

Briefing: The Supreme Court of the United States (“SCOTUS”) has ruled, by a majority, that the International Emergency Economic Powers Act (“IEEPA”) does not authorise the US President to impose tariffs.

Consolidated Cases No. 24-1287 Learning Resources, Inc. v. Trump, President of the United States | together with No 25-250 Trump, President of the United States v V.O.S. Selections, Inc. (hereafter the “IEEPA Judgment”).

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Why read this briefing? First, this briefing focuses on what the SCOTUS said. Second, it explains what certain current consequences of the IEEPA Judgment are and what the future consequences may be. Third, it can also help with evaluation of whether import tariff payments on which IEEPA tariffs were imposed may be recoverable.

Background (The alphabetical references here and in the SOTU and Introduction sections below can be found in the end-notes.)

As a result of tariff actions since January 2025, the U.S. average effective tariff rate as of mid-September 2025 was the highest it has been since the 1930s; according to one (Yale University) estimate, the U.S. overall average effective tariff rate increased from approximately 2.5% in January 2025 to 17.4% in September 2025.^a Since imposing these tariffs, the Trump Administration has been negotiating agreements with U.S. trading partners and reached preliminary agreements or understandings with some, including the European Union^b, Japan, South Korea, the United Kingdom,^c and Vietnam, among others. Until now, these arrangements generally committed to reducing the President’s initially proposed tariff rates, while maintaining an overall increase in tariff rates.^d

US President Trump’s State of the Union (“SOTU”) Address 24 February 2026

In his annual State of the Union Address President Trump insisted that despite the IEEPA Judgment his tariff programme would continue despite the ‘disappointing’ SCOTUS ruling, [Tariffs] *“Will remain in place under fully approved and tested alternative legal statutes and they have been tested for a long time. They’re a little more complex, but they’re actually probably better. Leading to a solution that will be even stronger than before. Congressional action will not be necessary.”*^e

Introduction

The judgment handed down by the SCOTUS on Friday last week, 20 February, invalidates the Trump administration’s IEEPA-based tariff programme. It finds that the President did not have authority to unilaterally impose tariffs (taxes on imports) under that Act. **There are U.S. constitutional implications** regarding the boundaries of the

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Congress and the US President's powers to raise taxes. **There are practical implications** regarding **i)** the possibility of recovering IEEPA tariffs that were paid before the judgment and **ii)** the replacement of the IEEPA tariffs by a non-discriminatory 10% tariff on all imports to the United States as from yesterday, 24 February 2026, under section 122 of the Trade Act of 1974. (The "**s122 tariff**".) (The initial s122 tariff of 10%^f could rise to 15%.)

What the majority said in the IEEPA Judgment

IEEPA, enacted in 1977, authorises the President to "regulate... importation or exportation" during a declared national emergency. The Trump administration argued that the words, "regulate" and "importation," included the power to impose tariffs. The majority in the SCOTUS rejected that interpretation unanimously but fractured sharply on **why**. Chief Justice Roberts, together with Justices Gorsuch, and Barrett applied the **major questions doctrine**, namely: that Congress must speak clearly before delegating what the Chief Justice called the "core congressional power of the purse," (p8). IEEPA did not contain such clarity. No President had invoked IEEPA to impose any tariff in its fifty-year history. The stakes, Chief Justice Roberts observed, "dwarf those of other major questions cases." Justices Kagan, Sotomayor, and Jackson concurred in the result but on plain statutory grounds: the word "regulate" has never been read, in any other statute, to include the power to tax, and reading it to cover tariffs would also authorise taxing exports - which the Constitution expressly prohibits. Justice Jackson separately relied on the legislative history of IEEPA and its predecessor to the same effect.

U.S. Constitutional implications

Article I, Section 8 of the US Constitution vests in Congress the power to "lay and collect Taxes, Duties, Imposts and Excises." That constitutional architecture matters. The Government's entire case rested on two words in IEEPA - "regulate" and "importation" - separated by sixteen others in IEEPA section 1702(a)(1)(B). The administration read those words as conferring unlimited tariff-setting power on the Executive: any amount, any duration, any product, any country, at the President's sole discretion. The six-justice SCOTUS majority profoundly disagreed with the Government's position, although, as noted above, the majority itself then fractured on the correct rationale for that disagreement.

Practical implications i) What possibility of recovering IEEPA tariffs?

The SCOTUS judgment found the tariffs were levied without due authority and, by necessary implication, that they are not '*voidable*' (prospectively) but were void as from the start. However, the Court only answered the narrow question that it posed itself of legality that it posed itself (whether the IEEPA authorises the President to impose tariffs). It does not offer any guidance on recovery of the unauthorised duties. There could be a legislative solution for this question, or solutions could be found piecemeal through litigation.

