



# ICAS TRADE N TECH DISPATCH

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## What's Been Happening

### 1 — CIT Overturns Trump IEEPA Tariffs, Legal Battle Heats Up — 1

#### [In One Sentence]

- On May 28, the Court of International Trade (CIT) ruled that President Trump's use of the *International Economic Emergency Power Act* (IEEPA) to enact tariffs on imports from U.S. trading partners was unlawful.
- Trump's "Liberation Day" tariffs cited the 1970s IEEPA, which permits the president to regulate imports during national emergencies but does not explicitly authorize tariffs.
- In April, Democratic attorneys general from 12 states sued to block Trump's tariffs, arguing at the Court of International Trade that he overstepped his authority while imposing his sweeping tariffs.
- On May 20, a Florida judge backed Trump's claim that IEEPA authorizes tariffs and transferred the suit to the Court of International Trade, handing the administration an early legal win.
- Earlier on May 13, California and a coalition of private companies represented by the Pacific Legal Foundation (PLF) filed motions in their parallel tariff suits, with California seeking a nationwide injunction in district court and PLF urging CIT to rule that the tariffs exceeded the President's statutory authority and that the use of the tariff instrument under the IEEPA was unconstitutional under the nondelegation doctrine.

#### [Mark the Essentials]

- The Department of Justice has appealed the CIT ruling, while the fate of over a dozen ongoing trade negotiations remain unclear.
- During the May 13 hearing, CIT judges scrutinized whether the Nixon-era Yoshida precedent supported Trump's IEEPA tariffs, questioning whether Congress intended the law to authorize such duties given subsequent trade statutes like Sections 122 and 301.
- At the May 21 hearing, CIT judges questioned whether Trump's use of IEEPA is a "political question" beyond judicial review, challenging DOJ's claim of broad authority and stressing the need to assess if the tariffs address an "unusual and extraordinary" threat.

- Meanwhile, the DOJ has urged regional courts to transfer IEEPA tariff suits to the Court of International Trade, arguing that parallel litigation undermines CIT's exclusive jurisdiction, already exercised in three active cases including V.O.S. Selections and the state AGs' suit.
- From the Democratic side, in a May 7 brief to the Court of International Trade, 12 Democratic attorneys general argued that Trump's IEEPA tariffs have "irreparably disrupted" state budgeting and procurement, citing unpredictable costs such as a \$100,000 surcharge on university lab equipment and volatile vendor pricing.
- Additionally, on May 20, 148 House Democrats filed an amicus brief to CIT supporting the states-led IEEPA suit, stating that while they hold diverse views on trade policy, they are united in believing the President has usurped Congress's constitutional authority by using IEEPA to impose tariffs.

### **[Keeping an Eye On...]**

- Boom. The hammer just dropped on the Trump administration at the U.S. Court of International Trade on its cherished "Liberation Day" and other tariffs. In a notable decision late on May 28, the court ruled that the administration's reciprocal, retaliatory and fentanyl duties, levied under the "War and National Defense" title of the U.S. Code and utilizing the authority of the *International Emergency Economic Powers Act* (IEEPA), amounted to an audacious and unlawful assertion of executive power that exceeded the authority granted to the president by IEEPA to regulate imports. "Regulate ... importation" in the text of IEEPA did not grant the president unlimited authority to rewrite the tariff schedules, the court suggested; indeed, such a reading if left to stand would amount to an unconstitutional delegation of power. Besides, the legislative history surrounding the IEEPA confirmed that Congress had cabined the president's authority to impose tariffs in response to balance-of-payments deficits to a separate specific, narrower, time-limited non-emergency statute (Section 122 of the Trade Act of 1974), and that the words "regulate ... importation" in the IEEPA did not permit the president to impose tariffs in response to balance-of-payment deficits. If the president nevertheless wished to impose the tariffs to address the large and persistent trade deficits (which is one of the key balance-of-payment deficits), he would have to comply with the limitations laid out in Section 122 (i.e., tariffs limited in duration to 150 days, unless extended by Congress, and limited to 15% ad valorem).

