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Tariffs and sanctions: an uneasy balancing act at the Supreme Court

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The US Supreme Court heard oral argument on 5 November 2025 in a pair of cases challenging the US president's authority to impose tariffs under the International Emergency Economic Powers Act (IEEPA).

Those cases raise fundamental questions about whether IEEPA, a nearly 50-year-old national security statute, authorises President Trump to unilaterally impose hundreds of billions of dollars' worth of duties on nearly all goods entering the US.

The court's eventual decision in *Learning Resources, Inc. v. Trump* and *Trump v. V.O.S. Selections, Inc.*

has been widely described as a possible landmark statement on the limits of presidential power.

A less noticed facet of those two cases is that, depending upon how the Supreme Court crafts its decision, a ruling striking down President Trump's IEEPA-based tariffs has the potential to unsettle US economic sanctions and outbound investment restrictions.

IEEPA explained

The US Department of the Treasury's Office of Foreign Assets Control (OFAC) is the principal administrator and enforcer of

most US sanctions. The agency derives its authority in part from the president's executive powers under the US Constitution, as well as a delegation of Congress's power to regulate commerce with foreign nations.

IEEPA, adopted in 1977, provides much of the statutory basis for US sanctions. To impose sanctions under IEEPA, the president need only issue an executive order in which the White House declares a national emergency with respect to an "unusual and extraordinary threat" that originates in whole or substantial part outside the US and

endangers the “national security, foreign policy, or economy of the United States”.

The president’s authority to make such a declaration and the president’s discretion in identifying emergencies have never been successfully challenged. Once an emergency is declared, the president unlocks very broad powers to – with very limited exceptions – “investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in” any property linked to a foreign country or a foreign person.

IEEPA has grown over the past five decades to become a key national security authority. Today, it underpins nearly all OFAC sanctions programmes, including, for example, extensive restrictions on dealings involving Iran, North Korea, Venezuela and Russia.

In 2024, President Biden invoked IEEPA to establish an entirely new trade controls regime, administered by the US Department of the Treasury, that restricts outbound investments by US persons into certain companies owned by, or affiliated with, Chinese persons in the semiconductors and microelectronics, quantum information technologies and artificial intelligence sectors.

Congress and the courts have traditionally afforded the president considerable deference in the

exercise of his authorities under IEEPA. Presidents, in turn, have traditionally made judicious use of that law, at least in part to preserve the executive branch’s formidable win-loss record defending the few judicial actions that have challenged the use of IEEPA.

Legal challenges to IEEPA-based tariffs

In a departure from historical practice, President Trump, starting in February 2025, invoked IEEPA to announce increased tariffs on goods from Canada, Mexico and China. In April 2025, President Trump again invoked IEEPA to impose “Liberation Day” tariffs on virtually all goods entering the US.

The *Learning Resources* and *V.O.S. Selections* cases that the Supreme Court heard in early November involve challenges to the president’s claimed authority under IEEPA to impose such tariffs. The outcome of those two cases will likely turn on, among other things, a close reading of the statutory text (IEEPA nowhere mentions tariffs, duties or taxes), the statute’s historical usage (IEEPA had never been used in such a manner in the half century since it was enacted), and whether the tariffs’ sprawling economic impact raises a “major question” requiring a clear statement from Congress.

The court is also expected to weigh whether, if IEEPA indeed authorises tariffs, the statute involves an impermissibly broad delegation of Congress’s authority. Notably, many of the arguments against IEEPA-based tariffs

advanced by the challengers, and adopted by the lower courts, could theoretically extend to US sanctions and outbound investment restrictions that are grounded in IEEPA.

The tariff litigation to date suggests that national emergencies declared by the president, and the trade controls imposed by the executive to meet such emergencies, are not beyond judicial review.

The lower courts that have considered President Trump’s tariffs have also questioned whether Congress, in enacting IEEPA, intended to confer upon the president the power to impose trade restrictions of nearly unlimited scope and duration.

