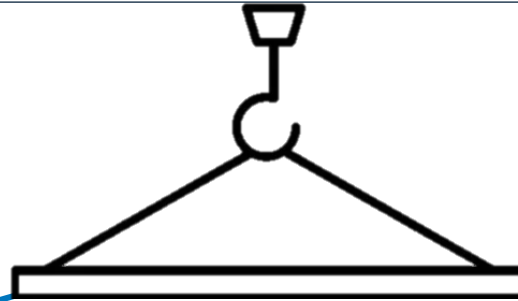
Country	Action	Product	Rationale	Response	Current Status
<b>CHINA</b> 	<ul style="list-style-type: none"> <li>February 1, 2025 – Trump imposed additional 10% tariffs on all imports from China, supplementing existing tariffs, under the International Emergency Economic Powers Act (IEEPA), effective February 4, 2025; tariff raised to 20% effective March 4, 2025</li> <li>Applicable to Hong Kong origin goods in contrast to previous 301 and 232 duties against China</li> </ul>	<ul style="list-style-type: none"> <li>All</li> </ul>	<ul style="list-style-type: none"> <li>Address the threat posed by illegal aliens and drugs (e.g., fentanyl) that constitutes a national emergency under the IEEPA</li> </ul>	<ul style="list-style-type: none"> <li>China imposed retaliatory tariffs on U.S. agricultural products, automobiles, energy products and other goods</li> <li>China implemented restrictions on the export of several elements / minerals critical to the production of modern high-tech products and launched an antimonopoly investigation into Google</li> </ul>	
<b>CANADA</b> 	<ul style="list-style-type: none"> <li>February 1, 2025 – Trump announced an additional 25% tariff on all imports and a reduced 10% tariff for energy and potash from Canada, under the IEEPA. Tariffs took effect March 4, but as of March 7, any USMCA eligible goods are exempt</li> <li>IEEPA duties can increase in response to retaliation</li> </ul>	<ul style="list-style-type: none"> <li>All</li> </ul>	<ul style="list-style-type: none"> <li>Address the threat posed by illegal aliens and drugs (e.g., fentanyl) that constitutes a national emergency under the IEEPA</li> </ul>	<ul style="list-style-type: none"> <li>Canada pledged a 25% tariff against CA\$155 billion worth of U.S. goods in two stages: (1) immediate tariffs on approximately CA\$30 billion worth of U.S. products; and (2) further tariffs on CA\$125 billion worth of U.S. products, subject to public consultation</li> </ul>	<ul style="list-style-type: none"> <li>Tariffs in effect for non-USMCA eligible good</li> </ul>

# FENTANYL IEEPA (CONT.)

Country	Action	Product	Rationale	Response	Current Status
MEXICO 	<ul style="list-style-type: none"><li>February 1, 2025 – Trump announced an additional 25% tariff on all imports from Mexico, and a reduced 10% tariff for potash from Mexico, under the IEEPA; tariffs took effect March 4, but as of March 7, any USMCA eligible goods are exempt</li><li>IEEPA duties can increase in response to retaliation</li><li>U.S. owned Mexican maquiladoras receive no special treatment</li></ul>	<ul style="list-style-type: none"><li>All</li></ul>	<ul style="list-style-type: none"><li>Address the threat posed by illegal aliens and drugs (e.g., fentanyl) that constitutes a national emergency under the IEEPA</li></ul>	<ul style="list-style-type: none"><li>Mexico announced a “Plan B,” which included non-specific tariff and non-tariff measures</li></ul>	<ul style="list-style-type: none"><li>Tariffs in effect for non-USMCA eligible good</li></ul>

# FENTANYL IEEPA

---



- Foreign Trade Zones (FTZs) cannot be used to store goods temporarily as a way to avoid the new duties. Goods entering the FTZ will be subject to the additional duty upon withdrawal from the FTZ.
- Drawback (i.e., refund of customs duties, taxes, and tariffs paid on imported goods) is not available with respect to these IEEPA duties.
- The IEEPA duties are in addition to any other duties owed (e.g., 301 duties).
- There is no limit for how long the IEEPA duties can remain in place.





