

LEGAL ALERT

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U.S. SUPREME COURT STRIKES DOWN EMERGENCY TARIFFS

BY GREGORY A. THOMPSON

HAHN LOESER & PARKS LLP

On February 20, 2026, the United States Supreme Court struck down the tariffs President Trump enacted under the International Emergency Economic Powers Act (“IEEPA”) against numerous countries.[1] The tariffs struck down include those levied against Canada, Mexico, and China, enacted under IEEPA in an effort to stop the influx of illegal drugs from those countries, and the so-called “reciprocal” tariffs against dozens of countries meant to reduce the United States’ trade deficit. The Supreme Court’s decision did not address tariffs issued under Section 232 of the Trade Expansion Act of 1962. Those tariffs, which are product-specific (explained further below), remain in place.

The Supreme Court held that Congress’s delegation of authority to the Executive Branch under IEEPA—which includes the power to “regulate . . . importation” of goods during an emergency—does not include the authority to tax or raise revenue (such as the enactment of tariffs). When Congress delegates such taxing authority (the so-called “power of the purse”), the Court reasoned, it does so in precise and express terms. IEEPA contains no such language. As such, IEEPA does not empower the Executive Branch to enact tariffs. The Supreme Court noted that, unlike the tariffs enacted under Section 232 of the Trade Expansion Act of 1962, President Trump’s IEEPA tariffs were unlimited in “amount and duration” and could be levied “on any product from any country.” For this reason, too, the Court found the IEEPA tariffs invalid.

While the decision provides some predictability to those in the construction industry, the fact remains that prices continue to rise. As mentioned above, the Section 232 tariffs remain in place. Those tariffs include:

- 10% on lumber;
- 50% on steel and iron, including derivative products (with the following exceptions: 25% for the United Kingdom); and
- 50% on aluminum and derivative products (with the following exceptions: 25% for the United Kingdom; 200% for Russia).

With the Section 232 tariffs remaining in place—and with the specter of possible additional tariffs—it remains critical for contractors to continue to mitigate risk on this issue. There is no silver bullet. Rather, a wholistic approach to mitigating risk is recommended. Measures that contractors can take to mitigate the risk of price increases include, but are not limited to: clearly setting forth all pricing assumptions or exclusions in bid documents; the inclusion of price escalation or adjustment clauses in contracts; negotiating risk-sharing provisions for price increases so that no single actor in the contract chain solely bears the brunt of price increases; and, where appropriate, the use of IncoTerms to clearly define shipping- and duty-related risks.

[1] The case is *Learning Resources, Inc. v. Trump*, No. 24-1287, and *Trump v. V.O.S. Selections, Inc.*, case no. 25-250, which was consolidated with *Learning Resources*.

AUTHORS



GREGORY A. THOMPSON
gthompson@hahnlaw.com
216.274.2421

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