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Supreme Court Strikes Down IEEPA Tariffs

The Constitutional and Policy Consequences of the Court's Ruling

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- The U.S. Supreme Court ruled 6–3 that IEEPA does not authorize tariffs, reasserting that tariff power must be grounded in clear congressional statute.
- Within hours of the ruling, President Trump announced new 10 percent across-the-board tariffs under Section 122 of the Trade Act of 1974. The 150-day, 15% cap authority functions as a temporary bridge while the administration builds more durable tariff frameworks under Sections 301 and 232.
- The Court left refund mechanics unresolved. With potential exposure exceeding $130 billion, any repayment process is likely to be claims-based, procedural, and prolonged.
- Tariffs remain available, but under more procedural and statute-bound authorities, recalibrating, rather than eliminating, U.S. negotiating leverage.

On February 20, 2026, the Supreme Court ruled 6–3 that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs. As a result, tariffs implemented under IEEPA during the President's second term are invalid.

The administration responded immediately. The President issued two executive orders: (1) terminating the collection of all IEEPA-based tariffs effective February 24[1], and (2) continuing the suspension of duty-free treatment for de minimis imports[2]. In addition, President Trump signed a proclamation[3] imposing a new 10 percent global tariff under Section 122 of the Trade Act of 1974 and indicated that the rate could increase to 15 percent. Existing tariffs imposed under Section 232 (national security) of the Trade Expansion Act of 1962 and Section 301 (unfair trade practices) of the Trade Act of 1974 remain in effect. Trump also directed the Office of the United States Trade Representative (USTR) to launch new investigations under Section 301 and other trade authorities.

The ruling limits the use of emergency powers to impose tariffs. Under IEEPA, tariffs could be introduced quickly following a declaration of national emergency. The alternative authorities operate differently:

- Section 122 allows immediate action but is limited to 150 days and tied to specific statutory conditions[4].
- Section 232 and Section 301 require formal investigations and defined findings before new tariffs

[1] Executive Order – Ending Certain Tariff Actions, February 20, 2026, (link).

[2] Executive Order – Continuing the Suspension of Duty-Free De Minimis Treatment For All Countries, February 20, 2026, (link).

[3] Proclamation - Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems, February 20, 2026, (link).

[4] Section 122 of the Trade Act of 1974 (codified at 19 U.S.C. § 2132) authorizes the President to impose temporary "import restrictions," including a surcharge of up to 15 percent ad valorem, for a period not to exceed 150 days, in response to a "fundamental international payments problem." The statute identifies purposes such as addressing "large and serious United States balance-of-payments deficits," preventing "imminent and significant depreciation of the dollar," or cooperating with other countries to remedy an international balance-of-payments disequilibrium.

can be imposed. These authorities are not time-limited and have previously been upheld in court.

The central policy question is whether the decision weakens U.S. leverage in ongoing trade negotiations. Among Washington trade experts, there is a broad view that countries which have already reached agreements with the administration are likely to honor their commitments, in part to avoid the risk of renewed tariffs under alternative statutory authorities.

That said, there are early indications of potential disruption. On February 23, the European Parliament halted ratification of a trade agreement with the United States, with media reports linking the move to the Supreme Court's ruling. Similarly, an Indian delegation scheduled to travel to Washington on February 22 to finalize an interim agreement canceled its visit. While it is too early to draw firm conclusions, these developments suggest that perceptions of U.S. negotiating leverage may already be shifting.

The Court did not address whether companies are entitled to refunds of tariffs previously collected under IEEPA authority. The potential financial exposure could be significant. The process and scope of any refunds remain unclear.

While the administration retains authority to impose tariffs under existing trade laws, the ruling removes the ability to rely on emergency powers for broad tariff action. U.S. trade policy is therefore entering a period of adjustment, with possible implications for negotiations, business planning, and market expectations. (Licenses, sanctions, embargo and other tools)

The Supreme Court Ruling

(1) Background

The case before the Supreme Court centered on whether IEEPA authorizes the President to impose tariffs. IEEPA allows the President, after declaring a national emergency, to "regulate" certain economic transactions involving foreign countries.

