

World after the judicial rebuff of Trump tariffs

The US Supreme Court ruling provides reasons to celebrate, but the threat of tariffs under other legal provisions remains

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One of the US's founding fathers, Thomas Jefferson, asseverated long ago that if one wishes to prevent men in power from doing mischief, they must be bound by the chains of the Constitution. Wielding the power of judicial review, the US Supreme Court upheld this key tenet of liberal democracy based on the rule of law in its *Learning Resources v Trump* ruling. The question before the court was whether the US president has the power to impose tariffs under the International Economic Emergency Powers Act (IEEPA) — a 1977 US federal legislation that gives the American president the power to regulate international commerce. This question arose as President Donald Trump had last year used the Act's provisions to weaponise tariffs as a tool of geopolitics. Citing national emergency under the IEEPA, Trump unilaterally imposed tariffs of “unlimited duration, amount, and scope” on America's trading partners — allies and rivals alike. These tariffs, which came to be known as reciprocal tariffs, wreaked havoc in the international trade world and toppled the rules-based international trading order.



Two legal provisions that Trump can also use to impose tariffs are Section 232 of the Trade Expansion Act and Section 301 of the Trade Act. (Bloomberg)

Now, in a major respite from this relentless Trumpian onslaught, the US Supreme Court has held that the president has no power to impose tariffs under the IEEPA, and that Trump's reciprocal tariffs are thus unconstitutional. Specifically, the court held that the IEEPA authorises the US president to “investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit . . . importation or exportation.” The court said that in this lengthy list of powers, there is no mention of tariffs and duties. The authority to “regulate” is distinct from the power to impose a tariff. Expounding the principle of separation of powers, the court held that a tariff constitutes a tax and that under US law, this

power of the purse is assigned to the US Congress, not the president. The US Supreme Court's ruling has underlined a fundamental postulate of constitutional theory: If executives begin to exercise the power to tax without the necessary legislative oversight, it would be an open invitation to tyranny.

While the US Supreme Court's decision is a significant pushback against the rising forces of competitive authoritarianism in America, and brings the chapter on IEEPA tariffs to a close, it does not put an end to the US weaponising tariffs. The Trump administration does not adhere to the principle of forbearance, as described by political scientists Steven Levitsky and Daniel Ziblatt, which emphasises self-restraint in the exercise of institutional power. Thus, it's not surprising that it has adopted a combative posture.

Even before the ink on this judgment had dried, the Trump administration announced it would impose tariffs on America's trading partners using other domestic legislation, though such tariffs might not be as sweeping as the IEEPA tariffs. The US has announced that it would impose tariffs of up to 15% under Section 122 of the 1974 Trade Act. This American law empowers the US president to impose tariffs for 150 days in the event of a balance-of-payments problem. This period can only be extended with the approval of the US Congress. Moreover, these tariffs must be applied uniformly across all countries. But imposing Section 122 tariffs in the current context is illegal because the US is not facing a balance-of-payments crisis. None of Trump's predecessors in the Oval Office used this law.

The other two legal provisions that the Trump administration can use to deploy tariffs are Section 232 of the 1962 Trade Expansion Act and Section 301 of the 1974 Trade Act. Section 232 of the Trade Expansion Act empowers the US president to impose tariffs on the grounds of "national security" based on an investigation and recommendation of the commerce secretary. Although unlike Section 122 tariffs, Section 232 tariffs do not have an upper cap, they cannot be imposed across the board, and would generally be sector-specific. Critical to recall that during President Trump's first term, the US had imposed Section 232 tariffs on steel and aluminium (including on Indian steel and aluminium), which were deemed illegal by a World Trade Organization (WTO) panel in 2022.

Section 301 of the Trade Act empowers the US to impose tariffs or other trade restrictions. This law authorises the US to impose restrictions, following investigations, if the US's trading partners engage in unfair trade practices or unreasonable and discriminatory actions that burden US commerce. Imposing Section 301 tariffs mandates consultation with the concerned foreign country. During Trump's first presidential term, the US imposed Section 301 tariffs on China, which the Biden administration continued. Since Section 301 tariffs are based on investigations and mandate an elaborate procedure, it is unlikely they can be deployed to carpet-bomb all countries with tariffs as the IEEPA tariffs were. However, as Inu Manak of the Council of Foreign Relations argues, the Trump administration can launch massive Section 301 investigations as a new tool to coerce countries to sign trade agreements dyed by the "America First" trade policy.

Finally, what happens to the "reciprocal trade agreements" that the US wishes to sign with countries like India? The primary concession the US has promised under

these agreements is to reduce IEEPA tariff rates, such as lowering them from 25% to 18% for India. Since these tariff rates are no longer in effect, countries should reconsider the need to sign a trade agreement with the US. While the threat of tariffs under other legal provisions remains, countries like India should consider tackling them through all available forums, including the WTO's dispute settlement body, as China and other countries have done. In conclusion, the US Supreme Court has provided a reason to celebrate. The fight against the US's arbitrary tariffs and its weaponisation should continue unabated.

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