

Policy Backgrounder

Court of International Trade Rules Against The 10% Global Tariff

A panel of the US Court of International Trade (CIT) ruled that the 10% global tariff the President imposed after the Supreme Court's decision in *Learning Resources v. Trump* is "unlawful." However the immediate impact of the decision will be minimal, as the court granted relief only to those plaintiffs in the case who had standing to bring the suit rather than to all importers who have paid the tariff.

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- The consolidated case, *State of Oregon, et al. v. US*, and *Burlap and Barrel Inc. et al.*,¹ concerns the 10% global tariff imposed by Proclamation No. 11012² after the Supreme Court ruled the "Liberation Day" tariffs unconstitutional. The court stated that the President's Proclamation did not meet the statutory requirements set out in Section 122(a) of the Trade Act of 1974 under which he imposed the tariffs.
- It is unclear what will happen next. The Administration will doubtless appeal the decision and request a stay -- perhaps seeking direct review by the Supreme Court. But the Administration must also choose whether to continue collecting tariffs that have now been declared unlawful, even if it does not yet face a court order to grant refunds.
- In any event, the Administration's 10% global tariff expires in July, unless Congress votes to extend it, which is unlikely.
- Importers of record seeking refunds under *Burlap and Barrel* must presumably file separate suits at the Court of International Trade, unless the decision is stayed.

Section 122 and the Global Tariff

In *Learning Resources v. Trump*, the Supreme Court ruled that the fentanyl-related tariffs on Canada, China, and Mexico and the “Liberation Day” tariffs all imposed under the International Emergency Economic Powers Act are unconstitutional. The Court stated that these tariffs are taxes, and the power to tax lies only with Congress, not the President.

The same day as this decision, the President issued Proclamation 11012, “Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems” and imposed a 10% tariff citing authority of Section 122(a) of the Trade Act of 1974 to impose temporary tariffs (not to exceed 150 days) of up to 15% to address “fundamental international payments problems. A group of states and a group of private importers brought suit against the tariffs alleging that the Proclamation exceeds the President’s authority under Section 122(a).

The Critical Question: Who Gets to Sue?

The CIT panel ruled 2-1 in favor of the plaintiffs. (A senior judge dissented on grounds of both statutory interpretation and the interpretation of the court’s rules of procedure.) The majority opinion written by the Chief Judge and another Judge is carefully reasoned and designed to appeal to both groups of Supreme Court Justices who ruled against the Administration in *Learning Resources*. A significant part of the opinion relies on originalist principles of jurisprudence and cites the “major questions doctrine” and the doctrine of nondelegation (essentially, that Congress cannot delegate to other Branches the powers the Constitution has assigned it). Another part gives a detailed legislative history of Section 122(a) in recognition that some Supreme Court Justices use legislative history in reaching their decisions.

In *State of Oregon*, the panel decided that only the State of Washington had standing to sue among the states plaintiffs because only Washington had proven that it was an importer of record (here, by the University of Washington of goods for its research functions). The other states, which alleged indirect harms, did not have standing and thus were dismissed from the suit. In contrast, all private importers in *Burlap and Barrel* were granted standing on the ground that they are importers who suffered direct harms from being asked to pay the tariffs.

What Does “Balance of Payments” Mean?

Having decided this threshold question, the court then turned to the heart of the matter: whether the 10% global tariff exceeds the President’s authority. The court began that analysis by citing *Learning Resources* to the effect that Congress grants the power to impose tariffs -- which is a taxing power -- only “clearly and with careful constraints.” Section 122(a) states in part that the authority to impose the temporary tariffs applies “[w]henver fundamental international payments problems require special import measures to restrict imports,” including “to deal with serious and large United States balance-of-payments deficits [.]” This language opens a line of judicial inquiry as to the meaning of the term “balance of payments” in Section 122(a).

The court concluded that because Congress used different language (“balance of trade”) elsewhere in Section 122, Congress therefore intended a specific meaning of “balance of payments” in Section 122(a). Thus, determining the meaning of the term “at the time the statute was enacted,” the court concluded that the Proclamation did not meet the statutory requirements. While the Proclamation uses trade deficits and other measures to justify the action, “[n]owhere” does it “identify balance-of-payments deficits within the meaning of Section 122 as it was enacted in 1974.” Thus, the Proclamation is “invalid, and the tariffs imposed on Plaintiffs are unauthorized by law.”

Further, the opinion raised two other points that the *Learning Resources* majority -- and some Justices in its minority -- would normally endorse. First, the power is too wide: “if the President has the ability to select among the sub-accounts to identify a balance-of-payments deficit, unless every sub-account is balanced, the President would always be able to identify a balance-of-payments deficit [.]” Something similar was at issue in *Learning Resources* -- if the President has the power to impose tariffs by emergency declaration, the power is essentially unlimited and thus constitutional suspect. Second, because this raises a nondelegation question, the court sought to use the “canon of constitutional avoidance” to interpret the statute more narrowly, on the ground that a “plausible construction” that does not raise a constitutional question “gives better effect to congressional intent” by permitting the statute itself to survive judicial review. In essence, the court ruled that Congress did its job well and clearly in 1974 in defining a narrow category under which tariffs could be imposed under Section 122(a).

Limited Relief

However broad the principle, however, the decision will have limited immediate practical impact. Having limited standing, the court granted a permanent injunction against the tariffs only for the parties (Washington and the private plaintiffs) that did have standing. It did not issue a universal injunction because of uncertainty over its ability to issue nationwide injunctions following the Supreme Court’s decision in *Trump v. CASA* that sharply limited those injunctions. In doing so, the court likely avoided a ground for a quick appeal and stay of its decision but limited its impact. (It is also an instance where the rule against nationwide injunctions hurts the interests of business.) The court also noted, however, that the plaintiffs did not request universal relief and thus declined to grant something for which they had not asked. Thus, the immediate practical impact of the decision will likely be very limited.

Next Steps

The Administration will almost certainly appeal and may seek a ruling on the Supreme Court’s “emergency docket” rather than the normal course of seeking a hearing *en banc* of the whole CIT. For similar reasons, the Administration will likely delay paying refunds of the tariffs to the affected plaintiffs, arguing that it believes they were validly imposed.

The Administration has another choice to make: whether to suspend a tariff issued under a Proclamation that has now been declared invalid. Presumably it will appeal and, on that ground,

seek to continue collecting the tariff. Other importers of record, however, may also file suit to get injunctions against their paying the tariffs. In all circumstances, there will be more litigation.

For the business community more broadly, it is another signal that the clarity and strength of the *Learning Resources* decision offers opportunities to challenge the Administration's tariff policies and judicial sympathy for *Learning Resources'* conclusion that Congress may only delegate tariff policy to the President carefully, and that the President may only impose tariffs within the narrow bounds of that delegation. And despite the limited impact of the recent decision, it will have an effect on how other countries perceive the direction of US tariffs policy and thus on negotiations concerning the future of the framework trade agreements negotiated last year.

Beyond all this, the Administration's tariff policy -- including the two major Section 301 investigations currently under way involving 76 separate potential determinations of tariffs -- will continue, with impacts on both US importers and exporters and shifts in global supply chains.

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Endnotes

¹ <https://www.cit.uscourts.gov/sites/cit/files/26-47.pdf>

² <https://www.federalregister.gov/documents/2026/02/25/2026-03824/imposing-a-temporary-import-surcharge-to-address-fundamental-international-payments-problems>