
Fw: Trump Trade 2.0: Supreme Court Strikes Down IEEPA Use for Tariffs

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The Supreme Court announced [the opinion on *Learning Resources v. Trump*](#) today, striking down the use of the International Emergency Economic Powers Act (IEEPA) as a vehicle for the implementation of tariffs. The 6-3 decision was authored by Chief Justice John Roberts, with Justices Amy Coney Barrett and Neil Gorsuch joining the three liberal justices in the majority. Justices Thomas, Alito, and Kavanaugh dissented.

On congressional authorities, the decision states that “What common sense suggests, congressional practice confirms. When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits.” In discussing presidential authorities, Roberts writes that “It is also telling that in IEEPA’s ‘half century of existence, no President has invoked the statute to impose any tariffs—let alone tariffs of this magnitude and scope...Presidents have, by contrast, regularly invoked IEEPA for other purposes.”

The ruling impacts both the country-by-country “reciprocal” tariffs imposed by President Trump, including the baseline 10% tariff levied on nearly all imports, as well as the “fentanyl” tariffs on imports from Canada, Mexico, and China. Tariffs imposed by other authorities, such as the Section 232 tariffs on steel and aluminum derivatives and the Section 301 tariffs, remain unchanged by this decision.

What’s Next: Refunds?

The Court, in the ruling, did not address the forthcoming issue of refunds for tariffs that have already been collected. [Several major companies](#) previously filed lawsuits seeking refunds if courts ultimately determined the tariffs were imposed illegally, underscoring the high financial

stakes for large importers. We are awaiting further action from the lower courts, following the filings of thousands of lawsuits, as well as administrative guidance from CBP. According to Census data, through mid-December 2025, the federal government had already collected \$81.7 billion in revenue from tariffs levied under IEEPA. [One often-cited estimate](#) suggests that the overall figure is now around \$175 billion.

What's Next: Plan B for Tariff Authority?

President Trump spent the morning meeting with the nation's governors. In response to the ruling, the President has reportedly told the governors that the decision is a "disgrace" and that he has a backup plan in place.

The White House has been exploring other options to impose import taxes on foreign goods as the Supreme Court deliberated its decision. Alternative authorities to impose tariffs include:

- Section 232 of the Trade Expansion Act of 1962,
- Section 122 of the Trade Act of 1974,
- Section 338 of the Tariff Act of 1930,
- Section 301 of the Trade Act of 1974, and
- Section 201 of the Trade Act of 1974.

President Trump announced that all current Section 232 and 301 tariffs would remain in place and that he will use his Section 122 authority to implement a global tariff of 10%. A 15% tariff could be imposed relatively quickly under Section 122 of the Trade Act of 1974. Still, the tariff would last only up to six months and may reduce revenue in cases where countries like China and Vietnam are already subject to the 20% tariff. Section 122 tariffs expire after 150 days unless Congress extends them.

The President retains his Section 232 authority to impose tariffs on imported goods that pose a threat to national security. While Section 232 tariffs do not offer the same latitude or immediate impact as IEEPA, the White House is likely to consider expanding their use. This could include expanding the definition of goods considered to impair national security, as well as narrowing exemptions for goods otherwise covered by existing Section 232 tariffs.

Section 338 of the Tariff Act of 1930 authorizes tariffs of up to 50%, though it has never been used and would require demonstrating that a country engages in discriminatory trade practices that uniquely disadvantage U.S. exporters without similarly affecting other nations. Section 301 tariffs under the Trade Act of 1974 (previously used by Trump during his first term) are more established but typically take at least 9 months to implement due to procedural requirements, such as investigations and public hearings.

It is worth noting that these authorities were all cited by Justice Kavanaugh as likely alternatives in his dissent. Section 201 of the Trade Act of 1974 allows the president to impose temporary safeguard measures (such as tariffs or quotas) if the U.S. International Trade Commission determines that a surge in imports is a substantial cause of serious injury to a domestic industry, though it requires a formal ITC investigation and injury finding.

Congressional Response

Some in Congress have [called for expedited legislative action to reinstate the IEEPA tariffs](#) statutorily via the budget reconciliation process. The House and Senate Republican majorities have discussed the potential for an additional reconciliation process this year, and the need for congressional action on tariffs would be a more potent motivator than what has been discussed post the One Big Beautiful Bill Act.

However, significant obstacles would stand in the way of such action, not the least of which is the lack of nearly unanimous support for the tariffs required for the majority to adopt a new budget resolution and subsequent reconciliation legislation on a party-line basis. The [votes in the House over recent weeks](#) opposing the IEEPA tariffs before today's court ruling are a good indicator of that lack of necessary cohesion in the majority. Still, President Trump has shown an almost unmatched ability to move Republicans in Congress to align with his sometimes unorthodox agenda and governing style, and further action in this space cannot be entirely ruled out.

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The Michael Best Strategies Federal Trade team is in close communication with trade officials and monitoring any updates related to the decision in the IEEPA case. We will continue to provide updates on any significant developments related to this decision. Please reach out to Partner and Trade Practice Lead Sarah Helton at sarah.helton@michaelbest.com with any questions.

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