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## BLOG — POST

# The unbearable volatility of Trump's tariffs: what next after the SCOTUS ruling?



On 20 February 2026, the Supreme Court of the United States (SCOTUS) ruled that the IEEPA (International Emergency Economic Powers Act, 1977) does not give President Trump the authority to impose tariffs.<sup>1</sup> It reaffirmed the role of Congress in granting the President the power to regulate commerce via IEEPA in cases of national emergencies caused by foreign threats. The court also made it clear that these tariffs are a tax borne by US firms and consumers, not a source of foreign revenue, as Donald Trump had suggested. This tax, at a level comparable only to that of the 1930s, is currently estimated at around 175 billion dollars collected since April 2025. SCOTUS thus echoed a recent assessment by New York Federal Reserve economists that 90% of the burden from raising tariffs from an average of less than 3% to more than 13% has fallen on US firms and consumers.<sup>2</sup> SCOTUS did not mention any refund, and we can expect a messy wave of litigation initiated by importers to get a refund.

This resilience of US institutions in the face of the president's attempts to bend them to his political choices is good news for American democracy – and therefore for the separation of powers of the democratic model. However, the legal battle will continue amid uncertainty, as following the Supreme Court's reminder of the constitutional basis (Article I) for Congress's authority over tariffs, Trump stated in his State of the Union address that 'Congressional action will not be necessary'.

For the business sector, the SCOTUS ruling also opens a new era of instability, just as firms had begun to adapt to the new landscape of bilateral deals imposed by Trump to stave off the initial threat of very high ‘reciprocal’ tariffs.

**The relative predictability these bilateral deals offer is once again being called into question by Trump’s daily adjustments, which send mixed messages and create confusion and uncertainty.** It will be more difficult for European firms to navigate this chaos, as they must assess the impact of Trump’s new announcements on the EU, the spillover effects of responses from third countries, and the growing risk of coercive pressure from the White House.

## I • Legal constraints and alternatives

The Supreme Court ruling does not affect most favoured nation (MFN) tariffs, neither 232 nor 301 tariffs. The US trade-weighted average tariff of 1.4% remains in place.

SCOTUS has suspended all ‘reciprocal’ tariffs adopted via IEEPA (ranging from 10% to 41%, depending on the country). However, this annulment of the legal basis for leveraging tariffs in bilateral negotiations with third countries does not necessarily invalidate the resulting deals. Third-country governments may decide to maintain their own concessions, especially where they were based on broader strategic or economic or security considerations that go beyond strict reciprocity in tariff levels.

Yet Trump’s response to the SCOTUS ruling, using other legal instruments to impose tariffs, could challenge the commitments made in bilateral deals.

Section 122 of the Trade Act of 1974 has never been used since it was added to the US legislative toolbox in 1974 to address balance-of-payments problems, but trade experts had clearly identified it as an alternative legal basis that Trump might be tempted to use.<sup>3</sup> The fact that, within four days, he adjusted the universal 10% tariff announced on Friday up to the maximum 15% allowed under Section 122 and yet did not confirm the raise from 10% to 15%, suggests messy improvisation. It also signals that doubling down on tariff volatility will remain a Trump trademark to keep leverage over third countries.

The new tariffs will remain transitional for 150 days - until the end of July - before Congress decides whether extend them. It remains to be seen whether Trump has the legal option of waiting for their expiry and then immediately reimposing them. He will also face litigation arguing that a balance-of-payments deficit is not a problem in the context of flexible exchange rates. Does this belated recognition of legal reality have a deeper impact on Trump’s trade strategy? Europeans should be cautious and assume that Trump is calibrating risks ahead of the November 2026 midterm elections, amid dissatisfaction within his own party over his tariff policy, rather than moderating his trade policy.

## II • Two contrasting scenarios: 10% tariffs or the new chaos of 15%?

Apart where MFN exceeds 15% (e.g. some textile, apparel, footwear, sugar, tobacco) a 15% across-the-board tariff, on top of MFN tariffs, would breach the Turnberry agreement reached with the EU in July, which sets a general 15% ceiling, with a list of exemptions for products benefiting from MFN-only (zero or low) tariffs.

Natural resources that are not available in the US (e.g. cork), all aircraft and aircraft parts, and generic pharmaceuticals with their ingredients and precursors are subject only to MFN tariffs, and additional sectors may be negotiated for MFN-only treatment based on their economic importance. Autos and parts are also exempted from the 25% duty imposed via Section 232 of the Trade Expansion Act of 1962 and remain at 15% plus the MFN tariff.