OFAC’s sanctions programmes, several of which prohibit substantially all US nexus dealings involving entire countries such as Iran, are often based on national emergencies that have been continuously in effect for years or decades. Moreover, in the context of the new outbound investment restrictions, an “emergency” was declared but it was over a year before any restrictions actually went into effect. Is this what Congress meant by “emergency”?

Sanctions and outbound investment restrictions targeting major, globally connected economies like Russia and China also arguably have vast “economic and political significance”, for which – as with IEEPA-based tariffs – “clear congressional authorization” might be required.

In short, if the Supreme Court strikes down President Trump's IEEPA-based tariffs, the business community should prepare for unintended consequences. Depending upon whether and how the court cabins the president's authority under IEEPA, the decision could result in US sanctions prohibitions and outbound investment restrictions becoming more vulnerable to legal challenge.

Implications for US sanctions

Although the tariff cases pending before the Supreme Court have been widely described as a major legal test of a key pillar of President Trump's economic agenda, the practical impact of those two cases could be subtler and farther-reaching than has generally been reported.

At oral argument, the justices appeared, without exception, to acknowledge that IEEPA has historically authorised a range of economic sanctions, up to and including a complete prohibition on all US trade with a particular country or region.

Indeed, many members of the court's conservative majority, including Justices Clarence Thomas, Samuel Alito, Brett Kavanaugh and Amy Coney Barrett, questioned whether Congress, when enacting IEEPA, could plausibly have intended to authorise as sweeping a restriction as, for example, a potential full embargo on trade with a foreign country, but not an arguably "lesser" measure such as a 1 percent tariff on all US imports

of that country's goods. Justice Kavanaugh, who formerly served as a senior White House official, in particular expressed concern about unduly narrowing the suite of tools available to presidents to respond to foreign emergencies.

Predicting the outcome of Supreme Court cases is a fraught exercise. The justices' questioning at oral argument suggests scepticism, across the court's ideological spectrum, of President Trump's claim that IEEPA authorises globe-spanning tariffs. At the same time, the justices seemed receptive to preserving the president's long-recognised powers under IEEPA to regulate or prohibit certain types of transactions. As the Supreme Court balances those two competing

imperatives, the devil could well be in the details.

If the court's decision in *Learning Resources* and *V.O.S. Selections* chips away at IEEPA, it could unsettle the foundation of US sanctions and outbound investment restrictions. Could the court question the president's discretion to declare an "emergency"?

Could the court target other once-novel uses of IEEPA, such as limiting investments in certain securities, declaring a generalised emergency (i.e., an emergency with neither a geographic nor temporal focus) targeting human rights abuses and corruption, or establishing a never-before-attempted outbound investment scheme?

Depending upon whether and how the court cabins the president's authority under IEEPA, the decision could result in US sanctions prohibitions and outbound investment restrictions becoming more vulnerable to legal challenge.

What then should executives and compliance professionals at multinational enterprises expect from the Supreme Court's forthcoming tariff decision? As a practical matter, the justices' repeated references to the president's well-established power to impose embargoes suggests that the court is unlikely to undercut IEEPA to such an extent as to open up new business opportunities in comprehensively sanctioned jurisdictions like Iran, North Korea and certain Russian-occupied regions of Ukraine.

However, a narrower ruling striking down the president's IEEPA-based tariffs could, depending upon how phrased, open the door for parties to

mount potentially more successful legal challenges or for those parties already in sanctions-related enforcement proceedings to negotiate more favourable resolutions.

US economic sanctions and outbound investment restrictions will almost certainly survive the Supreme Court's upcoming decision (which is due by June 2026 at the latest, but the court is highly likely to issue a ruling well before then).

With this in mind, businesses with international exposure should continue to maintain robust trade compliance programmes that are reasonably tailored to their unique risk profile – and prepare for President Trump, and successor administrations, to continue

making frequent and aggressive use of whatever the Supreme Court deems to be the president's true authorities under IEEPA. ■

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