The Trump administration had earlier mounted a spirited defense of its tariffs, with even Secretary of State Rubio, Treasury Secretary Bessent, Commerce Secretary Lutnick, and U.S. Trade Representative Greer making individual submissions in defense of the administration's position to the Court of International Trade (CIT). The administration's chain of logic ran essentially thus: the U.S.' large and persistent current account deficits have led to a hollowing out of domestic manufacturing, which constitutes an "unusual and extraordinary threat" and rises to being a "national emergency". The emergency is no mere trade policy emergency; it is a full-blown security and foreign policy-linked one. While Congress is constitutionally tasked with regulating trade and commerce, on foreign and security policy matters, it is the president who enjoys extensive powers, and a "measure of skepticism" of "unheralded power" that is supposedly being usurped by the president to regulate a significant portion of the U.S. economy is not warranted. Besides, Congress, and not the judiciary, is the appropriate review body. A declaration of an emergency under the *National Emergencies Act* (NEA) is a non-justiciable political question that needs to be resolved by the political branches (the same argument has been marshaled at the WTO's dispute settlement body in defense

of the U.S.' "essential security interest" argument) and not by judicial organs. Congress enjoys fast track procedures in this regard to terminate a president's national emergency declaration – and, in the current instance, has chosen not to do so. As such, the courts must lay off too. More lately, the administration's cabinet appointees have tacked on the argument that negotiations with dozens of countries on the strength of the IEEPA-authorized tariffs to address the "national emergency" are in a delicate state. Voiding the legal basis of the administration's tariffs would do irreparable harm to the foreign and security policy interests of the U.S.

Well, we shall have to wait and see now if the voiding of the tariffs really amounts to the "foreign policy disaster scenario" that US Trade Representative Greer alluded to in his submission. One thing is clear though: the administration's argument that the tariffs are no mere trade policy instrument but relate rather to foreign and security policy matters – and are hence amenable to the president's emergency powers authority – has fallen flat at its first test. Tariffs are a trade and commercial policy issue and must be dealt with authorities, including national security authorities such as Section 232 of the *Trade Expansion Act* of 1962, that fall under the "Customs Duties" title of the U.S. Code – not the "War and National Defense" title of the U.S. Code. Going forward, it is a certainty that the Trump administration will appeal the ruling while hoping to keep the tariffs in effect during litigation (the U.S. Court of Appeals for the Federal Circuit has temporarily stayed the CIT's judgment). It remains to be seen if the administration also takes recourse to Section 122 during the interim. But if the administration insists on fighting to the bitter end, it will likely find an uncooperative Supreme Court which has ceased to defer blindly to executive authority and the administrative state over the past decade or so. So much for the half-life of the radioactive "Liberation Day" tariffs!

### [Expanded Reading]

- [Federal court strikes down Trump's tariffs on countries around the world](#), *POLITICO*, May 28, 2025
- [A dozen US states decry Trump's "blank check" tariffs in lawsuit](#), *Reuters*, May 21, 2025.
- [Judge says Trump has power to impose tariffs, but punts lawsuit to different court](#), *ABC News*, May 23, 2025.
- [State Attorneys General Challenge US President's Tariff Authority Under IEEPA](#), *Morgan Lewis*, May 19, 2025.
- [Trump tariffs face major legal hurdle as federal trade court hears challenge](#), *CNBC*, May 13, 2025.
- [Pelosi, House Democrats Challenge Trump's Unlawful, Chaotic Imposition of IEEPA Tariffs](#), *Office of Nancy Pelosi*, May 13, 2025.

## 2 — U.S.-China Tensions Resurge over AI Chips After Geneva Truce — 2

### [In One Sentence]

- In a congressional 'capture move' targeting China's tech expansion (AI chips, HarmonyOS), House Select Committee leaders Moolenaar (R-MI) and Krishnamoorthi (D-IL) have urged U.S. and allies to block the adoption of Chinese operating systems worldwide, citing digital authoritarianism and espionage risks.
- Additionally, the Commerce Department's BIS has initiated a significant policy move aimed at curbing China's AI chip access, warning of U.S. export control violations and replacing a prior control framework with a stricter one.

