

## **Congress' Limited Tariff Role May Persist After Justices Rule**

By **Dylan Moroses**

*Law360 (January 29, 2026, 6:22 PM EST)* -- The U.S. Supreme Court's ruling on President Donald Trump's emergency tariffs could leave the door open for Congress to play a larger role in trade policy heading into November's midterms, but that opportunity may pose few political incentives for lawmakers.

The justices are expected to rule early this year on whether Trump can impose tariffs under the International Emergency Economic Powers Act, a law he has used repeatedly in novel fashion since taking office in January 2025 for a variety of tariff actions.

Congress has expressly delegated certain tariff powers to the president in other statutes, but a key question for the justices is whether the language in IEEPA includes the authority to impose tariffs, in addition to those authorities explicitly detailed in the statute.

Adam M. Smith, a former U.S. Department of the Treasury and White House official now at Gibson Dunn & Crutcher LLP, said an open question remains whether Congress will try to limit Trump's discretion to impose tariffs, either under IEEPA — depending upon the Supreme Court's impending ruling — or with other tariff authorities.

Smith said these sorts of congressional efforts may generate publicity heading into the midterm elections, but are unlikely to gain traction among lawmakers.

"I think it highly unlikely that you could get a majority of the House and Senate on anything to meaningfully reign in executive authority in this regard; tariffs have become so central to the president's view of the world and his foreign and national security policy," Smith said.

From a practical standpoint, Smith said that part of the issue with IEEPA tariffs is that the law principally has been employed to impose sanctions; it has never been used to impose tariffs before, so there is no regulatory or administrative infrastructure around those tariffs as there is for other duties.

It is not clear on what standard tariffs are imposed, nor are there longstanding best practices for how importers can best comply with and navigate the restrictions, he added.

### **Lawmakers' Tariff Lockout**

If the justices uphold lower court rulings and deem the IEEPA cannot authorize tariffs, Trump administration officials have indicated they will quickly pivot to replace those measures with duties

imposed under other statutory authorities, most of which require little, if any, congressional engagement. However, they do involve more drawn-out processes.

In short, no matter the Supreme Court's ruling or congressional action, "there are going to be tariffs — whether under IEEPA or otherwise," Smith said. "The question is, how will the president get to the place he already is."

Layna Mosley, professor at Princeton University, said she expects Trump will continue the limited engagement with Congress on imposing new tariffs to replace IEEPA duties in the event the justices deem them unlawful.

She said Trump is likely to rely on statutory authorities to impose duties already at his disposal, such as Section 301 of the Trade Act of 1974 and Section 232 of the Trade Expansion Act of 1962 .

Section 301 authorizes the president through the Office of the U.S. Trade Representative to take actions in response to countries that are found to have unfair trade practices toward U.S. businesses. Section 232 allows the president to respond to imports deemed to pose a national security threat following an investigative process led by the U.S. Department of Commerce's Bureau of Industry and Security.

The IEEPA tariffs stand in contrast to the tariffs Trump has imposed under Section 232 and Section 301, which have a much more established process for stakeholders.

"The 232 and 301 tariffs rely on decades-old formalized, black-and-white processes; dealing with, navigating the novel IEEPA tariffs is very much the blind leading the blind," Smith said.

If the IEEPA duties are upheld by the justices, Casey Weaver at Morgan Lewis & Bockius LLP said she could see an upswell of advocacy to lawmakers to rein in the executive branch's tariff authority under the law.

"U.S. companies and U.S. importers are not going to be happy with that decision," she said. "So I expect that they would be calling their representatives to try to look for some other relief."

### **Direction of Framework Deals**

Questions also surround the future of Trump's various framework trade agreements reached with trading partners to reduce their IEEPA tariffs in the event the justices deem those underlying actions unlawful.

In that scenario, assistant professor Anita Kellogg at National Defense University said that whether the U.S. House stays in control of Republicans or switches to Democratic lawmakers' control could largely influence future action on Trump's trade agenda.

"Republicans lose the House, then it will definitely delay any progress on some of these tariffs and new tariffs and trade agreements," Kellogg said. "If it remains in Republicans' hands, I think you would see a lot of effort to institute these types of agreements that Trump has reached."

### **Lackluster Political Impact?**

Mosley added that it remains difficult to see whether affordability concerns will politically tie to Trump's

tariffs in a way that amplifies the issue, making it hard for Republicans to ignore concerns from constituents, or for Democrats to build momentum from, even if those measures are contributing to higher consumer prices.

Mosley said the more likely scenario is that lawmakers in midterm elections will focus on economic "things that seem closer to consumers," including the cost of housing and healthcare.

"I just think that even though we all know the link between tariffs and consumer prices, it's not clear that is a winning frame from the point of view of the swing voter in Kansas," Mosley said.

Kellogg expressed similar doubt about Democrats' ability to win voters over with messaging related to tariffs and increased costs.

"I know Democrats will try to make the connection between tariffs and inflation, but the fact that inflation has been persistent but not going up dramatically, will probably push that issue further down than other aspects of the economy," Kellogg said.

### **Democratic Lawmakers' Trade Identity**

Democratic lawmakers have been largely opposed to IEEPA tariffs, particularly with respect to those measures placed on major trading partners such as Canada, but it is uncertain if they would support eliminating all the tariffs that Trump has imposed, Princeton's Mosley said.

Limiting executive branch tariff authorities could be of interest to Democratic lawmakers and become a part of messaging in midterm elections, but it is not clear that would lead to further "trade liberalization," she added.

Mosley noted that a significant portion of tariffs Trump imposed during his first term were retained under former President Joe Biden, but promoted from "a different place on the ideological spectrum" as supporting U.S. industry and domestic jobs.

"It's not clear to me that they have really become the party of free trade," Mosley said.

### **Congressional Oversight**

Since Trump took office last year, a major question underpinning not just Congress' role in trade, but in other policy areas, is "to what extent is Congress going to start doing its job in a constitutional sense," Mosley said. She noted the lack of oversight activity by the current Congress.

Mosley added that the failure of Congress to serve as a check on the executive branch may be tied in part to Republicans fearing political retaliation by Trump.

"We tend to see Congress allowing Trump to do these things, as almost a kind of what I assume is partly a fear on the part of Republicans that if you stand up to the president, then he's gonna harm you in some way or another, which might also include in the midterms," Mosley said.

Kellogg also pointed out that the current Congress in Republican control has remained largely inactive on or in response to Trump's trade agenda.

"I think that's just notable how Congress has, particularly the Republicans in Congress have kind of abdicated a lot of their responsibility," Kellogg said. "Usually Congress tries to hold on to their rights as much as possible."

Gibson Dunn's Smith noted that congressional oversight of IEEPA actions, whether tariff- or sanctions-related, has historically been limited, but the statute does provide for more meaningful oversight mechanisms.

"Congress could step up its oversight and question the administration on the nature of the national emergencies declared by the administration — which are required to trigger IEEPA authorities — and how the tariffs appropriately address the emergencies," Smith said.

But Smith noted that given the centrality of tariffs to the president's foreign policies, any expanded congressional role into trade oversight may be "well within the Hill's constitutional prerogative but also presents a constitutional predicament."

--Editing by Tim Ruel and Neil Cohen.