# RECIPROCAL TARIFFS - OVERVIEW

Country	Tariff Imposed					
All Countries (Universal Tariff)	10% baseline tariff on all imported goods (effective April 5).					
	European Union	20%	South Korea	25%	Taiwan	32%
	Vietnam	46%	India	26%	Japan	24%
	(reciprocal tariffs for U.S. trading partners delayed until July 9; see Appendix for all specific country rates).					
Certain Countries (Reciprocal Tariff)	Goods in transit prior to April 5 → 0% reciprocal tariff.					
	Goods in transit on or after April 9 → 10% baseline tariff other than China (see below).					
	After July 9→ country-specific reciprocal tariff.					
	Drawback (i.e., refund of customs duties, taxes, and tariffs paid on imported goods) is available.					
China (Reciprocal Tariff)	Not subject to reciprocal tariffs: (1) articles subject to 50 USC 1702(b) (e.g., donations for humanitarian relief); (2) steel / aluminum and derivatives and autos / auto parts subject to Section 232; (3) copper, pharmaceuticals, semiconductors, and lumber articles; (4) articles that may become subject to future Section 232 tariffs (e.g., rare earth elements, critical materials, industrial goods); (5) bullion; (6) energy and other certain minerals that are not available in the U.S.; (7) cell phones and computers.					
	145%+ tariff April 10 and after (125% + 20% previous IEEPA + 301 (as applicable)).					
	May 14, 2025: the 125% tariff was reduced to 34%, but that higher rate is also paused. During the pause, a 10% rate applies, and the additional 24% is suspended.					
	Applicable to Hong Kong and Macau origin goods in contrast to previous 301 and 232 duties against China.					
	Eliminated “de minimis” duty exemption for packages valued at under US\$800 from China and Hong Kong (effective May 2).					

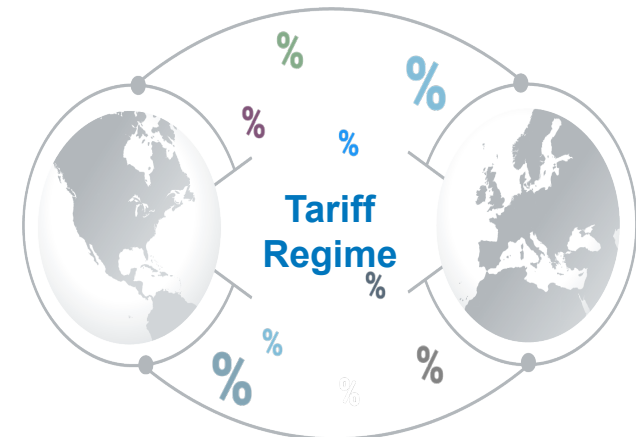
# RECIPROCAL TARIFFS - OVERVIEW

- Annex I to EO regarding Reciprocal Tariffs

Countries and Territories	Reciprocal Tariff, Adjusted	Countries and Territories	Reciprocal Tariff, Adjusted	Countries and Territories	Reciprocal Tariff, Adjusted
Algeria	30%	Iraq	39%	Nigeria	14%
Angola	32%	Israel	17%	North Macedonia	33%
Bangladesh	37%	Japan	24%	Norway	16%
Bosnia and Herzegovina	36%	Jordan	20%	Pakistan	30%
Botswana	38%	Kazakhstan	27%	Philippines	18%
Brunei	24%	Laos	48%	Serbia	38%
Cambodia	49%	Lesotho	50%	South Africa	31%
Cameroon	12%	Libya	31%	South Korea	26%
Chad	13%	Liechtenstein	37%	Sri Lanka	44%
China	125%	Madagascar	47%	Switzerland	32%
Côte d'Ivoire	21%	Malawi	18%	Syria	41%
Democratic Republic of the Congo	11%	Malaysia	24%	Taiwan	32%
Equatorial Guinea	13%	Mauritius	40%	Thailand	37%
European Union	20%	Moldova	31%	Tunisia	28%
Falkland Islands	42%	Mozambique	16%	Vanuatu	23%
Fiji	32%	Myanmar (Burma)	45%	Venezuela	15%
Guyana	38%	Namibia	21%	Vietnam	46%
India	27%	Nauru	30%	Zambia	17%
Indonesia	32%	Nicaragua	19%	Zimbabwe	18%

