



Delhi Policy Group

Advancing India's Rise as a Leading Power

POLICY BRIEF

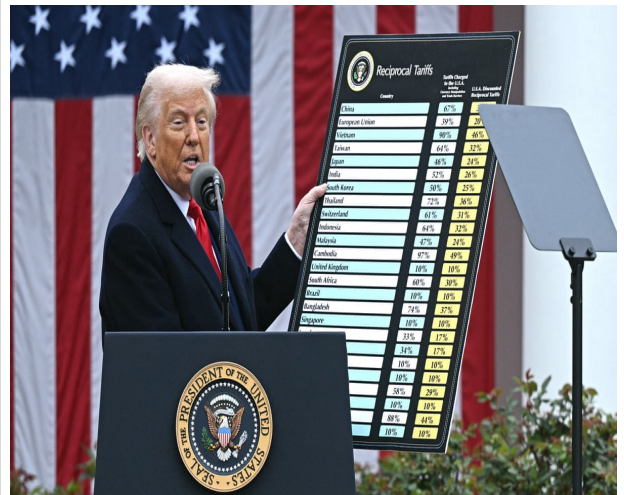
Trump Tariffs on Trial

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Cover Image:

US President Donald Trump holds up a chart while speaking during a "Make America Wealthy Again" trade announcement event in the Rose Garden at the White House, in Washington D.C., on April 2, 2025. Source: [X/@realDonaldTrump](https://x.com/realDonaldTrump)

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Introduction

In November this year, the U.S. Supreme Court will hear one of the most consequential trade cases ever brought before it. At issue are tariffs imposed by President Donald Trump under the country's International Emergency Economic Powers Act (IEEPA) of 1977, a law¹ originally designed to allow Presidents to freeze assets and regulate commerce in response to extraordinary foreign threats. Trump, invoking national emergency declarations, has used IEEPA to create sweeping sets of tariffs: one the so-called 'trafficking tariffs' on goods from Mexico, Canada, and China, ostensibly to combat fentanyl smuggling; and second, "reciprocal tariffs" to supposedly deal with persistent deficits on trade in goods by imposing baseline duties of 10 percent or more (going upto 50%) on imports from nearly all countries, including those with whom US enjoys a trade surplus. Moreover, higher tariffs have been levied against those countries with which a trade deal could not be concluded. Even in the case of the additional duties of 25% imposed on India on account of purchase of Russian oil, reference was made to IEEPA as a basis for taking action.

Some of these measures were challenged in the lower courts by businesses and certain states ruled by the Democratic Party, with both the Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit (CAFC) ruling against the administration. The CIT ruled against the President's imposition of tariffs under IEEPA saying that the law does not authorise the President's reciprocal and trafficking tariffs. The 7-4 majority verdict in CAFC held that IEEPA does not authorise the President to impose broad, indefinite tariffs. The government appealed, and the Supreme Court has agreed to hear arguments on both cases on a fast track basis². The two litigations - *Learning Resources et al v. Trump* and *Trump v. V.O.S. Selections et al*³ - will now be heard together in early November. A final ruling is expected by early 2026, or perhaps even earlier.

¹ <https://www.govinfo.gov/content/pkg/HMAN-112/pdf/HMAN-112-pg1123.pdf>

² <https://assets.bwbx.io/documents/users/ijjWHBFdfxIU/rh8qM86UF06Q/v0>

³ [https://www.supremecourt.gov/DocketPDF/24/24-1287/374396/20250911131748519_24-1287 Govt opp to Webber intervention file.pdf](https://www.supremecourt.gov/DocketPDF/24/24-1287/374396/20250911131748519_24-1287%20Govt%20opp%20to%20Webber%20intervention%20file.pdf)

Huge stakes involved

The stakes are enormous. Huge revenues in the form of tariffs have already been collected, and far more are expected to be. Pledges of hundreds of billions of dollars in procurements from the US and promises of huge investments to be made into the US have also been extracted from several trading partners using reciprocal tariffs as a threat (see Annex 1 that provides some of the details, even as they are not exhaustive about the commitments made by each partner, including in respect of non-tariff issues, digital regulation etc.).