Beginning with executive orders signed on February 1, 2025, the administration relied on IEEPA to impose tariffs on imports from Canada, Mexico, and China, purportedly to address migration flows and fentanyl and other drug trafficking. Subsequently, President Trump expanded IEEPA-based tariffs to a broader set of trading partners through so-called 'reciprocal' tariffs, invoking IEEPA and national emergency declarations that cited large and persistent U.S. trade deficits.

Several importers challenged the IEEPA tariffs, arguing that IEEPA does not explicitly authorize the imposition of duties. The cases were consolidated and ultimately reviewed by the Supreme Court.

(2) The Supreme Court Decision

The Court addressed whether IEEPA authorizes the President to impose tariffs.

In a 6–3 decision, the majority[5] held that IEEPA does not provide such authority. While the statute grants the President broad power to regulate aspects of international commerce during a national emergency, including the authority to "regulate…importation," it does not clearly authorize the imposition of tariffs. The Court emphasized that tariff authority is constitutionally vested in Congress and must rest on clear congressional authorization.

Central to the majority's reasoning was the distinction between "regulatory controls" (such as

[5] In issuing the majority opinion, Chief Justice Robert was joined by Justices Gorsuch, Barrett, Kagan, Jackson, and Sotomayor.

blocking orders, licensing requirements, or prohibitions) and "revenue-raising or duty-setting" measures. In the Court's view, tariffs fall into the latter category and cannot be inferred from general regulatory language.

The majority further noted that Congress has enacted separate statutes that expressly authorize tariffs, including Sections 122 and 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962. Allowing IEEPA to serve as an additional, unstructured source of tariff authority would blur the distinctions Congress established among these frameworks.

Accordingly, tariffs imposed under IEEPA during the President's second term were held invalid.

(3) Dissent

Three justices dissented[6]. They argued that tariffs have long been understood as a traditional means of regulating imports and have historically been used by the executive branch in the conduct of foreign affairs. Justice Kavanaugh, in particular, described tariffs as a familiar regulatory device and questioned whether the majority drew too sharp a distinction between tariffs and other forms of economic regulation.

The dissent also observed that many of the tariffs at issue could potentially have been justified under alternative statutory authorities such as Sections 122, 232, or 301. In their view, this overlap suggested that Congress did not intend to exclude tariffs from IEEPA's scope.

Finally, the dissent warned that the majority's approach could unduly constrain executive discretion in foreign economic policy, where trade measures often operate within a broader diplomatic and national security context.

(4) Immediate Legal Effect

The ruling does not affect tariffs imposed under other statutory authorities, including Section 232 and Section 301. It applies specifically to tariffs based on IEEPA.

The decision represents a clear statement that emergency economic powers do not automatically extend to tariff authority without explicit statutory language from Congress.

Next Steps for Trump's Tariff Agenda

The Supreme Court's decision removes IEEPA as a basis for imposing tariffs. However, the administration retains several alternative statutory authorities. The near-term direction of U.S. tariff policy will depend on how these tools are used.

(1) Section 122: Immediate Authority but With Limitations

Within hours of the Supreme Court's ruling, the President invoked, for the first time in history, Section 122 of the Trade Act of 1974. This provision authorizes temporary, across-the-board tariffs (with certain exceptions[7]) when the United States is experiencing "large and serious balance-of-payments deficits." The new tariffs took effect at 12:01 a.m. on February 24. Although the President announced

[6] Justices Kavanaugh, Thomas, and Alito dissented.

[7] The Section 122 tariffs apply broadly but, in this case, are not universal. The proclamation excludes (i) specific categories of goods identified in annexes to the order, and (ii) certain transactions that qualify for duty-free treatment, including products entered under Chapter 98 of the Harmonized Tariff Schedule of the United States. These categories were also excluded under the prior IEEPA-based tariffs.

his intention to raise the rate to the statutory maximum of 15 percent, the tariff remains at 10 percent as of this writing.

Section 122 is structured around a presumption of nondiscriminatory tariff application. As an exception, however, the statute permits the President to exclude particular countries from coverage if he determines that measures directed at "large and persistent surplus countries" would better achieve the statutory objective. That said, the text does not expressly authorize the imposition of different tariff rates on a country-by-country basis, and the permissibility of discriminatory rate differentiation remains subject to interpretation.

