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*The Supreme Court strikes down Trump's abuse of executive power.*

## The Real Tariff Liberation Day

### REVIEW & OUTLOOK

A6-3 Supreme Court majority on Friday struck down President Trump's sweeping emergency tariffs ( Learning Resources v. Trump) in a monumental vindication of the Constitution's separation of powers. You might call it the real tariff Liberation Day.

It's hard to overstate the importance of the Court's decision for the law and the economy. Had Mr. Trump prevailed, future Presidents could have used emergency powers to bypass Congress and impose border taxes with little constraint.

As Chief Justice John Roberts explains in the majority opinion, "Recognizing the taxing power's unique importance, and having just fought a revolution motivated in large part by 'taxation without representation,' the Framers gave Congress 'alone . . . access to the pockets of the people.'" Mr. Trump last February deemed fentanyl trafficking a national emergency, which he claimed gave him unbridled authority under the International Emergency Economic Powers Act (IEEPA) to impose tariffs on China, Canada and Mexico. He later said the U.S. trade deficit is an emergency to justify tariffs on any country at rates he has adjusted at his personal whim.

IEEPA grants the President emergency powers to deal with foreign threats, including the authority to "regulate . . . importation or exportation" of foreign property. But the law doesn't mention tariffs, and no previous President has used the law to impose border taxes.

It's "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," the Chief writes in an opinion joined by Justices Neil Gorsuch, Amy Coney Barrett and the three liberals. "When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits."

These are signs that the tariffs violate the Court's major questions doctrine, which says a President needs express Congressional authorization for economic and politically significant actions. The Court used this doctrine to strike down the Biden student loan forgiveness, eviction moratorium and vaccine mandate.

As the Chief writes, the "stakes" in this case "dwarf those of other major questions cases." He cites the Trump team's own claims: "The Government points to projections that the tariffs will reduce the national deficit by \$ 4 trillion, and that international agreements reached in reliance on the tariffs could be worth \$ 15 trillion."

Mr. Trump also claims the term "regulate" in IEEPA is capacious enough to encompass the tariff power. Justices Brett Kavanaugh, Clarence Thomas and Samuel Alito more or less agree in their dissent. But as the Chief writes, the term "regulate," as that term is ordinarily used, means to 'fix, establish, or control; to adjust by rule, method, or established mode.'" "Many statutes grant the Executive the power to 'regulate,'" the Chief points out. "Yet the Government cannot identify any statute in which the power to regulate includes the power to tax." He draws an important distinction that is blurred by the dissent. The real question, he stresses, isn't "whether tariffs can ever be a means of regulating commerce. It is instead whether Congress, when conferring the power to 'regulate . . . importation,' gave the President the power to impose tariffs at his sole discretion." It didn't.

The Administration's strongest argument is that it deserves deference on questions that implicate foreign affairs. The dissent agrees. But as Justice Gorsuch notes in a brilliant concurrence, this logic would have required the Court to uphold the Obama Clean Power plan in *West Virginia v. EPA* (2022) since climate change is an international issue.

Justice Gorsuch acknowledges that “the major questions doctrine may speak with less force where the President and Congress enjoy “overlap[ping] . . . authority” under the Constitution. But the Constitution expressly vests the power over taxation and foreign commerce with Congress, not the President.

Note

Justice Gorsuch also amusingly hoists the liberal Justices on their prior dissents that criticized the use of the major-questions doctrine in cases involving overreaches by Democratic Presidents. “Their approach today is difficult to square with how they have interpreted other statutes,” he writes. Yes, it is.

Mr. Trump lashed out Friday at the Justices who ruled against him (see nearby). But he vindicated their reasoning by invoking another trade law, Section 122, to impose a 10% tariff across the board. This tariff is also bad policy but it’s legal.

The tariff law ruling also gives the lie to the Democratic charge that the current Court is a rubber stamp for Mr. Trump. The Court has now shown it is willing to block abuses of executive power by Presidents of both parties. This is exactly what the Constitution calls on the Justices to do.

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