- The Trump administration has stated that it will uphold AI chip curbs on China, while simultaneously revising rules to facilitate secure U.S. AI tech access for allies, and dismissed Nvidia CEO Jensen Huang's warning that the "failure" to do so risked ceding the market to Chinese rivals.
- U.S. lawmakers have introduced the bipartisan *Chip Security Act* to stop AI chip smuggling to China by mandating location verification in chips from makers like Nvidia amid evolving U.S. export controls.

#### [Mark the Essentials]

- China's Ministry of Commerce condemned U.S. guidance restricting the usage of Huawei's advanced computing chips, citing that it directly undermines the recent Geneva understanding and damages prospects for de-escalating trade tensions through negotiation.
- The Port of Los Angeles' director observed that no immediate Chinese cargo surge is anticipated, as temporary Geneva tariff reductions are insufficient to counter prevalent U.S. duties, which continue to inflate prices, divert shipments, and make the 90-day detente too brief for significant supply chain recovery.
- Democratic senators, led by Minority Leader Schumer (D-NY) and Warren (D-MA), have warned the Trump administration that tech deals with Saudi Arabia and the UAE threaten U.S. national security by risking Chinese access to U.S. technology, the diversion of AI chips, and the undermining of export controls.
- Meanwhile, Senator Elissa Slotkin (D-MI) criticized President Trump's unpredictable China policy for confusing allies and lacking a discernible strategy, arguing it erodes U.S. soft power and harms domestic interests without effectively compelling Beijing to adopt fair trade practices.

#### [Keeping an Eye On...]

- Make no mistake. For all the drama-filled activity surrounding the "Liberation Day" tariffs, and as landmark as the Court of International Trade's (CIT) May 28<sup>th</sup> decision might come to be remembered, the trade and tariff war is a sideshow in the large scheme of things related to U.S.-China competition. The 'trade war' between the two sides will be managed, albeit somewhat messily – let's be clear on that. The same cannot be said on the technology front, most certainly. Indeed, with each passing day, the two sides are sinking deeper into the swamp of a no-holds-barred technology cold war. Donald Trump may not hold strong views on export controls as he does regarding tariffs. But this does not mean that he will not readily go along with far-reaching decisions on technology decoupling initiated by senior administration appointees. To the contrary, deferring to the priorities of his trusted subordinates was a feature of his first administration (for example, deferring to ex-VP Mike Pence's socially conservative policy agenda), which by all accounts continues to this day (would Afrikaners have enjoyed Refugee Admissions Program status had Elon Musk not been in the administration). And it bears remembering too that it was the first Trump administration that had fired the gun on the technology war against China by way of its expansive Information and Communications Technology and Services (ICTS) Order and subsequent actions against telecommunications giant, Huawei.

Already, within the first 125 days of the second Trump administration, several measures that weaponize the chokepoints held by the U.S. in its technology cold war with China have been or are about to be introduced. In mid-May, the Commerce Department issued guidance warning about the consequences of allowing U.S. AI chips to be used for training and inference of Chinese AI models. On the same day, guidance was also issued alerting industry to the risks of prosecution stemming from any form of use of Huawei's Ascend series of chips, claiming that the design or production of these chips likely involved one or more violations

of the U.S. export control rules. Later in May, it was reported that U.S. companies specializing in chip software-related electronic design automation (EDA) have been ordered to stop selling their services to Chinese entities. EDA software and semiconductor equipment manufacturing are the two weak links within the Chinese chips ecosystem, with U.S. EDA players accounting for 80% of China's EDA market. It has also been recently reported that the administration has suspended certain licenses to sell jet engines and components to China's state-owned aerospace manufacturer, COMAC. COMAC's C919 airliner still relies heavily on joint ventures with U.S. firms such as GE Aviation, Honeywell, Collins Aerospace, and Parker Aerospace to produce systems related to avionics core processing, flight control, communications and navigation, hydraulic systems, wheels and braking, and most importantly the C919's LEAP-1C jet engine. Earlier in March, a number of Chinese quantum, hypersonics, high-performance computing, cloud computing, and data service providers were dumped into the Entity List too. And Secretary of State Marco Rubio's recent announcement of U.S. visa revocations for Chinese students "with connections to the Chinese Communist Party or studying in critical fields" will only widen the S&T chasm between the two sides. China has not been entirely passive either. Although it has walked back some of its Export Control List and Unreliable Entities List designations following the 90-day pause, the new export controls introduced on April 4<sup>th</sup> on seven rare earth elements that have multiple dual-use applications continue to stand. A long 3 years and 8 months of zero-sum trench warfare on the technology front awaits. The U.S. clearly has the heavier weaponry, but China the guile to resiliency adapt and upgrade its capabilities.

