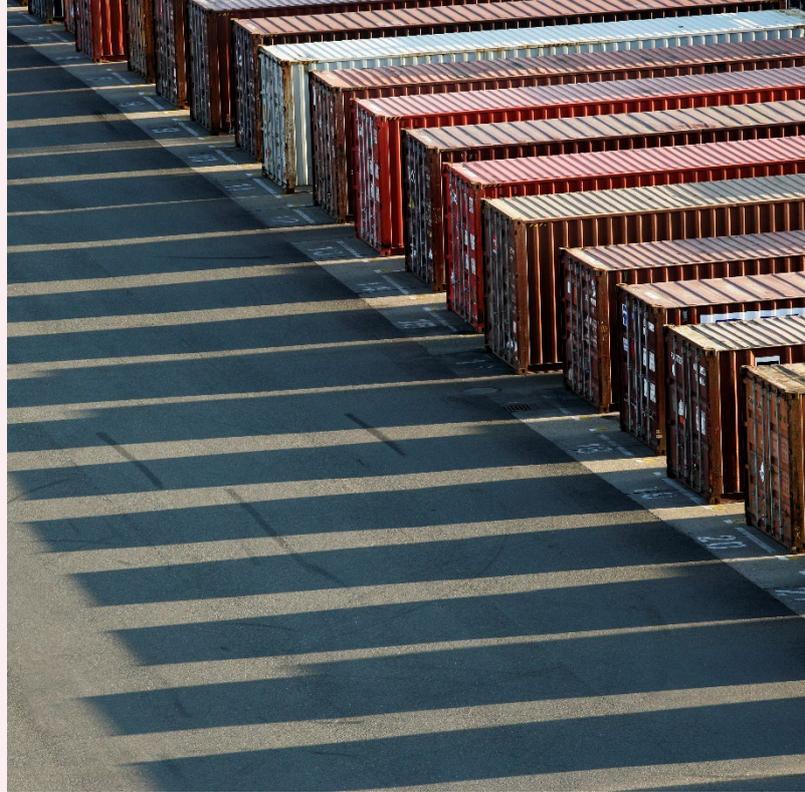


In a landmark opinion, the U.S. Supreme Court strikes down the Administration's IEEPA tariffs

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Today, the U.S. Supreme Court issued its opinion in [Learning Resources, Inc. v. Trump](#), holding that the President cannot use the International Emergency Economic Powers Act ("IEEPA") to impose tariffs. The opinion has profound implications, affirming congressional primary authority over tariffs, and eliminating the most expansive tariffs imposed by President Trump in 2025. But this is not the end of the story. Whether and how refunds will be issued remains an open question, and the President has already indicated in [remarks](#) following the decision that the Administration will use other tariff powers to deal with the perceived trade imbalances and unfair trading practices that it had used IEEPA to address.

Thus, notwithstanding the Supreme Court's important decision, tariffs are here to stay, as is continued uncertainty for businesses and their supply chains.

Background to the Case

a) Trafficking Tariffs:

- i. In [January 2025](#), the President declared the flow of illegal drugs including fentanyl, and the resulting public-health crisis, to be a national emergency. The following month, invoking IEEPA, the President ordered a 25 percent tariff on most [Canadian](#) and [Mexican](#) imports to address what he declared to be an unusual and extraordinary threat to the United States' national security, foreign policy, and economy. In the intervening months, the President has adjusted and paused elements of those duties, with the effective IEEPA tariff rate on Canadian imports being 35 percent.
- ii. On [February 1, 2025](#), the President acted under IEEPA to address the flow of fentanyl from the People's Republic of China ("PRC"), imposing a 10 percent duty on most goods imported from the PRC. The rate was increased to 20 percent in March 2026 before being halved in November 2025 pursuant to a trade truce between the United States and the PRC.

b) Reciprocal Tariffs

- i. On [April 2, 2025](#), the President declared a separate national emergency, finding that large and persistent U.S. trade deficits constitute an unusual and extraordinary threat to the national security and economy of the United States. Relying on IEEPA, the President imposed a 10 percent duty on most imported goods with additional higher tariffs being imposed on many countries. Over several months, the Administration has suspended and amended the Reciprocal Tariffs, adjusting rates via bilateral agreements and granting exemptions for certain products.

c) Lower Court Decisions on the Validity of the Trafficking and Reciprocal Tariffs

