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25 February 2026

NOTES ON SUPREME COURT TARIFF DECISION OF 20TH FEBRUARY 2026

Introduction

In response to losing the reciprocal tariff case at the Supreme Court (LEARNING RESOURCES, INC., ET AL. v. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.No. 24–1287. Argued November 5, 2025—Decided February 20, 2026), which ruled against the Administration by 6-3 on 20th February 2026, the Trump Administration has issued a flurry of Executive Orders and a Proclamation, to try re-establish an initial basis for tariffs. The sections below summarise key points and assess implications.

Executive Order 20th February 2026 (Ending Certain Tariff Actions)

https://www.whitehouse.gov/presidential-actions/2026/02/ending-certain-tariff-actions/

- The Executive Order simply states that ending the reciprocal tariffs does not affect any other duties, including duties imposed under Section 232 of the Trade Expansion Act of 1962, as amended, 19 U.S.C. 1862, and Section 301 of the Trade Act of 1974, as amended, 19 U.S.C. 2411. The Order also only terminates tariff specific components or clauses of previous Executive Orders that imposed reciprocal tariffs.

Proclamation of February 20, 2026 (Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems)

https://www.whitehouse.gov/presidential-actions/2026/02/imposing-a-temporary-import-surcharge-to-address-fundamental-international-payments-problems/

- The 10% is imposed using authority under Section 122 of the Trade Act of 1974, which empowers the President to address certain fundamental international payment problems through surcharges and other special import restrictions. "…my advisors have determined that an import surcharge in the form of ad valorem duties is required to deal with large and serious United States balance-of-payments deficits."
- The Proclamation imposes, for a period of 150 days, a 10% ad valorem import duty on articles imported into the United States.
- The temporary import duty will take effect February 24 at 12:01 a.m. Eastern Standard Time (07:01am South African Standard Time).
- ***Note:*** On February 21, 2026, President Trump used Truth Social to announce that he would increase the 10% tariff to 15% for all countries – this is the maximum tariff rate allowed under Section 122. A new Proclamation is therefore expected shortly to confirm this.
- In addition, the President has directed the Office of the United States Trade Representative (USTR) to use its Section 301 authority to investigate certain unreasonable and discriminatory acts, policies, and practices that burden or restrict U.S. commerce. The USTR has commented in this regard that is will conduct such investigations over an "accelerated time frame".
- The USTR further stated that these investigations will cover "most major trading partners" and will look into: industrial excess capacity; forced labour; pharmaceutical pricing practices; discrimination against US technology companies and digital goods and services; and digital services taxes; ocean pollution; and practices related to the trade in seafood, rice and other products. The Administration may therefore possibly attempt to replicate the same overall levels of tariff it achieved before the Supreme Court decision.
- It is possible a short window of 'only' 15% under Section may therefore result while the investigations are undertaken. At this stage it is uncertain whether exact replication of tariffs per country will occur or is feasible.
- **The exemptions from mid-November 2025 remain in place (including for agri products relevant to SA such as oranges, macadamias, pineapple juice) in that such goods will not be subject to**

the 15% temporary import duty ("My advisors have also opined that certain products should not be subject to the surcharge because of the needs of the United States economy and that the recommended exceptions are consistent with the limitations of section 122, the purposes of section 122, and the national interest of the United States." – President Trump). The Annexures to the Proclamation replicate the HS line wording of the November 14 2025 exemption Annexures. The list does not appear to have been expanded, so none of the products requested by the SA agri industry (in an Agbiz December 2025 submission), or presumably other industries globally, have been added to the list. The Proclamation itself contains similar wording to that of the 14 November Executive Order when it talks to such exemptions: "…natural resources and fertilisers that cannot be grown, mined, or otherwise produced in the United States or grown, mined, or otherwise produced in sufficient quantities to meet domestic demand; certain agricultural products, including beef, tomatoes, and oranges". See:
    - https://www.whitehouse.gov/wp-content/uploads/2026/02/2026Section122.prc_.ANNEX1_.FINAL_.pdf
    - https://www.whitehouse.gov/wp-content/uploads/2026/02/2026Section122.prc_.ANNEX2_.Final_.pdf
- The 10% surcharge imposed in the Proclamation will not apply to articles and parts of articles that are already subject to sectoral tariffs imposed under Section 232 measures.