### [Expanded Reading]

- [Exclusive: Nvidia To Launch Cheaper Blackwell AI Chip For China After US Export Curbs, Sources Say](#), *Reuters*, May 26, 2025
- [China Urges US To Correct Huawei Chip Curbs, Uphold Consensus Reached In Geneva Talks](#), *Global Times*, May 19, 2025
- [Why US-Middle East AI Chip Deals Spark Controversy](#), *Nasdaq*, May 20, 2025
- [Malaysia Downplays Huawei Deal As US Checks China's AI Reach](#), *Bloomberg*, May 20, 2025
- [Trump Changed Biden's AI Chip Rules. What Now, Will It Affect China Trade Talks?](#), *South China Morning Post*, May 22, 2025
- [All Eyes On China Restrictions As Nvidia Gets Set To Report Results](#), *CNBC*, May 27, 2025
- [TSMC To Set Up Chip Design Hub In Germany](#), *The Wall Street Journal*, May 27, 2027
- [Chinese Tech Giants Reveal How They're Dealing With U.S. Chip Curbs To Stay In The AI Race](#), *CNBC*, May 26, 2025
- [China Issues New Warning Over US Tech War](#), *Newsweek*, May 21, 2025
- [A.I. Chipmaker Nvidia's Revenue Jumps 69% To \\$44.1 Billion](#), *The New York Times*, May 28, 2025

## On the Hill

### [Legislative Developments]

- In a key U.S. trade policy move, the House Ways & Means Committee has advanced legislation to eliminate the duty-free allowance for low-value imports by 2027, mirroring the Trump administration's separate, ongoing efforts to unilaterally terminate the same *de minimis* provision.
- Democrats have challenged the credibility of Republicans' pledges of U.S. critical mineral security, asserting that proposed GOP budget cuts would unravel vital *Inflation Reduction Act* programs designed to decrease reliance on China and adversary foreign nations.

### [Hearings and Statements]

- During a recent hearing, industry representatives and Senate Finance Committee leaders, including Mike Crapo (R-ID) and Ron Wyden (D-OR), argued that the Trump administration should focus on targeted, sensible tariffs rather than its current broad approach.
- In a May 15 letter to President Trump, senior Democrats Sens. Jeanne Shaheen (NH), Jack Reed (RI), and Mark Warner (VA) contended that his tariffs are undermining U.S. national security by weakening relationships with allies in Europe and the Indo-Pacific and potentially violating treaty obligations in pursuit of unclear goals.
- Earlier, facing questions from multiple senators, U.S. Trade Representative Jamieson Greer told the Senate Finance Committee that President Trump is not considering exemptions to his “reciprocal” tariffs.
- During a recent event at Georgetown Law School, House Ways & Means Trade Subcommittee Chair Adrian Smith (R-NE) expressed the hope that lawmakers will extend the *African Growth and Opportunity Act* and other soon-to-expire or lapsed trade preference programs.
- In a May 12 letter to the Treasury, Commerce Department and USTR, Sen. Elizabeth Warren (D-MA) and Rep. Rosa DeLauro (D-CT) criticized Trump’s “reciprocal” tariffs as a “self-inflicted economic disaster” and requested responses to a series of questions of their asking by May 20.

#### [Expanded Reading]

- [House Republicans Propose End to De Minimis in 2027](#), *U.S. Fashion Industry Association*, May 14, 2025.
- [Committee Hearing: Trade in Critical Supply Chains](#), *Senate Committee on Finance*, May 14, 2025.
- [Leading National Security Senators to Trump: If your tariff tirade continues to spiral, “America First” may result in “America Alone.”](#) *Office of Sen. Jack Reed (D-RI)*, May 16, 2025.
- [USTR Greer: No Exemptions From Global Tariffs](#), *The Wall Street Journal*, April 8, 2025.
- [The Future of U.S.-U.K. Trade](#), *Georgetown Law School*, May 20, 2025.