At the same time, U.S. Trade Representative Greer[8] has suggested that country-specific rate variations may be applied in practice, raising the possibility that actual implementation could diverge from a strict textual reading of the statute. In addition, Section 122 is tied to statutory balance-of-payments criteria, and disputes over whether those requirements are satisfied could expose its use to judicial challenge.

That said, Section 122 tariffs are limited to a maximum duration of 150 days. Even if the method of implementation or the manner of application were challenged in court, it is unlikely that a final judgment would be issued within that timeframe. Accordingly, while litigation risk exists, the administration could subsequently transition to a more durable framework under Section 301 or other statutory authorities.

Courts could, in theory, issue injunctive relief, and the ultimate legal outcome remains uncertain. In any event, the longer-term trajectory of U.S. tariff strategy will depend largely on the procedural development of actions under Sections 232 and 301.

(2) Section 301 of the Trade Act of 1974: Unfair Trade Practices

Section 301 of the Trade Act of 1974 is likely to become the administration's primary authority for imposing new tariffs. This provision allows the United States to respond to unfair trade practices by foreign governments.

Section 301 requires a formal investigation by the Office of the U.S. Trade Representative (USTR). The process includes notice, public comment, and findings that a foreign practice is unreasonable or discriminatory and burdens U.S. commerce. Once implemented, Section 301 tariffs do not have a fixed expiration date, but they are subject to a mandatory four-year "review of necessity" and will terminate at four years unless a domestic industry requests their continuation."

Although the investigative process requires formal steps, it may not necessarily be prolonged. As a routine matter, the administration publishes an annual National Trade Estimate (NTE) Report that reviews trade practices of major trading partners and identifies longstanding concerns. Much of the analytical groundwork regarding alleged unfair practices is therefore already developed. As a result, new Section 301 investigations can move relatively quickly, depending on how broadly or narrowly the administration defines the scope of its review.[9]

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[8] David Lawder & Susan Heavey, U.S. tariff rate to hit 15% or more for some nations, USTR says, Reuters, February 25, 2026, (link).

[9] Comment by Angela Ellard, Senior Adviser (Non-resident), Economic Security and Technology Department, CSIS. She served as the Deputy Director-General of the World Trade Organization. Previously she served in Congress as a chief trade counsel. (link)

At the same time, the duration and complexity of a Section 301 action will depend on the policy objective. A narrowly tailored investigation could proceed more efficiently, while a broader, systemic case may require more detailed findings and extended review.

In practical terms, Section 301 provides a durable and legally established pathway for sustained tariff measures. However, it operates within a structured procedural framework and does not allow immediate across-the-board action in the same manner as IEEPA.

(3) Other available authorities

In addition to Section 301, the administration retains other statutory tools that could support new tariff measures.

- **Section 232 of the Trade Expansion Act of 1962 (National Security)**: Section 232 allows tariffs to be imposed following an investigation by the Department of Commerce into whether specific imports threaten national security. This authority has been used in recent years in the steel, aluminum, and automotive sectors. Once imposed, Section 232 tariffs are not time-limited. However, they require a defined investigation and are typically sector-specific rather than across-the-board.
- **Section 201 of the Trade Act of 1974 (Safeguards)**: Section 201 permits temporary tariffs or quotas when increased imports cause serious injury to a domestic industry. It requires an investigation by the U.S. International Trade Commission and findings of injury. Section 201 measures are temporary and are designed to provide time for domestic industries to adjust to import competition.
- **Section 338 of the Tariff Act of 1930**: Section 338 authorizes retaliatory duties of up to 50 percent on imports from countries that "discriminate" against U.S. commerce. The provision has never been used to impose tariffs. The statute is brief and leaves key terms undefined, including what constitutes "discrimination." It assigns a role to the U.S. International Trade Commission (USITC) to monitor and report potential discrimination, but it is not clear whether formal findings by the Commission are required before the President may act. Congressional Research Service analyses[10] have noted that Section 338 does not expressly require the type of structured investigation found in other trade statutes. Because the provision has never been invoked in practice, its procedural boundaries and scope remain uncertain. Any attempt to rely on Section 338 would likely raise significant legal and diplomatic questions.