Domestically in the US, there are some concerns regarding what impact these tariffs may have on inflation and national competitiveness as also economic growth over the medium and long term. More importantly, the key issue of distribution of power between the US Congress and the Presidency hangs in the balance before the Supreme Court.

While the case will be decided largely on the basis of domestic law, the credibility of the United States in the global trading system as being prone to arbitrariness and coercion will also hang in the balance.

Indeed, globally, the consequences of these tariffs have been quite disruptive, the full impact of which may be known only in the coming months or even later. U.S. trading partners are concerned how they will affect their respective national growth and employment prospects.

The broader worry is not merely the tariffs themselves, but the precedent: if the United States could invoke “emergency” powers to levy arbitrary duties, the entire rules-based trading order could lose credibility. And other countries could also feel emboldened to weaponise trade, as indeed China has already done by selectively restricting exports of rare earths and magnets with effect from April this year.

What has compounded the uncertainty is the arbitrary manner in which the U.S. has deployed tariffs. Duties on India and Brazil appear less connected to genuine emergencies than to short-term bargaining leverage on unrelated issues. The sense that tariff imposition has become a catch-all tool of U.S. diplomacy - used for migration, narcotics, domestic political issues as in Brazil, and reciprocal squabbles - has created anxiety that Washington has entirely abandoned predictability as a principle of trade policy.

For friends and foes alike, the message is unsettling: U.S. tariff policy has become a moving target, vulnerable to presidential whim. For example, President Trump

threatened the EU with a fresh tariff investigation on September 6 after a U.S. technology major was hit with a anti-trust fine of USD 3.5 bn.

The Legal Issues & Petitioners

At the heart of the dispute is a deceptively simple legal question: **Does IEEPA authorise the US President to impose tariffs as a tool of emergency economic action?**

IEEPA does empower the President, upon declaring a national emergency, to “regulate or prohibit” imports, exports, and financial transactions with foreign entities that pose an “unusual and extraordinary threat.” Historically, this has meant sanctions: freezing Iranian assets after the 1979 hostage crisis, restricting North Korean trade, or blacklisting terrorist financiers. Never before has it been interpreted as a license to redesign the entire U.S. tariff schedule, or launch a ‘Trump round’ of tariff schedules as claimed by USTR Greer who has also heralded a ‘Turnberry system’ replacing the Bretton Woods system⁴.

The petitioners fall into two categories. First are private businesses such as Learning Resources⁵, a toy manufacturer; Hand2Mind, an educational products company; and wine importer V.O.S Selections and a few other SME scale companies⁶ who argue that the tariffs impose massive costs and competitive disadvantages. Second are twelve Democrat-led states, spearheaded by Oregon, which contend that the President usurped Congress’s exclusive power to levy taxes and regulate commerce.

It must be made clear here what is also not at issue. These relate to certain sectoral tariffs which have been imposed on ‘national security’ grounds under Section 232 of the US Trade Expansion Act. So far, these have been imposed on steel, aluminium, copper, autos and auto parts, with more investigations underway in respect of pharmaceuticals, semiconductors etc. These tariffs are also of doubtful compatibility with WTO rules. The European Union, China and India have in fact sought consultations on them with the US at the WTO. But domestically in the US, the President is taken to have the legal authority to adjust such imports if they are seen as impairing national security. In any case, they are not under challenge now.

⁴ <https://ustr.gov/about/policy-offices/press-office/press-releases/2025/august/op-ed-ambassador-jamieson-greer-why-we-remade-global-order>

⁵ A family-owned business, that has created and sold over 2,000 hands-on educational toys and products for children.

⁶ https://www.ca9.uscourts.gov/opinions-orders/25-1812.OPINION.8-29-2025_2566151.pdf

Trump Administration's Arguments

The administration's brief to the Supreme Court cites that the Federal Circuit court's decision jeopardises tariffs that the President has determined are essential to the country's future⁷.

It leans heavily on the breadth of IEEPA's text. The statute authorises Presidents to "regulate" imports in emergencies; tariffs, they argue, are a classic regulatory device. When the broad term "regulate" is paired with "importation," the term is best read to include the power to impose duties because that is a traditional way to regulate importation. Moreover, the President's discretion, once an emergency is declared, is meant to be unlimited, because crises demand flexibility. Also, the brief notes, no agreements would be possible without the imposition of tariffs to regulate imports, and it contends that the tariffs have brought the countries to the table.