# RECIPROCAL TARIFFS - OVERVIEW

- **April 5, 2025:** A **universal 10% base tariff** took effect across all countries, unless otherwise excluded.
- **April 9, 2025:** A subset of 60 countries became subject to higher country-specific rates, which are to be applied in lieu of, not on top of, the 10%.
- **April 10, 2025:** The higher reciprocal rates were temporarily **paused for 90 days**, pushing their effective date to **July 9, 2025**.
- **May 14, 2025:** For China, the 125% tariff was reduced to 34%, but that higher rate is also paused. During the pause, a 10% rate applies, and the additional 24% is suspended.



# EXCLUSIONS FROM RECIPROCAL TARIFFS

---

- **For articles in which at least 20% of the value of article is U.S. originating, the U.S. content will not be subject to the reciprocal tariff. The reciprocal tariff will be assessed on the non-U.S. content.**
- **Canada and Mexico –**
  - **Not subject to Reciprocal IEEPA Tariffs while still covered under the Fentanyl IEEPA tariffs of 25%. USMCA originating goods exempt under the fentanyl IEEPA tariff, will continue under reciprocal IEEPA tariff.**
- 50 USC 1702(b) (e.g., informational materials, including but not limited to, publications, films, posters ...)
- Articles that are donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering.
- Steel and Aluminum, and derivatives, subject to 232 tariffs; Automobiles and parts subject to 232 tariffs
- Products specified in Annex II (copper, pharmaceuticals, semiconductors, lumber articles, critical minerals, energy products) and electronics excluded based on Clarification of Exceptions Under Executive Order 14257 of April 2, 2025, as Amended dated 4/11/2025
- Products HTSUS Column 2 countries (Russia, Belarus, Cuba, N Korea)
- Future 232 actions
- Chapter 98 Exemptions (e.g., 9817.00.92 – 9817.00.96 for Nairobi Protocol on goods for the handicapped, duty-free eligibility requirements)



# UNDERSTANDING THE RECIPROCAL TARIFFS TODAY - CALCULATOR

---

## Example – Black Pepper Country of Origin China

- **MFN:** 0%
  - 0904.11.0020, HTSUS, which provides for: “Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice): Pepper of the genus Piper: Neither crushed nor ground: Black.”
- **301:** 7.5% (List 4a)
- **Fentanyl:** 20%
- **Reciprocal:** 10%
- **MFN + 301 + Fentanyl + Reciprocal Tariff = 37.5%**



# UNCERTAINTY OF TRUMP ADMINISTRATION

---

## **PLAN FOR THE FUTURE !**

### **Compliance Considerations**

- Monitor changes to new trade regulations and adjust practices accordingly to avoid legal issues. (i.e., consult with your Customs expert/attorney)
- Expect more focus on customs compliance and have customs-related information and activities in order.

### **Legal Considerations**

- Review contracts for clauses related to tariffs and trade disruptions and make sure the risk allocation of increased tariffs is fully understood (and, in new contracts, that it is explicit and is fully considered in final pricing).
  - Force majeure clauses typically will not cover Section 232, Section 301, IEEPA or other tariffs unless explicitly stated.
- Identify which customer and supplier contracts contain “pass through pricing” for tariffs, taxes or similar matters where any increased cost is passed along to the customer and consider ability to amend or terminate any disadvantageous contracts.
- Identify which customer and supplier contracts contain fixed prices (i.e., without any adjustment for tariffs, taxes or similar matters) and consider ability to amend or terminate any disadvantageous contracts.