The Question of Refunds

(1) Lower Courts to Determine How Refunds Are Handled

Although the Supreme Court invalidated the IEEPA-based tariffs, it did not address how previously collected duties should be returned. Nor did it determine whether relief must be applied nationwide or only to the parties that filed suit.

[10] Congressional Research Service, *Congressional and Presidential Authority to Impose Import Tariffs*, CRS Report R48435, Library of Congress, accessed February 23, 2026, (link).

Instead, the Court remanded the case to the Court of International Trade (CIT), which must now determine[11]:

- Whether refunds are required and, if so, under what framework;
- Whether relief extends beyond the plaintiffs to all affected importers;
- Whether nationwide or blanket relief is permissible;
- Whether administrative procedures must be exhausted before repayment;
- How liquidation rules affect already-finalized entries; and
- The mechanics and timing of any repayment or reliquidation process.

(2) Scope of Relief Remains Uncertain

A key open question is whether relief will apply broadly to all affected importers or only to those who filed protective actions at the CIT. The Federal Circuit previously expressed skepticism toward nationwide injunctions in this matter, and the CIT must now revisit the permissible scope of relief.

For this reason, more than 2,000 importers filed direct actions at the CIT under Section 1581(i) as a protective measure[12]. The U.S. Government has indicated that, if the IEEPA tariffs are definitively invalidated, it would not oppose reliquidation for plaintiffs that filed such actions. Whether similar relief will extend to non-parties remains uncertain.

(3) The process will take time

A more likely scenario is that the government establishes a formal claims-administration process, similar to the system used to refund the Harbor Maintenance Tax (HMT) in the mid-1990s. In that instance, following judicial invalidation of certain HMT collections, Customs implemented a structured refund mechanism requiring individual claims. Although the total refund pool was approximately $750 million, the process took roughly two years to complete.

The potential refund exposure associated with the IEEPA tariffs is approximately $133.5 billion as of the last update[13], significantly larger by orders of magnitude. While it is premature to project a specific timeline, historical precedent suggests that repayment, if required, would likely proceed through an individualized, documentation-intensive process rather than an automatic or immediate reimbursement. In practical terms, this is unlikely to be resolved quickly through a single administrative action.

(4) Executive Branch Posture

The administration has indicated that refunds would follow only a final, unappealable judicial order requiring repayment. At a recent press conference, President Trump criticized the Court for not addressing refund mechanics and suggested that the issue could require “two years” or even “five years” of litigation. In an interview with CNN, Treasury Secretary Scott Bessent said that the issue of

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[11] Gregory Husisian, What Every Multinational Should Know About Managing the Aftermath of the Supreme Court’s IEEPA Tariff Decision, The National Law Review, accessed February 23, 2026, (link)

[12] Skadden, Arps, Slate, Meagher & Flom LLP, The Supreme Court Ends IEEPA Tariffs (Feb. 2026), (link) ("The CIT is expected to establish a case management process to handle refund claims… That process would cover the nearly 2,000 cases that have already been filed for that purpose…")

[13] CBP trade statistics as of December 14, 2025. (link)

refunds is not up to the administration, but is up to the CIT, and such ruling could be "weeks or months away".

Even if a formal refund mechanism is established, experts warn that the process could be cumbersome. In public remarks, Bill Reinsch of CSIS says that, in theory, CBP could use existing systems to issue refunds efficiently to affected importers but cautions that the CBP could require formal documentation, detailed paperwork submissions, and strict procedural compliance before authorizing repayment. According to Reinsch, the key variable is not whether a refund mechanism exists, but whether the government chooses to make the process administratively streamlined or administratively demanding.

These statements signal that repayment will not be expedited absent clear judicial instruction. The unwind is therefore likely to be procedural, incremental, and potentially prolonged.

Foreign Policy and Negotiating Leverage

(1) IEEPA as a Tool of Economic Statecraft

IEEPA allowed the administration to impose tariffs immediately following a national emergency declaration and to tailor those measures to specific countries. This flexibility enabled tariffs to function not only as a trade remedy, but also as an instrument of broader economic and geopolitical strategy.