It would also constitute a breach of the agreement between the United States and United Kingdom (which limits tariffs to 10% with specific exemptions) and regarding other bilateral agreements.

The alternative option of a limited 10% Section 122 tariff (added to MFN tariffs) that the White House is also considering could incentivise the Europeans to commit to the Turnberry agreement as the threshold would broadly respect the 15% initial cap of the agreement.

Unilaterally fulfilling the commitments of an agreement could also be considered by the EU and other disadvantaged third countries to protect them from further retaliation.

But the European Parliament (EP) has sent another signal with the freezing of the ratification process for the Turnberry agreement. The EP already amended the two implementing regulations that explicitly made EU tariff concessions conditional on the United States' commitment to respect the agreed tariff levels. But the suspension of the EP's vote on the EU's concessions in the Turnberry agreement (0% on US industrial products imported into the EU and tariff rate quotas for specific US products, such as agricultural products, seafood and industrial products) is certainly adding pressure on Trump's advisers to avoid the risk that other third countries could also back away from their initial commitments.

The side effects of adjusting to new US customs duties and the manner in which third countries will or will not comply with their bilateral agreements (new comparative advantages for market access and redirection of trade flows) will plunge American and foreign companies into unmanageable tariff chaos.

These latest twists and turns in Trump's trade policy should in no way compromise European companies' commitment to risk reduction, which is costly but urgent. The resilience of the US legal framework limits the president, while fuelling his appetite for domination through economic coercion.

### III • Relief or preparation for the worst?

The customs duties provided for in Article 232 on imports considered to be a threat to the national security of the United States remain in force (50% on steel and aluminium and their derivatives, 25% on motor vehicles and spare parts, 10% on timber, 25% on semiconductors, 25% on copper; weighted average customs duties based on world trade amounting to 5.3%).<sup>4</sup>

There are also ongoing investigations (on Robotics and Industrial Machinery, Personal Protective Equipment (PPE), Medical Consumables/Equipment, Wind Turbines and Components, Processed Critical Minerals/Derivatives). US trading partners.

Section 301 of the Trade Act of 1974 tariffs targeting China's unfair trade practices also remain in place (ranging from 7.5% on clothing to 25% on magnets and 100% on electric vehicles; the weighted-average tariff on Chinese imports is 11.2%). In addition to the ongoing Section 301 investigations, the series of investigations launched on 20 February by an angry Trump will provide him with highly offensive tools. He has already requested that the investigation period, which generally lasts between 6 and 12 months, be accelerated – certainly before the midterms.

If these investigations conclude that unfair trade practices exist, Trump will be authorized to impose tariffs, which he can then quickly increase by executive order. As Section 301 tariffs consider regulations and other non-tariff barriers, Europeans must seriously anticipate the risk of being aggressively targeted.

The November 2025 US National Security Strategy is much more focused on what Trump considers as an overregulated EU and the impact of unfair European regulations on US companies, than on China's unfair trade practices. There is a growing risk that new Section 301 investigations will lead to increased tariffs on European goods that are currently exempt from Section 232 tariffs under the Turnberry Agreement.

US trading partners failed to coordinate their opposition to Trump's announcement on Liberation Day in April 2025. By targeting specific countries, future Section 301 tariffs will continue to prevent international coordination.

But Europeans must accelerate their risk-reduction strategy by increasing investment in European innovation, diversifying their supply chains, and strengthening coordination with trusted partners, starting with CPTPP countries. Europeans must actively strengthen their resilience (by reducing excessive dependencies) so that they can fully use the anti-coercion instrument as a deterrent.

Finally, the ironic outcome of recent days is that China is benefiting from a significant tariff reduction and is one of the big winners of the SCOTUS ruling.

In the short term, the main concern for Europeans is now how Trump will adjust his strategy towards China ahead of his meeting with Xi Jinping at the end of March. Closer coordination between the EU and its trusted partners on how to reverse the growing dependence on Chinese production and innovation would help avoid being drawn into Trump's China policy and the risk of economic coercion from both the United States and China.

#### FOOTNOTES :

<sup>1</sup> See *Learning Resources, Inc. v. Trump* (Docket No. 24-1287), consolidated with *Trump v. V.O.S. Selections, Inc., et al.* (No. 25-250).

<sup>2</sup> See Paulsen, Mona « Is Section 122 of the 1974 Trade Act a Fall-Back Option for Trump to Impose Tariffs? », *International Economic Law and Policy Blog* (November 2025).