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Supreme Court Hears Challenges to IEEPA Tariffs

On November 5, the Supreme Court heard oral argument in three cases¹ concerning whether the International Emergency Economic Powers Act (IEEPA) authorizes the President to impose tariffs to address a national emergency.²

At issue in the case is specific language in the IEEPA statute that authorizes the President to, among other things, “by means of instructions, licenses, or otherwise ... regulate ... importation” to “deal with” a declared national emergency. It is this authority that President Trump has used to impose tariffs on Canada, Mexico, and China to address concerns about the flow of fentanyl and fentanyl-precursors into the United States³; as well as to impose worldwide tariffs on nearly all imported goods to address “large and persistent annual U.S. goods trade deficits.”⁴ Lower courts had struck down the tariffs, ruling either that IEEPA does not authorize the President to impose tariffs of any kind or that IEEPA may provide limited tariff authority but does not authorize the President to impose sweeping tariffs on nearly all imported goods from nearly all U.S. trading partners.

During the course of oral arguments before the Supreme Court, a majority of the Justices expressed skepticism of the Government’s argument that the statutory authority under IEEPA to “regulate importation” extends to imposing tariffs. While the timing of a decision is unclear, the expedited process for the case thus far could prompt the Court to issue a decision before the end of 2025.

The Principal Arguments of the Parties

During the argument, which was scheduled for 80 minutes but lasted more than 2.5 hours, the Government argued that the plain reading of “regulate importation” includes the power to tariff. In the Government’s view, the power to tariff is a “lesser” authority than the power to, for example, place an embargo on imported goods - which the parties generally agreed would be permissible under the statute. In its opening, the Solicitor General, arguing on behalf of the Government, said:

“The phrase ‘regulate . . . importation’ plainly embraces tariffs, which are among the most traditional and direct methods of regulating importation. And plaintiffs concede that IEEPA authorizes quotas and other tariff equivalents.

¹ The consolidated cases included *Learning Resources, Inc. v. Trump* (24-1287) and *Trump v. V.O.S. Selections, Inc.* (25-250). The Court also heard argument from the Oregon Attorney General on behalf of a coalition of 12 states.

² As a reminder, tariffs imposed under other authorities - including Section 232 of the Trade Expansion Act of 1962 or Section 301 of the Trade Act of 1974 - are not at issue in this case and will not be impacted by the Court’s ruling.

³ Executive Order 14193, *Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border* (Feb. 1, 2025); Executive Order 14194, *Imposing Duties To Address the Situation at our Southern Border* (Feb. 1, 2025); Executive Order 14195, *Imposing Duties To Address Synthetic Opioid Supply Chain in the People’s Republic of China* (Feb. 1, 2025).

⁴ Executive Order 14257, *Regulating Imports With the Reciprocal Tariff to Rectify Trade Practices That contribute to Large and Persistent Annual United States goods Trade Deficits*,” (April 2, 2025).



... IEEPA confers major powers to address major problems on the President, who is perhaps the most major actor in the realm of foreign affairs. And ... Congress may assign the President broad authority regarding the conduct of foreign affairs, where he enjoys his own inherent Article II powers."

The Solicitor General asserted that this case is about the President's inherent foreign affairs powers under Article II of the Constitution, as opposed to Congress' power "To lay and collect Taxes, Duties, Imposts and Excises" under Article I. In furtherance of this argument, the Solicitor General argued that the tariffs at issue in the case are "regulatory tariffs" because they are "a foreign-facing regulation of foreign commerce, not a "revenue-raising tariff" because the revenue raising aspect of the tariffs is "only incidental."

Neal Katyal, arguing on behalf of the businesses challenging the authority to impose tariffs under IEEPA, disputed both of these interpretations. In his opening, Katyal stated:

"Tariffs are taxes. They take dollars from Americans' pockets and deposit them in the U.S. Treasury. Our founders gave that taxing power to Congress alone. Yet, here, the President bypassed Congress and imposed one of the largest tax increases in our lifetimes."

With this framing, Katyal repeatedly argued that the tariff authority is a tax which falls under Congress' Article I constitutional authority, not an Article II foreign powers authority. He further argued that Congress has given tariff authority to the Executive Branch dozens of times, and in each instance, has made the tariff authority explicit.

