US Supreme Court Curbed Executive Tariff Power — Now the Hard Work Begins for In-house Counsel

Commercial and Contracts

Government

Banner artwork by Golden Sikorka / *Shutterstock.com*

When the US Supreme Court ruled in *Learning Resources, Inc. v. Donald Trump*, it did more than invalidate a set of tariffs — it redrew the boundary on how far a president can go using the International Emergency Economic Powers Act (IEEPA).

As ACC President and CEO Jason L. Brown put it, the decision “reshapes presidential trade authority, affects billions of dollars in tariffs, and immediately changes the compliance landscape for in-house counsel.” Within hours, the administration signaled it would pursue new duties under different statutes, putting legal and compliance teams in the familiar position of managing refunds and forward-looking risk at the same time.

To unpack what the ruling changes — and what it doesn’t — ACC convened a panel featuring: Jason L. Brown, President and CEO, Association of Corporate Counsel; Pratik Shah, Partner and Head of Supreme Court & Appellate Practice, Akin Gump; Aline Drucker, General Counsel and Global Head of Legal & Compliance, Invicta Watch Group; Alan Richey, Senior Vice President – Legal and Government Affairs, Dell Technologies; and Linda Kelly, Chief Legal Officer & Corporate Secretary, National Association of Manufacturers (NAM).

Register to watch the full recording on demand

A “straightforward” bottom line, with major implications

Shah — counsel of record for petitioner Learning Resources, Inc. — opened with a message designed to cut through the noise: Despite a lengthy opinion and multiple concurrences and dissents, “the bottom line is actually quite straightforward: IEEPA does not authorize the imposition of tariffs.”

He mapped the ruling to the real-world tariffs companies have been living with: fentanyl-related tariffs, global reciprocal tariffs, and other IEEPA-based measures. “All of those tariffs have been rendered unlawful” because the Court reached a categorical conclusion that IEEPA simply doesn’t grant tariff authority. The ruling does not affect tariffs enacted under other trade authorities, such as Section 232 of the Trade Expansion Act (national security–based tariffs) or Section 301 of the Trade Act of 1974 (unfair trade practices).

Shah also emphasized the structure of the majority. The decision came down 6–3, with the Chief Justice John Roberts writing the principal opinion and a coalition that — importantly for counsel tracking institutional dynamics — included Justices Niel Gorsuch and Amy Coney Barrett, along with Justices Elena Kagan, Sonia Sotomayor, and Ketanji Brown Jackson.

On the substance, Shah broke the Chief Justice’s opinion into three practical takeaways:

1. **Tariffs are taxes, and taxation sits with Congress.** The Court anchored the analysis in Article I: “tariffs are part of the taxing power… squarely part of Congress’s Article I authority,” and it rejected framing the dispute as primarily an Article II/foreign affairs question.
2. **For some justices, this was also a “major questions” case.** Shah explained that the Chief Justice, joined by Gorsuch and Barrett on that portion, treated the issue as implicating the Major Questions Doctrine — requiring clear congressional authorization before concluding Congress handed the executive branch such economically and politically significant power.
3. **Traditional statutory interpretation still gets you there.** Using familiar interpretive tools, the Court noted that unlike other tariff statutes, IEEPA contains “no explicit reference to duties, tariffs, and taxes,” and its operative verbs aren’t revenue-raising powers.

Shah then flagged a key operational shift already underway: “The government is no longer entitled to collect any IEEPA tariffs,” and his understanding was that Customs had ceased collection after reprogramming systems.

Preparing for the ruling — then bracing for “Plan B” and a new uncertainty

Dell’s Richey noted that the issue had been in motion “for the better part of the last year,” so Dell had been preparing for either outcome. When the ruling hit, the immediate internal focus was practical: “What does it mean, and what’s the practical effect, going forward?”

He also observed that the administration moved quickly, suggesting a ready “Plan B” — with an executive order and guidance “out fairly quickly” under Section 122.

Invicta Watch Group's Drucker likewise said her team anticipated the result — and immediately treated it as an opportunity for legal and compliance to deliver measurable value: identifying "areas where we can potentially have a cost savings," while refocusing monitoring priorities.

Within one or two business days, