

Appeals court orders a stay on ruling against Trump's tariff war

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A US federal appeals court has ordered an administrative stay on a ruling on Wednesday by the International Court of Trade which found that Trump's "liberation day" April 2 reciprocal tariffs were illegal, saying that Trump had exceeded his power in ordering them.

The appeals court did not rule on the legal merits of the decision but ordered a temporary stay "until further notice." The decision opens the way for the Trump administration to appeal the decision, possibly securing a rapid hearing in the Supreme Court.

That appeared to be the direction it is taking following yesterday's stay.

Speaking on the appeals court decision, White House press secretary Karoline Leavitt said: "The judges of the US Court of International Trade brazenly abused their judicial power to usurp the authority of President Trump, to stop him from carrying out the mandate that the American people gave him. Ultimately the Supreme Court must put an end to this for the sake of our constitution and our country."

The issue of the tariff war is the subject of an intense conflict within the ruling class with significant sections fearful of the damage it is doing to the American economy and the standing of the US as the pre-eminent global power.

These views were articulated by an editorial in the *Wall Street Journal* which said Wednesday's ruling was heard around the world and was "an important moment for the rule of law as much as for the economy."

It said the Trump tariffs had "created enormous costs and uncertainty but now we know they're illegal."

The case against the administration was brought by a New York-based wine importer VOS Selections and four other small businesses. VOS was represented by the Liberty Justice Center, described as a "libertarian" public litigation firm.

It was supported by a coalition of 12 states led by Oregon which asked for a permanent injunction against the Trump tariffs.

Trump ordered the tariffs under the 1977 International Emergency Economic Powers Act (IEEPA) which gives the president the authority to take economic action in a "national emergency."

The administration has claimed that persistent US trade

deficits, going back decades, had created just such a situation.

Lawyers for the plaintiffs argued that the IEEPA did not give the president the power to impose tariffs as this was the responsibility of Congress. They maintained that the "IEEPA does not even mention tariffs" and the deficits were "neither an emergency nor an unusual or extraordinary threat" as trade deficits had persisted for decades.

They maintained that Congress could not delegate its legislative authority to the president.

"If there are any constitutional limitations to delegation at all, they apply here in a case where the executive claims virtually limitless authority to impose massive tax increases and start a worldwide trade war."

The Trump Justice Department argued that the president had historically conducted foreign affairs and had dealt with national security through the regulation of trade and that in approving the IEEPA, Congress had delegated authority to the president. It said in foreign affairs, "broad grants" of discretion to the executive were common and that Trump's declaration of an emergency was a political question that could not be second-guessed by the judiciary.

The court ruled that the executive orders issued by Trump "are declared to be invalid as contrary to law." It said the "Worldwide and Retaliatory Tariff Orders exceed any authority granted to the president to regulate importation by means of tariffs."

Dealing with the claim that Congress had delegated authority to the president, the court said handing over "unbounded tariff power" to the president would be unconstitutional. "An unlimited delegation of tariff authority would constitute an improper abdication of legislative power to another branch of government."

It maintained that the US trade deficit did not fit the IEEPA's definition of an unusual and extraordinary threat.

It also ruled that the tariffs imposed by Trump against Mexico and Canada over the issue of the drug fentanyl crossing the border were illegal because they did not address the drug trafficking problem.

The court also ruled in favor of the Oregon-led coalition of states. During the hearing, their legal representative Brian Marshall said the Trump tariffs were unprecedented and

untenable.

“The government argues that so long as the president says he is confronting an unusual and extraordinary threat that he can set tariffs of any amount from any country for any length of time, and no court may review it,” he said. “That’s a position that no court has ever embraced and, until this year, power no president has ever asserted.”

There were some sharp exchanges during the Oregon-led case which maintained that the tariffs would raise the cost to public organizations of equipment and supplies.

Department of Justice lawyer Brett Shumate said an injunction against the tariffs would “completely kneecap the president” when he was trying to make trade deals. The longest-serving judge of the court, Jane Restani, replied that the court could not, for political reasons, allow the president to do “something he’s not allowed to do by statute.”

There was back and forth over the issue of what constituted an emergency. Shumate told the court that “the president identified the emergency and he decided the means to address that emergency.” He said the goal of the tariff actions was to “bring our trading partners to the table” and create the conditions for a deal.

Restani replied: “It may be a very dandy plan, but it has to meet the statute.”

The decision of the three judges said: “The court does not pass upon the wisdom or likely effectiveness of the president’s use of tariffs as leverage. That use is impermissible not because it is unwise or ineffective, but because [federal law] does not allow it.”

The administration argued that if it were to make a decision in favor of the plaintiffs, that it be only a narrow decision with no broader application. This was rejected.

“There is no question here of a narrowly tailored relief; if the challenged tariff orders are unlawful as to the plaintiffs, they are unlawful as to all,” the panel said.

There was a predictable angry response from the Trump administration to the court’s decision.

White House spokesperson Kush Desai said: “Foreign countries’ non-reciprocal treatment of the United States has fueled America’s historic and persistent trade deficits. These deficits have created a national emergency that has decimated American communities, left our workers behind, and weakened our defense industrial base – facts that the court did not dispute.”

He then went on to outline the theory of unlimited executive power which forms the basis of the Trump administration’s efforts to construct an authoritarian and fascist state.

“It is not for unelected judges to decide how to properly address a national emergency. President Trump pledged to put America first, and the administration is committed to using every lever of executive power to address this crisis and restore American greatness.”

According to this doctrine, which has been advanced in other

court rulings against the administration, the president determines what constitutes a crisis and a “national emergency” and what action should address it without any judicial or other restraint.

In response to previous adverse decisions, members of the Trump regime have railed against “activist judges,” “lunatics,” and even “Marxists.” They will have difficulty in doing so on this occasion.

The most senior member of the panel, Restani, was appointed to the court by Ronald Reagan. Timothy Reif is a Democrat with a reputation for being a trade protectionist and was appointed to the court by Trump. The third member, Gary Katzmann, a former federal prosecutor, was appointed by the Obama administration.

The International Trade Court decision is a blow to the Trump administration. But the issue is far from settled and it does not cover the tariffs imposed on autos, steel, aluminum, and shortly on pharmaceuticals.

The administration is no doubt hoping that the Court of International Trade decision will be overturned by the Supreme Court.

If that fails, there are other means that can be used, in particular Sections 232 and 301 of the 1974 Trade Act. The latter gives the president the power to “take retaliatory action against the trade practices of foreign countries,” which can include “tariffs or non-tariffs” to address actions deemed burdensome to the US.

After hailing the stay as a “big victory for the president,” in an interview with Fox News, Kevin Hassett, director of the National Economic Council, indicated the administration could head in that direction if the use of the IEEPA ultimately failed.

He said there were “different approaches” the administration could take to impose tariffs. “We’re not planning to pursue those right now because we’re very, very confident” because the International Court of Trade ruling “really is incorrect.”



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