In practice, IEEPA-based tariffs were used in connection with negotiations that extended beyond traditional trade issues. The Trump administration sought to acquire Greenland from Denmark and publicly threatened IEEPA tariffs on Denmark and other European countries (as well as the United Kingdom) unless they acquiesced to U.S. control or sale of the territory. It also signaled potential tariff measures against countries trading with Iran or purchasing Venezuelan oil. In Brazil's case, tariffs were imposed in response to political developments involving supporters of former President Bolsonaro.

The ability to act quickly and target specific countries increased the credibility of these threats.

(2) Structural Limits of Replacement Authorities

With IEEPA no longer available as a legal basis for tariff measures, the structure of how economic pressure can be applied is likely to change. Section 122 allows for immediate action, but it caps the tariff surcharge at 15 percent and limits its duration to 150 days. In addition, the statute is structured around a presumption of nondiscriminatory application, and the permissibility of country-specific differential tariff rates remains subject to interpretive debate.

As a result, while Section 122 can function as a rapid-response tool, it appears to impose relatively greater institutional and structural constraints than IEEPA when used to extract targeted policy concessions from specific countries.

Sections 301 and 232 remain available and are durable once imposed. They require investigations and defined statutory findings before new tariffs can be introduced. This reduces the ability to apply immediate, country-specific pressure on short notice. However, once an action under Section 301[14]

[14] Under Section 301, the U.S. Trade Representative may modify an existing action (including changing tariff rates or adjusting product coverage) provided the changes remain connected to the original findings. Significant modifications

or Section 232[15] is properly established, the administration retains meaningful flexibility to adjust existing measures.

The shift following the Supreme Court's decision is therefore not the loss of tariff authority altogether, but the movement from broad emergency discretion to more statute-anchored and procedurally structured tools.

(3) Early Signals from Trading Partners

Some policymakers in Washington believe that countries that have already reached agreements with the administration will continue to honor those commitments to avoid triggering new tariffs under Sections 301 or 232.

At the same time, early developments suggest that legal constraints are influencing negotiating dynamics. The European Parliament halted ratification of a trade agreement following the Court's decision[16]. Similarly, India postponed a delegation visit to Washington in order to reassess developments after the ruling and the administration's shift to alternative tariff authorities[17]. Reporting indicates that both sides remain interested in an agreement, but timing and potentially terms are under review.

While these developments do not indicate a collapse in negotiations, they suggest that the Supreme Court decision on the IEEPA tariff authority may affect perceptions of U.S. leverage.

(4) Implications for U.S. Credibility

The loss of IEEPA authority reduces the administration's ability to impose immediate, country-specific tariffs in support of broader policy objectives. While tariffs linked to trade rationales can continue under Section 301 or Section 232 once established, it will be more difficult to replicate the flexibility and speed of IEEPA measures that were pursued for non-trade objectives.

Trump has threatened tariffs to influence migration arrangements with Colombia, forcing European countries to accept US acquisition of Greenland, as well as threatening "secondary tariffs" on countries that purchase Venezuelan oil or trade with Iran. Without that tool, the administration may

typically require at least streamlined notice-and-comment procedures and a reasoned explanation. Some trade experts argue there is uncertainty about how freely a president can modify existing Section 301 tariffs without new procedural steps. While modifications remain connected to the original findings, significant adjustments may still trigger procedural requirements such as notice-and-comment and reasoned explanation under the Administrative Procedure Act. This issue continues to be debated in policy circles. (link)

[15] Under Section 232, once the Department of Commerce has made a national security determination and the President has acted, the statute grants continuing authority to "adjust imports." Historically, administrations have modified tariff rates and product coverage under this authority with relatively limited additional procedure, so long as the adjustments remain within the same national security rationale. In Transpacific Steel LLC v. United States (Fed. Cir. 2021), the U.S. Court of Appeals for the Federal Circuit upheld the President's authority under Section 232 to increase tariffs on steel imports from Turkey after the initial national security determination, without obtaining a new Commerce Department report. The court concluded that such adjustments were permissible where they remained tied to the original national security rationale. (link)

[16] European Parliament, EU–US trade legislation: legislative work on hold following Supreme Court ruling, Press release, February 23, 2026, accessed February 23, 2026, (link).