On Monday, 23 February, 2026, certain US Senators (all of whom are Democrats), sponsored a Bill, the Tariff Refund Act of 2026, to provide for the refund of duties imposed under the IEEPA, with interest, within 180 days. The draft legislation requires

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U.S. Customs and Border Protection (“**CBP**”), which would oversee such reimbursements, to prioritise small businesses.¹ (There is currently no bi-partisan or Republican sponsored initiative to the same effect.)

As regards litigation, on the other hand, there are several reports, also from Monday, 23 February, that FedEx, the large package, commercial delivery and logistics company, filed a lawsuit in the U.S. Court of International Trade seeking a refund for the IEEPA tariffs. Reuters reported that the lawsuit stated: "Plaintiffs seek for themselves a full refund from Defendants of all IEEPA duties Plaintiffs have paid to the United States."²

It has also been reported that more than 1,500 companies had already filed lawsuits to protect their refund rights in the U.S. Court of International Trade before the ruling.³

Practical implications ii) Replacement of the IEEPA tariffs by a non-discriminatory 10% (or 15%) tariff on all imports to the United States for 150 days.

In his dissenting judgment, at page 50, Justice Kavanaugh explicitly identified the alternative statutory vehicles the administration can use to re-impose equivalent measures to those found to be unauthorised by the majority: namely Section 232 of the Trade Expansion Act of 1962, Sections 122, 201, and 301 of the Trade Act of 1974, and Section 338 of the Tariff Act of 1930.

The Administration’s Immediate Response: Section 122 tariffs at 10%

Within hours of the ruling, President Trump announced a 10% global tariff under Section 122 of the Trade Act of 1974. (The “**Trade Act**”). (By Saturday morning he had suggested that could increase to 15%: the maximum permitted under that statute.⁴) The 10% tariff took effect, yesterday, 24 February and runs for 150 days, expiring on 23 July 2026, unless Congress approves an extension.

What about the future?

No President has previously invoked Section 122 of the Trade Act to impose tariffs. The legal basis for doing so is already being questioned, but any judicial challenge will take months. Moreover, the Administration has explicitly said it intends to use the 150-day window to carry out investigations under Section 232 and Section 301 of the Trade Act to replace the Section 122 tariff.

1 See: <https://www.finance.senate.gov/ranking-members-news/wyden-markey-shaheen-and-19-senate-democrats-release-legislation-requiring-refunds-of-trumps-illegal-tariffs>, accessed Feb’26. The News release estimates the unauthorised collection of tariff revenue at US\$ 175 billion.

2 See: <https://www.reuters.com/world/fedex-sues-us-refund-trumps-emergency-tariffs-2026-02-23/>, accessed Feb’26. What appears to be a complete draft of the complaint, showing the wording referred to, is also available at:

<https://storage.courtlistener.com/recap/gov.uscourts.cit.19237/gov.uscourts.cit.19237.2.0.pdf>

³ Source: <https://www.freightwaves.com/news/what-the-ieepa-scotus-ruling-means-for-american-freight>.

⁴ Section 122 Trade act allows the President to impose temporary tariffs of up to 15% to address “large and serious balance-of-payments deficits.”

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The Trump Administrations options, and the requirements for their correct application, are usefully summarised in the table below.⁵

Table 1. Selected Statutory Authorities

Summary of Key Provisions and Examples

	Section 232	Section 201	Section 301	Section 122	Section 338	IEEPA
U.S. Code Reference	19 U.S.C. § 1862	19 U.S.C. §§ 2251–55	19 U.S.C. §§ 2411–20	19 U.S.C. § 2132	19 U.S.C. § 1338	50 U.S.C. §§ 1701–10
Subject Matter	Threats to national security	Injury to domestic industry	Trade agreement violations; certain other practices	International payments problems	Discrimination against U.S. commerce	National emergency
Agency Required to Make Findings	Secretary of Commerce	ITC	USTR	None	None	None
Limit on Duration of Action	None	4 years; may be extended to 8 years in total	4 years; may be extended with no upper limit	150 days	None	None
Limit on Tariff Rate	None	50%; note phasedown requirement	None	15%	50%	None
Selected Tariff Examples	Steel and aluminum, 2018–; automobiles and auto parts, 2025–	Solar cell products, 2018–2026	Certain imports from PRC, 2018–	Never used to impose tariffs	Never used to impose tariffs	Imports from PRC, Canada, Mexico, 2025–; 10% or greater global tariffs, 2025–

Source: Compiled by CRS based on U.S. Code and CRS analysis of selected tariff actions.

Review and Potential actions

The Section 122 10% tariff came into force yesterday. (For more complete information about application of the Section 122 tariff, please refer to endnote ‘f’ below). The 150-day clock ending at midnight on 23 July, is running.

Your priorities could include the following:

- Identify which of your US import entries attracted IEEPA duties and map protest filing deadlines - some are already imminent.⁶

⁵ Source: Congressional and Presidential Authority to Impose Import Tariffs, Updated April 23, 2025, at page 26. See: https://www.congress.gov/crs_external_products/R/PDF/R48435/R48435.2.pdf , accessed Feb’26.

