

Supreme Court, IEEPA and Where things Stand

January 26, 2026 – Dorsey Law & Policy Notebook

by Troy M. Keller

Way back on January 9, I logged into a SCOTUSblog chat group to hear that excellent team live-blog the announcement and delivery of Supreme Court opinions for the day. From the comments of other visitors, I wasn't the only one joining to see if a decision on tariffs was forthcoming. Not by a long shot. Journalists, trade professionals, executives, and others were waiting breathlessly for the news. But the news turned out to be no news. An opinion on the IEEPA case, *Learning Resources, Inc. v. Trump*, would not be delivered that day. A similar experience was repeated on January 14 and January 20. Still no decision. The next Supreme Court opinion release date won't be until later in February. So it looks like a few more weeks of waiting, at a minimum.

Why were Supreme Court tourists like me so anxious about this decision that they couldn't wait the additional 15–30 minutes it would take for the broader media to digest the news and put out a headline? I don't know. I knew I would be speaking with clients immediately after the release. Getting a head start on the actual opinion—and seeing the initial reaction from the SCOTUSblog team—I felt would give me better perspective than distilled journalism. Plus, I just wanted to know as soon as possible!

But the waiting, and the speculation, continues. A popular line of thinking is that the timing now suggests the Court is in no hurry because they are going to uphold IEEPA and the status quo. Any truth to that? Probably not. [This article](#) takes a deep dive into the question. The consensus view seems to be that it's impossible to know what the passage of time means in this case. All that can be taken from the delay (if it can be called that) is that the case is complicated. That makes sense.

Another comment in the article is that the Court may not be anxious because of the White House's commentary that it will move to other tariff authorities if necessary, *i.e.*, taking the pressure of the Court to act quickly. This is also good for businesses to keep in mind. While other authorities aren't as flexible as IEEPA, there are a number of options the White House has to implement tariffs without going to Congress for additional authority. I like this summary table Dorsey's trade team put together:

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Legal Basis	Expected Timeline
International Emergency Economic Powers Act (IEEPA): Unusual or extraordinary threat to the United States	Potentially immediate
Section 301 of Trade Act of 1974: Impose action necessary to address unfair action or unjustifiable burden on U.S. commerce	Potentially immediate as to China; 6-12 months for other countries (new investigation)
Section 232 of Trade Expansion Act of 1962: Impose repair or threaten to impair U.S. national security	Potentially immediate as to steel/aluminum; 6-24 months for other products (new investigation)
Section 122 of Trade Act of 1974*: Global balance of payments allowing temporary 15% tariffs	Potentially immediate
Section 338 of Tariff Act of 1930*: Tariffs against other countries that discriminate against U.S.	Potentially immediate
Further Congressional Action: Congress has plenary authority to establish tariff rates, including potentially "overruling" actions by President	Uncertain, depends on speed of legislative process
Antidumping/Countervailing Duties: Address unfairly sold or subsidized goods	12-18 months after initiation of investigation
*Not used previously to increase tariffs	

Some of these (like Section 301 and 232) are more or less tried and true at this point. Others, like Section 338 less so. Altogether, it means this case is more about the tariffs paid over the past year than the future and whether importers can anticipate a return of some or all the IEEPA based tariffs. More to come on that front.

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