Insights: Publications

Takeaways From Supreme Court Hearing on Tariffs

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On November 5, 2026, the Supreme Court heard oral arguments concerning tariffs. The case, *Learning Resources, Inc. v. Trump*, addresses whether the International Emergency Economic Powers Act ("IEEPA") grants President Trump sufficient authority to impose the reciprocal and country-specific tariffs issued under that statute. Below are some key points from the hearing.

1. Skepticism on Presidential Authority Under the IEEPA: Several Justices appeared skeptical that the IEEPA authorizes the President to impose sweeping tariffs of the type currently in effect. A recurring argument was that tariffs function as a form of taxation, something the IEEPA was not designed to support. The broader concern centered on the Administration's interpretation of the IEEPA, which effectively allows the President to declare a national emergency on nearly any basis and impose open-ended tariffs on virtually any country, even those only tangentially related to the declared emergency. Also of note, in seeking to distinguish tariffs from other forms of foreign trade action, the Justices repeatedly noted that, unlike tariffs which generate revenue, the IEEPA empowers the President to completely bar the entry of goods into the United States.

2. Reissuing the Tariffs Under Other Authorities: Perhaps the most revealing comments came from Justice Alito, who asked, if the Court were to find that the IEEPA does not provide tariff authority, what would stop the President from simply reissuing the same tariffs under alternative authorities such as Sections 301, 232, or even 338? Counsel candidly acknowledged that nothing would prevent that outcome, and that the question of whether those other statutes provide adequate authority would simply be litigated anew, likely reaching the Supreme Court again within a year.

3. Ancillary, Though Critical, Practical Implications: Several practical issues with potentially far-reaching consequences were raised but left unresolved, including whether the U.S. would be required (or even able) to refund collected tariffs, and if any ruling limiting the IEEPA's scope would apply retroactively or prospectively.

Takeaways: Predicting Supreme Court outcomes is difficult at the best of times, but the oral argument appeared more favorable to the petitioning companies than to the Administration. The broader question, however, is whether a ruling constraining IEEPA authority would meaningfully change the tariff landscape. Even if the Court limits the IEEPA's reach, the President could immediately reimpose tariffs under other statutory provisions. Moreover, many of the affected countries have already entered or are finalizing trade agreements with the U.S. that effectively ratify these tariff structures, suggesting their economic impacts will persist regardless of how the Court rules.

In the longer term, Congress, and key agencies such as the Office of the U.S. Trade Representative, remain the actors most likely to influence tariff policy in a lasting way. Notably, the Senate recently voted to rescind the emergency declaration underpinning the tariffs on Canada. That said, meaningful action from any of these entities will require a fully functioning federal government, something unfortunately lacking at the moment.

We'll continue to monitor and provide updates as these issues develop.

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