⁶ When goods enter the country, importers pay estimated duties. Customs then has a 314-day window to “liquidate” each entry and finalise the amount owed. Once an entry liquidates, the duty amount becomes final unless the importer has filed a timely protest or obtained a court-ordered suspension of liquidation.

Source : <https://www.freightwaves.com/> op cit.

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- Determine which entity in your group structure bore the economic burden of duties paid and whether a recoverable claim exists.
- File protective Bi-lateral Investment Treaty (“**BIT**”) notices of dispute where any investment treaty limitation period risk exists.
- Review 2025 commercial contracts for force majeure, hardship, and Material Adverse Change (“**MAC**”) clauses triggered by tariff costs.
- Assess your exposure to the new 10% Section 122 tariff, including whether any of product categories fall within the exemptions.
- UK businesses: take urgent advice on whether your EPD sector carve-outs (automotive, aerospace, pharmaceuticals) remain enforceable and what your position is on the 10% general goods rate after 23 July, 2026.
- EU exporters: take advice on whether your arrangements under the 2025 EU–US (Turnberry Deal) framework remain enforceable under the new statutory landscape*.

* The Turnberry Deal

In July 2025, the EU and the US reached a political agreement on tariff and trade issues (the so called “Turnberry Deal”). The International Trade Committee (“**INTA**”) of the European Parliament announced on Monday, 23 February, 2026 that it had put the legislative work for implementation of the Turnberry Deal on hold following the IEEPA Judgment and the US Administrations reaction to it. It commented: *“The proposed replacement for IEEPA, Section 122, applies indiscriminately to all countries exporting to the United States and is imposed on top of the Most Favoured Nation (MFN) rate. As a result, imports from the EU into the US would be subject to an applied rate exceeding the 15% threshold. This, in itself, constitutes a clear departure from the terms of the Turnberry Deal.”*⁷

Postscript

The fundamental importance of the issues raised by the Learning Resources, Inc. and V.O.S. Selections, Inc. cases argued and the issues they raise is underlined by the fact that although Chief Justice Roberts announced the majority judgment and opinion of the Court and each of Justice Sotomayor, Justice Kagan and Justice Jackson agreed; they joined only Parts I, II-A-I and II-B of that opinion. The concurring judgment of Justice Gorsuch is more than twice as long as the majority opinion. There are also three dissenting judgments, of which Justice Kavanaugh’s is the principal dissent⁸.

⁷ Source EP INTA Press Release (accessed Feb’26):

https://www.europarl.europa.eu/pdfs/news/expert/2026/2/press_release/20260223IPR36005/20260223IPR36005_en.pdf

⁸ ROBERTS, C. J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II–A–1, and II–B, in which SOTOMAYOR, KAGAN, GORSUCH, BARRETT, and JACKSON, JJ., joined, and an opinion with respect to Parts II–A–2 and III, in which GORSUCH and BARRETT, JJ., joined. GORSUCH, J., and BARRETT, J., filed concurring opinions. KAGAN, J., filed an opinion concurring in part and concurring in the judgment, in which SOTOMAYOR and JACKSON, JJ., joined. JACKSON, J., filed an opinion concurring in part and concurring in the judgment. THOMAS, J., filed a dissenting opinion. KAVANAUGH, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined.

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Biographical

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Endnotes:

a Congressional Research Services - Executive Branch Tariff Actions in the 119th Congress R48716 page 3. https://www.congress.gov/crs_external_products/R/PDF/R48716/R48716.1.pdf accessed Feb'26.

b White House, Joint Statement on a United States-European Union Framework on an Agreement on Reciprocal, Fair, and Balanced Trade, August 21, 2025, <https://perma.cc/SP5Z-4A3H> accessed Feb'26.

c Executive Order 14309 of June 16, 2025, <https://www.govinfo.gov/app/details/DCPD-202500699> Accessed Feb'26. "Implementing the General Terms of the United States of America-United Kingdom Economic Prosperity Deal," 90 Federal Register 26419, June 23, 2025.

d CRS R48716 *ibid*.

e Source: <https://www.npr.org/2026/02/25/nx-s1-5716159/trump-congress-state-union-read> , accessed Feb'26

f An U.S. Customs and Border Protection Cargo Systems Messaging Service update CSMS #67844987 Imposing Temporary Section 122 Duties, provides the following guidance: "For articles that are the product of any country entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern standard time on February 24, 2026, and through 12:01 a.m. eastern daylight time on July 24, 2026, the following [...] additional duty rate [applies] **an additional ad valorem rate of 10%**. Certain exemptions including for aircraft parts and engines, passenger vehicles, crossover utility vehicles, minivans and light trucks and semi-conductors are then set forth.

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