Executive Order of February 20, 2026 (Continuing the Suspension of Duty-Free De Minimis Treatment for All Countries)

https://www.whitehouse.gov/presidential-actions/2026/02/continuing-the-suspension-of-duty-free-de-minimis-treatment-for-all-countries/

- President Trump reaffirmed and continued the suspension of duty-free de minimis treatment for low-value shipments, including goods shipped through the international postal system, which will also be subject to the temporary import duty imposed under Section 122.

Refunds

- Normal tariff refunds can take some time, and it is unknown at this time whether an expedited process will be implemented for IEEPA refund claims, as neither the Supreme Court's decision nor the Executive Order revoking the IEEPA tariffs addressed refunds, which means expected relevant US Court of International Trade proceedings and pronouncements in this regard will be followed. Usually, the CIT will outline the processes to be followed where refunds are involved.

- Although Justice Kavanaugh, in a dissenting judgement noted that the refund process could be "a mess", the online systems used by US Customs and Border Patrol (CBP) to log and track imports, mean that such information in practice is known and accounted for. It would not be possible to levy tariffs accurately otherwise. Human errors on both sides may occur, but the system as a whole has not been reported to be dysfunctional. The CBP has in addition recently launched a new including a new refund application e-portal. It is more likely that other factors may complicate refunds, for example the Administration may litigate in order to reduce refund repayments or delay them.
- The majority Supreme Court opinion states that the US Court of International Trade (CIT) has exclusive jurisdiction over IEEPA tariff related challenges. There were previous cases at the CIT, pending the Supreme Court decision. These will now resume, and the CIT will decide on the issue of relief for importers.
  - ***Background:*** in May 2025, the US Court of International Trade ruled that the bulk of Trump's tariffs "exceed any authority granted to the President". The Administration appealed the decision to the Court of Appeals for the Federal Circuit. The lower court ruling was paused while the case proceeded. In early September 2025 the Appeal Court ruled 7-4 to uphold the lower court's decision that the reciprocal tariffs of April 2025 could not be imposed using the International Emergency Economic Powers Act (IEEPA) of 1977. The Appeals Court further asked a lower court to consider what categories of claimants would be eligible for refunds. The Administration stated that it would appeal the matter to the US Supreme Court, which it duly did, and lost.
- The International Fresh Produce Association therefore recommended in mid-2025 that exporters and importers maintain detailed records in preparation for any resulting refund process (e.g. customs entry forms, invoices, bills of lading, packing lists).
- It can be noted again that the only party that would be eligible to claim would be the party that actually paid the tariffs, called the Importer of Record. i.e. cargo owners and exporters usually cannot claim. However, where arrangements to 'split the tariff impact' were made, such could presumably be used again to similarly distribute any refund.

- While awaiting the Supreme Court decision, nearly 2,000 importers filed cases at the CIT challenging the IEEPA tariffs, seeking refunds.
- The CIT will likely now issue instructions to CBP on the methodology to be followed for refunds. The CIT's deliberations will therefore likely precede any CBP refund action.

Alternative trade remedy pathways available to the Trump Administration

- In a previous communication to Members, Agbiz outlined the tariff authority pathways available to the Administration in the event that the reciprocal tariffs were withdrawn. These mostly require Congressional oversight, are more targeted, and provide for lower tariff levels. This means the threat of tariffs could even continue for some time; but in possibly a more predictable and transparent fashion. Chief Justice John Roberts in the Supreme Court decision noted that: "The cited statutes contain various combinations of procedural prerequisites, required agency determinations, and limits on the duration, amount, and scope of the tariffs they authorize."
- US Trade Representative Jamieson Greer noted on Sunday 22 February 2026 that the **revenue projections for the US treasury for 2026 are unchanged**. This implies that the Administration may now seek to build a tariff architecture of layered tariffs that replicate the overall reciprocal tariff revenue projections. How this will impact individual countries or what combination of trade remedies will be used, in what proportion, remains unclear.
- These instruments are listed again as **Addendum I.** Of relevance is that if the Senate or House are retaken by Democrats in the November 2026 Mid-Term elections, the Trump Administration may struggle to renew or deploy such alternative tariffs and their associated trade remedies.

Other implications

- The status of **tariff levels agreed in deals already signed** between the US and various partners, but not yet ratified by their own parliaments, is now uncertain. Analysts have previously questioned the legality and permanence of these deals, noting that they could possibly be unenforceable, open to challenge at the WTO (as they operate outside of any WTO agreed multilateral process), or might change – as elements may be significantly changed by a new Administration.

