

The Supreme Court rules against Trump, but his administration has been working on Plan B.

It's the End of the Beginning of the Tariff War

By Scott Lincicome

The Supreme Court's ruling in Learning Resources v. Trump is welcome news for American importers, the U.S. economy and the rule of law. But the tariff fights have only begun.

Invalidating the tariffs President Trump imposed under the International Emergency Economic Powers Act will eliminate the most potent and unchecked instrument in his tariff tool kit, boosting certainty and predictability in the U.S. market. It will also immediately set off a battle over the tens of billions of dollars that the federal government has unlawfully collected from American importers since the spring.

These refunds could be remarkably easy: With almost all duty payments now made electronically, and with every IEEPA-related import assigned a specific tariff code, U.S. Customs and Border Protection could return most of the money owed to importers, with interest, at the push of a button. In several past cases, CBP has issued automatic blanket refunds covering many years and billions of dollars, and duty refunds in general are a daily occurrence.

Yet unless Congress mandates the easy approach, the Trump administration will probably make the refund process as burdensome as possible, requiring every importer to file mounds of paperwork, if not a lawsuit, to get its money back. That process would demand significant time and money that American businesses won't be able to devote to their core operations—and that smaller importers might be unable or unwilling to commit. Government resistance would therefore be a costly travesty as a matter of both economics and fairness. Unfortunately, it's also widely expected.

The longer-term fight will be over the tariffs the administration will impose to replace the now-defunct IEEPA levies. The Constitution grants Congress the power to impose tariffs, but U.S. trade law is littered with provisions delegating the president broad powers to impose tariffs for various reasons.

Mr. Trump has already invoked some of these laws. We have Section 301 tariffs of up to 25% on around half of all Chinese imports, due to alleged unfair trade practices by Beijing. We also have global Section 232 tariffs of up to 50% on imports of steel and aluminum, automotive goods, heavy-duty trucks, copper, and wood products—each imposed on grounds that these goods threaten U.S. national security.

The Trump administration has also created a process whereby "derivative" products made from goods subject to Section 232 tariffs will be covered by those same tariffs. This "inclusion" system is mind-bendingly complicated and has already doubled the coverage of Mr. Trump's steel tariffs. Several other Section 232 investigations—on semiconductors, pharmaceuticals, critical minerals, commercial aircraft and more—were initiated in 2025, setting the stage for more tariffs in the weeks ahead.

In a press conference after the ruling on Friday, Mr. Trump acknowledged that his team had been studying these and other laws as fall-back options, and he announced a slate of new actions to replace his IEEPA tariffs. This includes the current 232 actions, initiating new investigations under Section 301, and imposing a global 10% tariff under Section 122 of the Trade Act of 1974, which empowers the president to address "large and serious" balance-of-payments deficits via global tariffs of up to 15% for no more than 150 days (after which Congress must act to continue the tariffs). The administration might later consider Section 338 of the Tariff Act of 1930—a short and ambiguous law that authorizes the president to impose tariffs of up to 50% on imports from countries that have "discriminated" against U.S. commerce—but this is legally riskier.

These measures will create global tariff regime similar to what Trump imposed under IEEPA. The main difference—and the main benefit for America's economy and trading partners—would rest in how the president does so. IEEPA was

essentially an Oval Office “tariff switch” that Mr. Trump could flip on and off at any time, for any reason and in any amount. This created massive uncertainty and crippling complexity for businesses, foreign governments and the U.S. economy. The alternative authorities, by contrast, have substantive and procedural guardrails that limit their size and scope or, at the very least, give companies time to prepare for tariffs (or lobby against them).

To be sure, “guardrails” is a relative term for a president who has already stretched Section 232’s “national security” rationale to cover whipped-cream cans and bathroom vanities. And the courts have largely rubber-stamped the administration’s previous moves under Sections 232 and 301—a big reason why the tariff Plan B will feature them. Abuse is likely, as is more litigation. And unlike with IEEPA, we shouldn’t expect the courts to save us.

The justices’ ruling is an important victory for constitutional governance and will eliminate the most destabilizing element of Mr. Trump’s tariff regime. But until Congress reclaims some of its constitutional authority over U.S. trade policy and limits the president’s legal tariff powers, costly and erratic tariffs will remain the norm in the U.S., to our economy’s great detriment.

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