The administration also insists that the emergencies were real: fentanyl trafficking is an "unusual and extraordinary threat" to national security; large and persistent trade deficits constitute an "unusual and extraordinary threat to the national security and economy of the United States" that has its source in whole or substantial part outside the country. Reciprocal tariffs, the administration contends, are a proportionate response designed to force fairer treatment of U.S. exports.

Another argument is that courts owe deference in matters touching foreign affairs and national security. "Whether a given action in fact dealt with an identified threat or emergency in the areas of foreign affairs and national security is a question on which courts should give substantial deference to the President".

This line of argument is also implicit in the Executive Order signed by President Trump on August 6, in which he linked the "extraordinary threat to national security and foreign policy" of the U.S. posed by actions taken by Russia against Ukraine with the importation by India of Russian oil. That led to the imposition of an additional 25% on Indian imports from August 27, further to the 'reciprocal duties' of 25% that came into effect from August 7.

Petitioners' Arguments

The challengers contend that the IEEPA statute was never intended to give Presidents *unbounded tariff authority*. Tariffs are not simply regulatory measures; they are taxes, and under the Constitution the power to tax lies squarely with Congress.

⁷ https://cdn.patentlyo.com/media/2025/09/Trump_v._VOS_petition.pdf?utm_source=chatgpt.com

Petitioners emphasise that Congress has created specific laws for tariff adjustments, such as Section 232 of the Trade Expansion Act of 1962⁸ (national security tariffs) and Section 122 of the Trade Act of 1974⁹ (emergency import surcharges to deal with balance of payments issues). By using IEEPA instead, Trump effectively sidestepped the constraints and procedures those laws impose^{10 11}.

Moreover, the requirement that emergencies be “unusual and extraordinary” was ignored. Trade deficits, migration pressures, and policy disagreements with partners are not emergencies in any ordinary sense.

Finally, they point to the arbitrariness of tariff increases - sometimes targeted at allies, sometimes tied to unrelated diplomatic demands - as evidence that the president was wielding powers Congress never meant to delegate.

General Expectations about the outcome

This is not a legal brief, so it does not speculate on the likely outcome of the cases at the Supreme Court or seek to assess the merits and demerits of arguments of either side.

It is possible that the Supreme Court will be reluctant to curb presidential discretion in emergencies, especially where foreign policy is implicated. Furthermore, the 7-4 majority win for petitioners at the Federal Appeals court could flip in the Supreme Court in which the majority of judges now are those nominated by past Republican administrations. But embracing Trump’s reading of IEEPA would collapse the separation of powers and could hand future Presidents unbridled executive power.

Judgements by lower courts appear to stress the non-delegation doctrine: Congress cannot give away its taxing power without meaningful limits. If IEEPA authorises tariffs, it amounts to an unconstitutional delegation.

⁸ Section 232 authorises the President, but only in a product specific manner, “take such action, and for such time, as he deems necessary to *adjust* the imports of (the) article and its derivatives so that . . . imports (of the article) will not threaten to impair the national security.” It also requires prior investigation to be conducted to demonstrate impairing of national security.

⁹ Section 122 of the Trade Act of 1974 authorises the President to impose “duties” “not to exceed 15 percent ad valorem *** on articles imported into the United States” in order “to deal with large and serious United States balance-of-payments deficits,” but those tariffs expire after 150 days unless Congress enacts legislation to extend them.

¹⁰ https://www.supremecourt.gov/DocketPDF/24/24-1287/363370/20250617121408066_No-____Learning_Resources_Petition_For_A_Writ_Of_Certiorari_Before_Judgment.pdf

¹¹ https://libertyjusticecenter.org/wp-content/uploads/V.O.S.-v.-Trump-Appellees-Brief-FILE-STAMPED.pdf?utm_source=chatgpt.com

There could also be a qualified decision in the end. More justices may uphold trafficking tariffs as narrowly tied to a drug emergency, while striking down reciprocal tariffs as too sweeping. Others may vote for a clean break, insisting tariffs of any kind fall outside IEEPA. Still others may craft a compromise, urging Congress to clarify the statute in line with the Supreme Court's own Major Questions Doctrine which requires the Congress to "speak clearly if it wishes to assign to an agency decisions of vast economic and political significance".

