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SCOTUS Strikes Down President Trump's Tariffs

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In *Learning Resources, Inc. v. Trump*, the Supreme Court struck down many of President Trump's tariffs. The Court held 6-3 that the law he had relied upon, the International Emergency Economic Powers Act of 1977 ("IEEPA"), does not authorize the President to impose tariffs.

Background

The decision arises out of the President's "Liberation Day" tariffs. Invoking IEEPA, the Administration imposed broad tariffs on our trading partners, contending that the trade deficit was a national emergency. IEEPA provides that, when the President declares an emergency based on an "unusual and extraordinary threat" to national security or the economy, he may "investigate, [temporarily] block, ... regulate, direct and compel, nullify, void, prevent or prohibit" any importation from abroad. The President also invoked IEEPA to impose "trafficking" tariffs on China, Canada, and Mexico related to the fentanyl crisis.

Small businesses and states sued, alleging that IEEPA did not authorize the President to impose the tariffs. The Court of International Trade agreed, the Federal Circuit affirmed, and the Supreme Court granted review.

Decision

In a 6-3 ruling, the Court sided with the challengers, holding that IEEPA did not authorize the President to impose the tariffs. The Chief Justice wrote the majority opinion and was joined in full by Justices Gorsuch and Barrett, and in part by Justices Kagan, Sotomayor, and Jackson (although the latter three only disagreed with the Chief Justice's reasoning—all six justices agreed with the core holding that IEEPA does not authorize tariffs). Justices Thomas, Alito, and Kavanaugh were in dissent, with Justice Thomas and Justice Kavanaugh each penning a dissenting opinion. Four of the Justices in the majority (Kagan, Gorsuch, Barrett, and Jackson) offered separate opinions, mostly focusing on the "major questions" doctrine.

Writing for a majority of the Court, Chief Justice Roberts first noted that the tariff power is an outgrowth of the taxing power and that the Founders considered taxes and other revenue raising measures to be a critical action undertaken only by Congress.

The opinion went on to reject the Administration's interpretation of IEEPA. It pointed out that the government relies on the words "regulate" and "importation" for the power to impose tariffs, and rejected that reading as both linguistically and structurally implausible. IEEPA contains a long, detailed list of things the President may do with respect to transactions and property interests during a national emergency, but it never mentions "tariffs" or "duties." That stands in stark contrast to other tariff statutes, which mention the terms expressly. The ordinary meaning of "regulate" is to control, govern, or direct conduct, not to tax. The Government could not point to any statute where the word "regulate" authorized taxes. If the word "regulate" was as broad as the government suggested it was, then the rest of IEEPA's powers are likely superfluous.

The Court also noted the absence of historical practice under IEEPA. Despite decades of presidential reliance on IEEPA for a wide range of sanctions programs, no President before this one had invoked the statute to impose tariffs. The Court treated that lack of precedent as further evidence that IEEPA had not been understood to authorize such a dramatic action.

In the portion of his opinion not joined by a majority of the Justices, the Chief Justice invoked the Court's major questions doctrine, which holds that when the executive branch seeks to make decisions of major "economic and political significance," it must point to clear Congressional authorization for that decision—which IEEPA failed to provide. He explained that the tariffs go to the "power of the purse," Congress's most important authority, and may have an effect on the U.S. economy totaling in the trillions of dollars. He rejected arguments that the major questions doctrine should not apply to statutes dealing with emergencies or foreign affairs (a distinction many scholars had believed the Court would draw). Instead, because the tariff power is given directly to Congress, the major questions doctrine must apply with equal force.

Justice Kagan, joined by Justices Sotomayor and Jackson, concurred in portions of the Chief Justice's opinion and in its judgment, but wrote separately to address the major questions doctrine. She explained

that in her view, the Chief Justice's opinion reached the right result, but incorrectly invoked the major questions doctrine to reach its conclusion. In her opinion, the government's position failed as a matter of ordinary statutory interpretation.

Justice Gorsuch also authored a concurrence, largely responding to Justice Kagan and defending the major questions doctrine. He argued that the doctrine is the only consistent way to analyze executive power, pointing out that the Justices who purport to reject the doctrine apply it in all but name. Justice Gorsuch rejected Justice Barrett's view (set out in a concurrence of her own) that the major questions doctrine is merely the application of "common sense" to statutory interpretation.

Justice Barrett responded in her own concurrence, asserting that Justice Gorsuch attacks a "straw man," and that she believes the major questions doctrine is, and must be, a way of reading statutory language in context.

Justice Jackson concurred alone, stating that she would use legislative history, rather than just the text, to inform IEEPA's meaning.

Justice Kavanaugh authored the principal dissent, joined by Justices Thomas and Alito. He argued that in the relevant historical and legal context, the authority to "regulate . . . importation" had been understood to include the power to impose duties on imports. In his view, Congress enacted IEEPA against a backdrop in which similar language had been used and upheld in connection with presidential import duties, and the Court should not presume that Congress silently stripped that established authority when it adopted IEEPA's text. He also stressed the emergency setting and the foreign-affairs stakes, warning that applying the major questions doctrine incorrectly constrains the political branches' ability to respond quickly to external threats through economic measures.

Justice Thomas authored a separate solo dissent. He argued that the nondelegation doctrine should not apply in cases regarding foreign commerce and duties.

Going Forward

While the Supreme Court's decision rejected the Administration's efforts to impose tariffs under IEEPA, it has not removed uncertainty surrounding tariffs. Immediately following the Supreme Court's announcement of its decision, the administration announced that it will reimpose similar tariffs by relying on sources of authority other than IEEPA. Sections 232 and 301 the Tariff Act allow for the President to impose tariffs to combat issues such as national security threats and unfair trade practices. The President has also announced an immediate, 10% global tariff under Section 122 of the Trade Act of 1974, which allows the President to impose tariffs in response to large trade deficits. All of these laws, however, come with limitations. Sections 232 and 301

require more complex procedure before duties can be levied, and Section 122 comes with a 150-day time limit (absent congressional approval).

In addition, the Supreme Court's decision ripens the question of whether tariff refunds will be available for the now-invalidated tariffs. The Court did not address the issue of refunds in its decision, and the issue will now be litigated in the lower courts and in proceedings involving the relevant agencies.

Moreover, while the decision was decided on a 6-3 vote, the seven different opinions issued across the nine Justices address a variety of areas of disagreement on issues of constitutional and statutory interpretation that may become relevant in future challenges to Administration actions, especially any new tariffs.

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