- i. Multiple businesses and a group of states challenged the Trafficking and Reciprocal Tariffs before the U.S. Court of International Trade ("CIT"). The challengers contended that IEEPA did not give the President tariff or taxing power, even in the event of a national emergency, and that Congress did not delegate tariff power to the President through IEEPA.
- ii. On August 29, 2025, the Federal Circuit affirmed in part the CIT decision in [V.O.S. Selections Inc.](#), finding the IEEPA tariffs unlawful. The Government immediately appealed to the U.S. Supreme Court.
- iii. On September 9, 2025, the U.S. Supreme Court agreed to consolidate and expedite review of the Federal Circuit case (*V.O.S. Selections*) and a separate D.C. Circuit case ([Learning Resources Inc.](#)), which had similarly found that IEEPA does not authorize the President to impose tariffs.

The U.S. Supreme Court's Groundbreaking Opinion Rejects the President's Use of IEEPA to Impose Tariffs

1. The U.S. Supreme Court held that IEEPA does not authorize the President to impose tariffs. Although the Court splintered in its reasoning, in the governing portion of the opinion (speaking for six Justices) Chief Justice Roberts relied on the ordinary meaning of the words and the "context" of IEEPA.
2. The government had argued that IEEPA's grant of power to "regulate...importation" authorized the tariffs. The Court rejected that core argument, noting that "taxation" is a distinct power from "regulation" and that tariffs are a means of raising revenue, i.e., taxation.
3. The Court declined to conclude that Congress had hidden a core delegation of its "birth-right power to tax within the...power to regulate." The Court noted that when Congress has delegated tariff authority to the Executive in other statutes, it has done so in "explicit terms, and subject to strict limits."
4. Although three Justices invoked the "major questions doctrine" in support of the result, the remaining three Justices forming the majority did not. As such, the Court's governing decision is narrowly based on the language of IEEPA. Much of the Court's discussion emphasized, however, that Congress, not the President, has primary constitutional authority to authorize taxes, including tariffs, and that Congress had not delegated that authority to the President through IEEPA.
5. Speaking for the plurality on "major questions," the Chief Justice observed that a grant to the President of the authority to "unilaterally impose unbounded tariffs," amounted to a delegation of major "economic and political significance," and would require Congress to speak clearly. Opining that the stakes in this case "dwarf[ed]" other major questions cases, the plurality concluded that no such clear delegation had occurred.
6. In a dissenting opinion on behalf of three Justices, Justice Brett Kavanaugh argued that other (non-IEEPA) statutory bases also provide the President with

the power to impose "most if not all" of the tariffs at issue. The dissent criticized the majority as faulting the President for "ticking the wrong statutory box," and warned that the resulting refund process "is likely to be a mess." The majority was not persuaded, stating that the Court would not speculate on hypothetical cases involving statutes that were not before it.

7. Hours following the decision, the White House issued a new executive order, "Ending Certain Tariff Actions," that ordered relevant executive departments and agencies to terminate the various tariffs imposed under IEEPA. Importantly, the order extended beyond the IEEPA tariffs at issue before the Court, directing the termination of all IEEPA tariff programs, including those imposed on India and Brazil.

Businesses Should Brace for New Tariff Measures and for the Administration to Revisit Existing Investigations

1. Today's opinion has no bearing on existing tariffs imposed under other delegated authority, including under Section 301 of the Trade Act of 1974 or Section 232 of the Trade Expansion Act of 1962. During a press conference following the U.S. Supreme Court's opinion, President Trump confirmed that existing Section 301 and Section 232 tariffs remain in effect.
2. Administration officials repeatedly signalled that backup plans were in place to replace any IEEPA tariffs that are invalidated. The Administration's "Plan B" came into focus at a press conference shortly after the Court's opinion was announced. The President started to implement this plan later the same day, issuing a Proclamation [Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems](#). Under this Proclamation, a global tariff of 10 percent is imposed on U.S. imports under Section 122 of the Trade Act of 1974, subject to certain exemptions that largely mirror exemptions to the IEEPA tariffs (e.g., energy and energy products and certain agricultural products). This Section 122 tariff will not stack with Section 232 tariffs. This tariff measure will act as a stop gap allowing the Administration to maintain a certain tariff level in place between February 24, 2026 and July 24, 2026 to deal with large and immediate balance-of-payments deficits.
3. President Trump also announced that he will be launching [Section 301 investigations](#) into other countries' unfair trading practices, without indicating which countries would be involved. Section 301 requires the Office of the U.S. Trade Representative to undertake an investigation meeting various procedural requirements, following which tariffs can be imposed.
4. President Trump also raised the possibility of using Section 338 of the 1930 Tariff Act—a provision that has not been used before to impose tariffs—but that authorizes the President to impose tariffs of up to 50 percent on imports from countries that he finds as a fact unreasonably discriminate against U.S. commerce.
5. There is also the potential for the Administration to launch new [Section 232 investigations](#) into specific sectors or take action in existing investigations. The Administration has made broad use of Section 232 in President Trump's second term, imposing tariffs on various goods, including steel, aluminum, copper, automobiles and auto parts, semiconductors, lumber, and furniture. Multiple Section 232 investigations remain pending into products, including wind turbines, polysilicon, and robotics.
6. With potential new tariff measures and investigations on the horizon, businesses should be ready to navigate and understand the shifting landscape and related compliance obligations and enforcement risks.