# WHAT STRATEGIES EXIST FOR REDUCING TARIFFS FOR COMPANIES – LOWERING CUSTOMS VALUE

---

## 1. Lower the Customs Valuation



- Customs value is the basis on which the ad valorem tariff rate is applied.
- Customs valuation is based in a hierarchy of valuation formulas that must be applied in order.

Customs valuation follows a strict hierarchy under U.S. law, with transaction value **(the price actually paid or payable)** as the primary method.

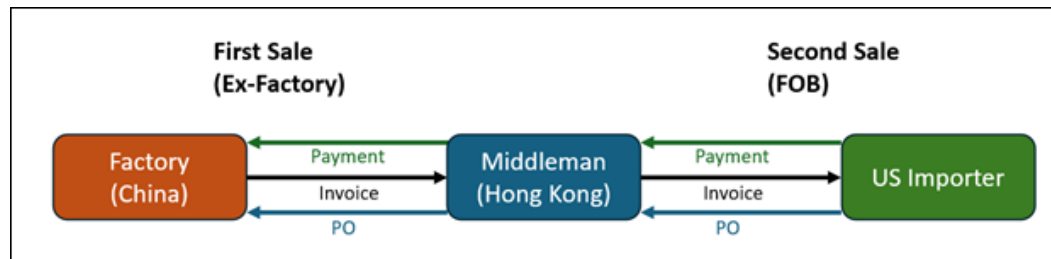
💡 **Strategic opportunities exist to reduce the Customs value.** 💡

# WHAT STRATEGIES EXIST FOR REDUCING TARIFFS FOR COMPANIES – LOWERING CUSTOMS VALUE (CONT.)

---

- **First Sale**

- Applies to a multi-tiered structures



- **Use of Buying Agents**

- A buying agent acts as the arms and legs of a U.S. buyer

- **Potential “Slice and Dice”**

- Unbundling costs—for example, separating out dutiable and non-dutiable charges like post-importation services, design fees, or royalties where legally permissible.



# WHAT STRATEGIES EXIST FOR REDUCING TARIFFS FOR COMPANIES

## – TARIFF ENGINEERING

---

### 2. Change the Tariff Classification

- All imported goods must be classified pursuant to the Harmonized Tariff System of the United States (HTSUS). The tariff code assigned dictates the duty rate to be applied to the customs value.
- The HTSUS is a complex nomenclature that seeks to provide a classification code for all existing goods.
- Often, there are more than one tariff code that on its face may appear to apply to an imported product.
- Goods may also be “**tariff engineered**” to qualify for a lower duty rate provision.

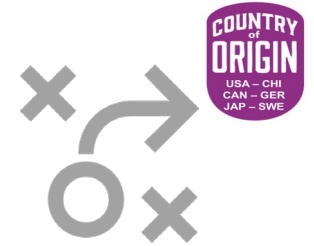


# WHAT STRATEGIES EXIST FOR REDUCING TARIFFS FOR COMPANIES – SUBSTANTIAL TRANSFORMATION

---

## 3. Change the Country of Origin

- Shifting the country of origin can often avoid the imposition of the tariff especially with targeted tariff increases.
- Changing the entire production is not the only way to change country of origin.
- Multi-country processing can be used, and the country of origin will be determined by the last country that effected a “substantial transformation.”
- **A substantial transformation is when a new and different article of commerce has been created. CBP interprets this to be where the essential component or character is imparted.**



# SUBSTANTIAL TRANSFORMATION – LEGAL STANDARD



- The “substantial transformation” test generally looks to whether an article emerges from a manufacturing or production process with a **new name, character, or use, different** from that possessed by the article prior to processing.

Nat’l Hand Tool Corp. v. U.S., 16 CIT 308, 310 (1992), aff’d, 989 F.2d 1201 (Fed. Cir. 1993); Anheuser Busch Brewing Ass’n v. U.S., 207 U.S. 556, 562 (1908).