Ramifications from the Court ruling

The consequences of the Supreme Court's decision in any case will be far reaching.

If the Court rules for the President:

- Presidents will gain virtually unchecked authority to use IEEPA to levy tariffs, bypassing Congress.
- Using tariffs as a leverage could become a permanent feature of presidential diplomacy, deployed for issues as varied as migration, political disputes, human rights, and pushing for policy preferences in third countries etc.
- Global partners may come to treat U.S. trade commitments as entirely unreliable and unpredictable, undermining their value.

If the Court rules against the President:

- The U.S. Congress will be reaffirmed as the central actor in the country's tariff policy. President Trump could, however, try and see if he could pressure the Republican House and Senate members to pass legislation to endorse his tariff plan since they have formed the basis for his economic agenda and all that has happened in the last eight months towards implementing his slogan of 'Make America Great Again'. But this path will not be easy since one view is that members of Congress, irrespective of their party affiliation, are very sensitive to potential price hikes/inflation for which they can no longer hide behind the White House.
- Alternatively, the Administration could introduce the tariffs, or a good part of them, through other legislative provisions including Section 232 or Section 122 even as they carry certain legal, procedural and time limitations. Section 301 action could also be considered, as was done in the case of China under Trump's earlier administration. But they are all unlikely to be as sweeping in scope as the reciprocal tariffs.
- Should, however, the judgement seriously limit such options and make U.S. trade policy more predictable, it could be reassuring to allies and other trade partners,

and help stabilise the multilateral trading system. Very likely, the US will then focus on reforming the WTO than risk seriously undermining it. The next WTO ministerial meeting in Cameroon in March 2026 may then gather far more importance. At the present juncture, however, this seems like an unlikely scenario, considering the bipartisan indifference in the U.S. towards the WTO.

In any case, the ruling will reshape the legal and political landscape of both U.S. trade and world trade.

Potential Implications for India

India is one of the countries yet to arrive at a deal with the U.S. From most recent indications, it appears that the negotiations on reciprocal tariffs and the bilateral trade agreement (BTA) are still continuing, even as negative narratives emerge from time to time, and there is even a mention about a possible visit by India's Commerce Minister Piyush Goyal to the US soon¹². However, a question can be posed if India should await the U.S. Supreme Court verdict before concluding the BTA.

This writer would argue that it is advisable to try and conclude these deals as soon as possible, without overstepping our red lines. This would limit the serious impact that could otherwise fall on our exports. An earlier brief¹³ by this author has already outlined what could form part of our package offer. It is also interesting to note a recent op-ed¹⁴ by a US Congressman which has pointed out that India's potentially high growth during the next two decades could mean more consumption of peas and lentils, computer software and airplanes from his state of Washington.

It is an open question if President Trump's somewhat more friendly tweets about PM Modi and the special relationship between U.S. and India posted^{15,16} after the ruling about reciprocal tariffs on August 29 had anything to do with that development. Is it that the U.S. is also keen to wrap up the negotiations before the fate of these tariffs is decided upon by the Supreme Court? After all, the administration has argued that the threat of reciprocal tariffs is what brought the countries to the negotiation table.

¹² <https://www.newindianexpress.com/nation/2025/Sep/11/us-ambassador-designate-to-india-says-trade-deal-within-reach>

¹³ https://www.delhipolicygroup.org/storage/uploads/publications_file/publication_DPG_Policy_Brief_X_Issue_22_August_15,_2025.pdf

¹⁴ <https://timesofindia.indiatimes.com/blogs/toi-edit-page/todays-squalls-will-pass-logic-of-our-partnership-will-endure/>

¹⁵ <https://timesofindia.indiatimes.com/india/ill-always-be-friends-with-modi-trump-calls-india-us-ties-very-special-voices-disappointment-over-pms-recent-actions/articleshow/123728449.cms>

¹⁶ <https://timesofindia.indiatimes.com/india/looking-forward-to-speak-with-my-good-friend-modi-trump-says-us-india-trade-talks-to-continue-confident-of-successful-outcome/articleshow/123797151.cms>

Whatever may be the reality, the BTA negotiations were decided upon by the two sides on February 13 during PM Modi's visit to Washington, even before the initial announcement of 'reciprocal tariffs' by President Trump on April 2 invoking his powers under the IEEPA. Moreover, if our objective is to achieve a bilateral trade of USD 500 bn by 2030, some accommodation with the US administration will be necessary, irrespective of the Supreme Court verdict, to convey our willingness to increase imports from the US to bring greater balance in bilateral goods trade.