[17] "India-US Will Resume Trade Talks With More Clarity on Tariffs, Minister Says," Yahoo News Singapore (from Reuters), accessed February 24, 2026, (link).

face greater challenges in signaling coercive resolve in policy areas where traditional trade rationales do not apply.

In this broader context, other forms of statecraft (including diplomatic pressure or military positioning) may assume a more prominent role in signaling U.S. resolve. In other words, shifts in economic leverage can coincide with heightened emphasis on other instruments of national power. How this manifests on matters of foreign policy remains to be seen.

Congressional Dynamics in an Election Year

The Supreme Court's ruling reasserts congressional primacy over tariff authority by limiting the use of emergency economic powers for broad tariff measures. How Congress responds (both legislatively and through oversight) is emerging as a central debate in Washington.

(1) Congressional Oversight and Legislative Options

Lawmakers from both parties have called for enhanced oversight of tariff policy following the Supreme Court decision. Some Democrats have welcomed the ruling as a constitutional check on executive authority and pushed for measures to protect consumers and small businesses from tariff costs. Republicans are more divided: some argue Congress should expand Trump's tariff authority while others view the ruling as a necessary restraint on executive power.

Several proposals circulating in Congress reflect these divides. Trump's allies, led by Senator Bernie Moreno (R-OH), have already suggested exploring legislation that could allow tariff increases to be approved by a simple majority vote through the reconciliation process[18]. Others are considering legislation to require greater congressional notification or approval for future tariff actions, including potential bipartisan efforts such as a "Trade Review Act"[19] that would require the executive to consult with Congress before maintaining tariffs beyond a short period.

In addition to broad review bills, members of Congress are likely to consider narrower legislative responses focused on specific sectors or policy objectives (e.g., agricultural tariffs, national security carve-outs, or relief mechanisms for businesses affected by invalidated tariffs). Continued litigation over refunds and tariff authority may provide additional impetus for legislative action.

(2) Election Year Dynamics

The debate over tariff authority is unfolding against the backdrop of the 2026 midterm election cycle, where economic concerns (particularly affordability and inflation), are top voter priorities. Some lawmakers argue that broad tariffs contributed to higher costs for U.S. businesses and consumers, while others defend strong trade enforcement as a tool to protect domestic industries.

While Republicans hold only narrow majorities in both chambers (meaning small shifts in party cohesion could influence legislative outcomes) it is difficult to envision any effort to significantly curtail President Trump's tariff authorities attracting the veto-proof support necessary to become law. House Republicans have shown little appetite for curtailing the President's trade policy; only six Republicans voted against the Canada tariffs this month.

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[18] Mike Lillis & Andrew Duehren, Trump Tariffs Supreme Court Ruling, The Hill, February 24, 2026, (link).

[19] The Trade Review Act of 2025 (S.1272/H.R.2665) is a bipartisan bill introduced in early 2025 aimed at reasserting congressional authority over tariffs by limiting the President's power to impose them unilaterally. The legislation requires congressional approval for new tariffs, mandates justification reports within 48 hours, and caps unapproved duties at 60 days.

At the same time, efforts to expand presidential tariff authority (such as the proposal advanced by Senator Moreno) are far from assured. House Republican leadership has signaled limited interest in inserting Congress more directly into the tariff debate, suggesting that both restriction and expansion of executive trade powers face meaningful political constraints.

Conclusion

The Supreme Court's decision does not extinguish tariff authority, but it fundamentally reshapes how that authority must be exercised. The center of gravity has shifted from open-ended emergency discretion in the White House to clearly grounded, statute-based processes defined by Congress. The administration still retains meaningful trade tools, but they now operate within more structured procedural guardrails and heightened institutional oversight. The next phase will not turn on whether tariffs can be used, but on how deliberately (and how sustainably) they are deployed, and how Congress, U.S. trading partners, and the courts recalibrate in response.

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