

Supreme Court begins deliberations on Trump's "reciprocal tariffs"

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The US Supreme Court will today hear arguments in the appeal by the Trump administration against the decision of two lower courts striking down his use of "reciprocal tariffs" by invoking powers given to the president after the declaration of a national emergency under the International Emergency Economic Powers Act (IEEPA) of 1977.

These powers have been invoked by previous presidents since the law was passed during the Carter administration. But they have never been invoked as the basis for the imposition of tariffs, which supposedly is ultimately in the hands of Congress unless it has given the executive the power to do so.

In May, the Court of International Trade found that Trump had exceeded his authority under the IEEPA, as the legislation did not specify a tariff power. This decision was subsequently upheld in a seven to four decision by a US appeals court, whereupon the administration took it to the Supreme Court.

Despite these rulings, the tariffs continued and revenues were collected because both courts ruled they could remain until a final decision was made.

No decision will be made today, and the Supreme Court is expected to take many weeks, possibly months, before rendering its judgement.

The decision has major implications. If the appeal is upheld the Trump regime will have been granted virtually unlimited authority to impose tariffs against any country for virtually any reason it chooses to cite, simply by claiming its actions are in response to a national emergency.

If the court turns down the appeal, the question immediately arises as to whether the administration will abide by the decision. Its legal submissions, echoing claims made by Trump in various social media posts, have asserted that if the tariff revenues must be paid

back because they have been ruled illegal this could set off a crisis in the US akin to that of the 1930s.

The extremity of the language is a strong indication that in the event the Supreme Court rules against it, the administration will proceed in defiance of the judgement, no doubt claiming that it must respond to an emergency or even a crisis.

The use of reciprocal tariffs, first unveiled in his announcements of April 2 which effectively overturned the foundations of the post-war international trading order, have been central to the US global tariff war which has developed since then. They are very much Trump's weapon of choice.

It has been estimated that tariffs imposed under the IEEPA account for 71 percent of tariffs imposed by the administration this year. Without them the average effective US tariff rate would fall from 17.4 percent to 6.8 percent. It is projected that over the course of a decade IEEPA-imposed tariffs would bring in \$1.7 trillion, with the administration claiming this will offset the increase in US government debt as a result of its tax cuts.

But in the seven months since they were announced it has become clear that the reciprocal tariffs have served a wider objective. They have been the main weapon by which the administration is extracting hundreds of billions of dollars from other countries in the form of investments in the US.

The starkest example is the case of Japan which has been coerced into an agreement with the US that it will provide \$550 billion in funds to be invested in projects decided on by Trump and his appointees and that the profits from such projects, once the initial investments has been recouped, will be split 90 percent to the US and 10 percent to Japan.

The so-called deal was reached under the threat that if

Japan did not agree it would be subject to crippling reciprocal tariffs under the powers of the IEEPA, threatening enormous damage to the auto industry. And such tariffs can be re-imposed by the US if Japan pulls back on the US demands for cash.

The reciprocal tariff threat has been used to extract a commitment from South Korea for total investments of \$350 billion and for investments from Malaysia of \$70 billion.

The value for the administration of these tariffs is that they cover all the exports of a given country to the US.

Tariffs can be imposed and are being imposed under Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962. These provisions contain no legal problems because Congress has delegated the tariff power to the executive and it has been argued that they could be used if the Supreme Court rules against the administration.

But they are cumbersome in comparison to the reciprocal tariffs because they apply not to countries but to particular commodities, such as aluminium, steel, auto and auto parts and so on, which have already had tariffs imposed. Moreover, unlike the reciprocal tariffs which can be imposed through a declaration by Trump on his social media, they are often subject to an investigation by the commerce department.

Given the right-wing and outright reactionary composition of Supreme Court and its decision of July 2024 that the president is not acting illegally when carrying out an action as part of his official duties, it is very possible the court will rule in Trump's favour. Treasury secretary Scott Bessent is of this view, insisting that "we feel very confident that the president's trade policy ... will win at the court."

But there is opposition from sections of the corporate and business world as well other sources.

The *Financial Times* reported earlier this week that "about 40 legal briefs have been filed by groups ranging from the US Chamber of Commerce to former national security officials in opposition to the signature policy the US president has relied on to wage his trade wars."

In a social media post on Sunday, Trump described it as "one of the most important cases in the history of our country."

"If a President was not able to quickly and nimbly use the power of Tariffs, we would be defenseless,

leading perhaps even to the ruination of our country."

It appears that the administration will be relying heavily on the dissent judgement of the appeals court authored by Obama appointee Richard Taranto who said Congress had made an "eyes-open" decision in 1977.

"We know of no pervasive basis for thinking that Congress wanted to deny the president use of the tariff tool," he wrote.

On the other hand, the chief justice of the Supreme Court, John Roberts, has in the past supported the "major questions" doctrine according to which executive actions with "vast economic and political significance" must be authorised by the Congress.

Opponents of the reciprocal tariffs point out there is no mention of tariffs or its synonyms such as taxes in the IEEPA legislation.

The "major questions" doctrine is clearly an obstacle. But if the Supreme Court starts with a fixed decision, as it has often in the past and then finds the arguments to justify it, a way will be found to get around it.



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