**NOTE: Section 134.1(b) of the Customs regulations defines “country of origin” as:**

- **the country of manufacture, production, or growth of any article of foreign origin entering the U.S.** Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

# SUBSTANTIAL TRANSFORMATION – LEGAL STANDARD

---

## CBP's Legal Standard (Key Takeaways)

- Totality of the circumstances and case-by-case review
- A “new and different article of commerce” must result in change in designation, identity, character, or use
- If the manufacturing or combining process is merely a minor one that leaves the identity of the article intact, a substantial transformation has not occurred. Uniroyal, Inc. v. United States, 3 CIT 220, 542 F. Supp. 1026, 1029 (1982), aff'd, 702 F.2d 1022 (Fed. Cir. 1983).

### Generally:

- ✗ Simple blending or combining ≠ substantial transformation
- ✗ Mere dilution ≠ substantial transformation
- ✗ Mere packing ≠ substantial transformation

⚠ However, CBP has held that under certain circumstances the blending of various materials into a new article constitutes a substantial transformation. ⚠



# SUBSTANTIAL TRANSFORMATION – BLENDING/MIXING EXAMPLES

**1. Mixed and Packaged:** Seasoned salt from India. The paprika, onions, turmeric, garlic and black pepper from various countries, are shipped to **India where they are mixed together with salt and sugar and repackaged in retail packages.**

Decision: CBP held that the mixing together of ingredients in India to create the finished product results in a substantial transformation. (NY N311655, May 22, 2020).



**2. Blended and Packaged:** “Garlic Powder E” is an off-white powder composed of approximately 54% maltodextrin, 45% garlic, 1% silicon dioxide, and trace amounts of garlic flavor. The garlic and garlic flavor are products of Taiwan. The maltodextrin is a product of China. The silicon dioxide is a product of Korea. **All ingredients are blended in Taiwan and packed in 300-gram plastic shaker bottles.**

“White Pepper Powder” is an off-white powder composed of approximately 33% wheat bran, 31% maltodextrin, 11% pepper, 10% corn starch, 10% chili pepper, and 5% anise. The wheat bran and corn starch are products of Taiwan. The maltodextrin and anise are products of China. The pepper is a product of Malaysia. The chili pepper is a product of Thailand. **All ingredients are blended in Taiwan and packed in 300-gram plastic shaker bottles.**

Decision: CBP held that the blending of the ingredients together in the case of the “Garlic Powder E” and the “White Pepper Powder” changes the character of the initial ingredients and creates new products, food preparations. This satisfies the substantial transformation requirement of having a new “name, character or use.” Thus, the country of origin of the “Garlic Powder E” and the “White Pepper Powder” is the country where the blending process occurred. (NY N260554, Feb 5, 2015).

# SUBSTANTIAL TRANSFORMATION – BLENDING/MIXING EXAMPLES (CONT.)

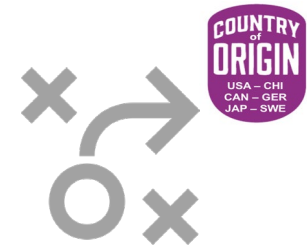
---

<u>Ruling</u>	<u>Processing Location &amp; Description</u>	<u>CBP Holding</u>
NY N333285 (June 29, 2023)	<b>Japan:</b> Sauce preparation manufactured by mixing raw materials with seasoning, removing metal, filling into 1200g containers, capping, labeling, and boxing.	✓ Substantial transformation found
HQ 559841 (July 25, 1996)	<b>Dominican Republic:</b> Tomato sauce made by mixing paste concentrate with spices, starch, beet powder, and water; then cooking, filtering, pasteurizing, and canning.	✓ Substantial transformation found
HQ 734076 (Sept. 10, 1991)	<b>U.S.:</b> Mixing/blending of tomato powder with other ingredients to create seasoning mixes.	✓ Substantial transformation found