- The status and timelines of **deals still being negotiated** may now change, as the immediate threat of punitive tariff changes appears now removed, due to the processes involved in the majority of alternative trade remedies which involve Congressional approval.
- For countries where the 15% represents a significant drop, the prices of goods from such countries are now effectively 'on discount' until any replacement tariffs are ready. This may lead to a rush to front load imports again, as occurred during the 90-day suspension of the previous tariffs in early to mid-2025. This may have implications for shipping rates and port congestion.
- On 20th February the US Bureau of Economic Analysis (a division of the Department of Commerce) announced the Gross Domestic Product (GDP) had grown at just a 1.4% annualised rate in the fourth quarter. That made 2025 the second-worst year for GDP growth since 2016. President Trump had claimed recently figures of over 4%.
- Employment data is also weak, the US economy added just 584,000 jobs in 2025, the weakest annual job growth since 2013, apart from recession years. Housing, cars and food costs are have risen.
- The political cost of continuing with significant tariffs is therefore also rising, in a mid-term election year. The uncertainty triggered by the tariff campaign is cited by businesses as one of the key factors in pausing new hirings and investment.

ADDENDUM 1: ALTERNATIVE TARIFF RELATED TRADE REMEDIES

- **Section 122 of the Trade Act of 1974:** This authorises the President to impose tariffs of up to 15% for up to 150 days. or quotas on all imports for up to 150 days to address balance-of-payments deficits. These can be extended, but any only with Congressional approval.
- **Section 338 of the Trade Act of 1930:** This allows for new or additional duties to be imposed on imports from a foreign country of up to 50%, or exclusion of its products from importation, if the foreign country imposes unreasonable charges or discriminates against US commerce). "Discrimination" defined as when a trading partner's laws, import duties, regulations or other restrictions place the U.S. at a disadvantage. No formal investigation is required. The law has not been deployed since the 1930s, and triggered retaliatory measures from trade partners when it was utilised then.
- **Section 301 of the Trade Act of 1974:** This allows a U.S. President to apply county-based tariffs at a rate of his/her choosing if the U.S. Trade Representative determines that another country

either violated U.S. trade agreements or engage in acts that are unfair, unjustifiable, or unreasonable and harm U.S. commerce. The law can't however be applied universally to all imports from other nations, and must be preceded by an investigation. It lapses after 4 years unless renewed. The first Trump Administration used this to impose sweeping tariffs on a wide range of Chinese products. The tariffs must be reviewed after 4 years by the USTR. The Biden administration extended these Trump 301 tariffs for another 4 years and increased rates on some items.

- **Section 232 of the Trade Expansion Act of 1962:** Section 232 allow for the imposition of tariffs if an investigation by the U.S. Department of Commerce finds that imports "threaten to impair" U.S. national security. The first Trump Administration used this to impose duties on steel and aluminium on a range of trade partners. The Biden Administration allowed most of these to continue but reached agreements with the EU, Japan, and UK to settle WTO challenges to the tariffs. The current Trump Administration used US Commerce Department investigations into further sectors 'vital to national security' to deploy a set of 232 tariffs already (see image at end of list). These are usually sector-based tariffs.
- **Section 201 of the Trade Act of 1974:** Where the ITC finds that imports are seriously injuring, or threatening serious injury to, U.S. industries, the ITC may recommend import restrictions (such as tariffs) to protect U.S. domestic production. Unlike Section 301 investigations, the ITC does not need to find that another country is engaged in "unfair" trade practices to recommend import restrictions. The first Trump Administration imposed such tariffs on imports of solar panels and washing machines. The Biden Administration allowed the washing machines tariff to lapse but retained the solar panel tariff.

Figure 1: Existing Section 232 Tariff actions

TITLE	STATUS	RATE
Steel	Active	50
Aluminum	Active	50
Autos and auto parts	Active	25
Copper parts	Active	50
Timber and lumber	Active	10
Cabinets and vanities	Active	25
Upholstered furniture	Active	25
Heavy-duty trucks	Active	25
Buses	Active	10
Some semiconductors	Active	25
Pharmaceuticals	In process	—
Aircraft	In process	—
Polysilicon	In process	—
Crewless aircraft	In process	—
Movies	In process	—
Wind turbines	In process	—
Medical equipment	In process	—
Robotics	In process	—

Source: New York Times website, February 2026.