That said, there should certainly be a discussion with the US side about how the BTA will be implemented in terms of securing US Congressional support. Hopefully, the IEEPA will not be shown as the basis for the deal when the US administration announces it, except perhaps for purposes of immediate implementation. Secondly, there should also be some bilateral understanding reached in dealing with the fall-out in case the Supreme Court orders dismantling of 'reciprocal tariffs'. Any edge that India may gain in the US market from the BTA should not get disadvantaged in the process.

Furthermore, the U.S. should also recognise that India itself has an adverse trade balance on merchandise trade globally, no less in scale than that of the U.S., even if the balance flips in the bilateral context. Some understanding, therefore, needs to be shown towards India seeking to expand its manufacturing base, and the U.S. should certainly not be discouraging its companies from investing in India.

Conclusion

The Trump tariffs' case now before the U.S. Supreme Court is about much more than customs duties. It is also about the boundaries of presidential power on tariffs and the integrity of Congressional authority. Globally, it is also about the predictability and reliability of the US as a trade partner, and the impact of all these controversies on the global trading system.

If the Supreme Court upholds Trump's actions, it will have effectively converted IEEPA - a Cold War emergency statute - into a de facto tariff law, empowering U.S. Presidents to wield economic weapons at will. If it strikes them down or trims the scope substantively, it will rein in executive overreach, restore predictability, and compel Congress to reclaim its constitutional role in trade. But in that case the Trump administration could also be expected to try other options to retain the tariffs under various statutes, rather than submit to immediate compliance in letter and spirit.

All this notwithstanding, this brief suggests that India should try and conclude the ongoing reciprocal tariff and BTA negotiations, while ensuring that the Supreme

Court's judgement, as and when it comes, will not disadvantage any edge that India may stand to gain from a concluded BTA.

Annex 1

Table 1: Highlights of Trade Deals finalised by Trump Administration

	Tariff concessions by the trade partner for US products	Commitments by trade partner to make investments in the US	Commitments by trade partners to make purchases from the US	Final adjusted. Reciprocal tariff on July 31 (Reciprocal tariff levied on April 2)
United Kingdom	Zero tariffs on most imports from the US and average duty reduced from 5.1% to 1.8%		1. USD 10 bn worth of airplanes 2. USD 950 mn comprising 1.4 bn litres of ethanol and 13,000 tonnes of beef	10 % (10)
European Union	1. Elimination of tariffs on all industrial goods. 2. Preferential access on certain agri items	USD 600 bn across strategic sectors by 2028	1. Energy products valued at USD 750 bn through 2028 2. USD 40 bn of chips 3. Substantial increase in defense procurement	15% (20)
Japan	1. Increased market opening in several areas 2. A 75% increase in rice access in Japan	USD 550 bn of Japanese investments as selected by US govt. By Jan 2029	1. USD 8 bn of agri products every year 2. USD 100 bn of Boeing aircrafts 3. Defense eqpmt	15% (25)
South Korea	Already is a party to an FTA with the US	USD 350 bn of which USD 150 bn will go towards ship building	USD 100 bn in LNG	15% (25)
Vietnam	Zero tariffs for all US goods imports		50 Boeing airplanes	20% (46)
Indonesia	Zero tariffs on 99% of tariff lines		1. USD 3.2 bn of aircrafts 2. USD 4.5 bn of agri products 3. USD 15 bn of energy products	19% (34)
Malaysia	Zero tariffs on 98.4% of US goods	USD 70 bn over 5 years	1. Multinationals in Malaysia to buy USD 150 bn of eqpmt. 2. LNG valued at USD 3.4 bn a year	19% (25)
Thailand	Zero tariffs on about 90% of tariff lines	1. Boosting Thai investments in the US energy sector	1. Agri products 2. Energy products including LNG 3. Aircrafts and parts 4. Defense eqpmt.	19% (36)



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