A Key Priority for Businesses Is Understanding the Availability of Refunds

1. The U.S. Supreme Court in *Learning Resources* was silent on the availability of IEEPA refunds. As noted, only the dissenting opinions referenced refunds, stating that they "may" be required and the process would be a "mess."
2. Given the unprecedented scale of refunds at issue, it will be critical to track how this issue resolves in the weeks and months ahead. Although they are likely to be the subject of future litigation, there are existing legal mechanisms to seek refunds, including:
 - a) For unliquidated imports, which account for a substantial portion of the entries subject to IEEPA tariffs, the Administration may be required to issue refunds upon liquidation and without further request from the affected importer. The exact contours of this requirement are unsettled.
 - b) For already liquidated entries, importers can file a formal protest with Customs and Border Protection ("**CBP**") within 180 days of the liquidation. A denial permits judicial relief.
 - c) Finally, importers can bring an action for refunds in the CIT. Many large U.S. importers have already filed such complaints.
3. It is expected that there will be further litigation around efforts to obtain refunds. This issue will likely be a matter for the CIT, which the U.S. Supreme Court noted has exclusive jurisdiction of over tariff challenges.

What Happens to the Administration's Bilateral Trade "Deals"?

1. The U.S. Supreme Court's opinion may impact some of the bilateral trade deals and framework agreements that the Administration negotiated over the course of 2025, including with the European Union, United Kingdom, Japan, and South Korea, granting favorable tariff rates compared to those initially imposed. Similar deals with, for example, Argentina and Taiwan, have been agreed in 2026. Other negotiations are underway. Many of these agreements have involved modifications of the reciprocal tariff rates imposed under IEEPA—now invalidated—in exchange for a host of commitments concerning U.S. market access and investment.
2. As Justice Kavanaugh noted in his dissent, the Supreme Court's opinion does not directly address the President's authority to enter bilateral agreements dealing with tariffs.
3. It remains to be seen how U.S. partner countries will respond to the invalidation of IEEPA tariffs that were the impetus for initial negotiations with the Administration. Front of mind will be the possibility that the Administration may use other authorities to reimpose tariffs. Notably, these agreements address—in addition to the now-invalidated IEEPA tariffs—certain sector-specific tariffs, and non-tariff trade issues. For many countries, there will be an upside to maintaining the bilateral trade deals, including business certainty and the preferential rates across different tariffs. However, it remains to be seen whether the Administration will seek to reopen some of these deals following the U.S. Supreme Court's decision on the IEEPA tariffs.

What Businesses Need to Know

1. The Court's decision eliminates the costly IEEPA tariffs. However, businesses will face new tariff measures, as the Administration has already announced its Plan B to replace the IEEPA tariffs. The short-term effect will be to exacerbate existing uncertainty and supply chain risks, but the Administration's use of

established trade authorities with procedural requirements may give more visibility to businesses around the timing and scope of new tariff measures.

2. Businesses will need to monitor the Administration's tariff policies and measures, ensuring that they implement robust compliance programs given the Administration's focus on criminal and civil enforcement of tariff evasion.
3. The extent of the tariff refunds at issue here is unprecedented and the availability of refunds remains an open question, potentially destined for initial resolution in the CIT. Existing mechanisms for seeking a refund exist, but may raise complexities and be subject to delays given the extent of the tariff refunds in question. Businesses are well-advised to file protests with the CBP within the 180-day period required to preserve their rights to refunds. Steps to take include:
 - i. Downloading ACE information and ensure accurate record keeping.
 - ii. Undertaking administrative processes to correct entries, extend liquidation, challenge liquidation.
 - iii. Considering court action.
 - iv. Considering potential for litigation with supply chain partners.

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