# NAFTA RULE – BLENDING/COMBINING EXAMPLES

---

1. **Blended and Packaged:** Garlic powder (90% garlic powder from China, 10% salt from Canada) **is blended and packaged in Canada.** CBP held that per the NAFTA Marking Rules, the imported garlic powder and salt blend is a good of Canada. (**NY N127049**, Oct 20, 2010).
2. **Combined and Packaged:** Salsa Ranch Dip is a red-orange powder containing red, white, and green-colored particles. The product is said to be composed of approximately 16% buttermilk powder (Canada), 15% minced onion (U.S.), 13% each of salt and sugar (Canada), 9% onion powder (U.S.), 5% each of red bell pepper (China), green bell pepper (China), garlic powder (China), and tomato powder, 3% parsley, 2% each of ground jalapeno pepper, paprika (India), and lime juice powder, and 1% or less, each, of xanthan gum, citric acid, cilantro flakes, green bell pepper flavoring, artificial tomato flavor, soy oil, silicon dioxide, oleo paprika, and oleo capsicum. **In Canada, all ingredients will be combined according to the prescribed formula, and packed into 28-gram packages.** CBP held that per the NAFTA Marking Rules, the imported Salsa Ranch Dip is a good of Canada. (**NY N025236**, March 28, 2008).



# NOT SUBSTANTIAL TRANSFORMATION – EXAMPLES

---

## **Simple Packaging or Blending Not Enough ≠ substantial transformation**

- **HQ 732315** (1989): Transferring paprika from bulk to retail containers in a second country did not change the product's name, character, or use.
- **NY N330391** (2023): 50/50 blend of two chemicals in same tariff classification = no new article of commerce.

## **Mixing of Like Products ≠ substantial transformation**

- **HQ 732260** (1989): Blending multiple types of whiskey resulted in no transformation—end product retained same essential character.

## **Minor Refinement of Natural Product ≠ substantial transformation**

- **HQ 724872** (1984): Processing of maple syrup (e.g., filtering, grading) was insufficient to alter its essential identity.
- **National Juice Products Ass'n v. U.S.** (1986): Imported concentrate mixed with domestic water, flavorings, oils → Held: Minor processing; imported concentrate retained essential character of orange juice, = no new article of commerce

# TRUMP'S IEEPA TARIFFS ARE BEING REVIEWED BY THE COURTS

On May 28, 2025, the U.S. Court of International Trade ruled in *V.O.S. Selections Inc. et al. v. United States*, Slip Op. 25-66, that the International Emergency Economic Powers Act (IEEPA) does not authorize the tariffs imposed on goods from China, Canada, Mexico, or other countries. The decision invalidates the so-called “fentanyl tariffs” and the 10% global “reciprocal tariff,” finding that the President exceeded his statutory authority. While the ruling does not affect tariffs under Section 232 (steel/aluminum) or Section 301, its enforcement has been stayed pending appeal. Importers must continue paying duties for now, though they may need to protest liquidated entries or file suit to secure refunds depending on the appeal’s outcome.

The following day, the U.S. District Court for the District of Columbia issued a broader ruling in *Learning Resources, Inc. v. Trump*, No. 1:24-cv-00708 (D.D.C. May 29, 2025), holding that IEEPA categorically does not authorize the imposition of tariffs. Judge Rudolph Contreras denied the government’s motion to transfer the case to the CIT, declared the tariffs unlawful, and issued a preliminary injunction—limited to the two plaintiff importers—but stayed that injunction for 14 days to allow for appeal. The decision creates a clear split with the CIT, raising both jurisdictional and substantive questions likely to be addressed by higher courts.



# GDLSK

GRUNFELD DESIDERIO LEBOWITZ  
SILVERMAN & KLESTADT LLP

**Michele S. Lehat**

Associate

212.973.7732

MLehat@gdlsk.co  
m

## Questions?

**Richard M. Wortman**

Partner

213.624.1970

RWortman@gdlsk.com



gdlsk.com