The Justices Questions

During arguments, Justices Kagan, Sotomayor, and Jackson appeared skeptical of the Government's argument - in some instances openly disagreeing with the Solicitor General's characterization that a tariff is not a tax or that the power to tariff is anything other than Article I authority, which Congress may delegate, but in such cases, must do so clearly. The Justices also questioned the Government's argument that these are "regulatory tariffs" as opposed to "revenue-raising tariffs." In one exchange, Justice Sotomayor said:

"I just don't understand this argument. It's not an article. It's a congressional power, not a presidential power, to tax. And you want to say tariffs are not taxes, but that's exactly what they are. They're generating money from American citizens, revenue."

Chief Justice Roberts, and Justices Gorsuch and Barrett - three of the six conservative Justices on the Court - also questioned the Government's argument. In her initial exchange, Justice Barrett asked whether the Solicitor General could point to any statute where "regulate importation" has been used to confer tariff imposing authority. The Solicitor General could only point to IEEPA and its predecessor statute, the Trading with the Enemies Act. Chief Justice Roberts questioned the Solicitor General about its characterization that the tariffs are not a form of taxation and only raise revenue incidentally.



Justice Gorsuch expressed concern that if the Court finds that IEEPA confers tariff authority to the President, as a practical matter, Congress would not be able to retrieve that power if it wanted to do so. Justice Gorsuch told the Solicitor General this would amount to “a one-way ratchet towards the gradual but continual accretion of power in the executive branch and away from the people’s elected representatives.”

Questions by Justices Kavanagh, Alito, and Thomas suggested skepticism that the power to “regulate importation” did not also encompass the power to tariff imports. Their questions also suggest concern with limiting the President’s ability to respond to national emergencies and ensuring he has all the necessary tools to do so. For example, Justice Thomas adopted language used by the Solicitor General in referring to the tariffs as “foreign facing” and emphasized that “foreign affairs is a core power of the executive.” Justice Thomas asked Katyal whether the President could impose a tariff under IEEPA in response to a U.S. citizen being held hostage by a foreign government. Justice Barrett raised, as did other Justices, questions about whether the word “license” in the IEEPA statute was equivalent to a tariff. Katyal argued it was not in this instance. Justice Alito questioned whether all tariffs are revenue-raising.

Finally, on behalf of the State parties, Benjamin Gutman argued in support of the businesses. In so doing, he argued that the power to tariff - or tax - is a fundamentally different power than the power, for example, to issue an embargo or quotas.

What’s Next?

The Supreme Court often waits to issue its biggest decisions until the end of the term, in June. But in this instance, where the parties have asked for expedited treatment and where considerable uncertainty remains until the case is decided, it is possible that the Court will issue a decision much more quickly - perhaps before the end of the year. That said, there is no requirement that the Court rule quickly, and the question before the Justices is complex. We also caution that the Justices’ questioning during oral arguments is not necessarily predictive of the Court’s final opinion.

That said, if the Supreme Court finds that IEEPA does not authorize the President to impose tariffs, the Court may grant relief to the five businesses who brought the cases - possibly setting in motion refunds of tariffs paid or remanding to a lower court for further action. But there is a great deal of uncertainty as to what relief might be available for companies who are not a party to the case or how a refund process might be implemented.

On this point, Justice Barrett asked Katyal if a reimbursement process would be “a complete mess.” In response, Katyal acknowledged that it would be difficult, but that was not a reason for the Court to rule in a particular way. He also responded that the Court had several options for granting relief, including administrative procedures outlined in 19 U.S.C. 1514; staying the case so Congress can act, if appropriate; or perhaps limiting the decision to prospective relief. However, experts also believe that if the tariffs are struck down, it logically follows that importers would be entitled to refunds, though this question could get remanded to a lower court for consideration, and the Government may require importers to affirmatively take action to seek a refund.



Finally, if the Supreme Court rules that IEEPA does not authorize the imposition of tariffs, it is widely anticipated that the administration will turn to other tools to carry out its [America First Trade Policy](#) agenda. This includes the use of section 232 of the Trade Act of 1962 and section 301 of the Trade Act of 1974, as well as the possible use of section 122 of 1974 Act or section 338 of the Tariff Act of 1930. In other words, even if IEEPA is taken away from the President as a potential tariff tool it does not mean the end to tariff uncertainty.

You can listen to the full audio of the oral argument [here](#). A full transcript is also available [here](#).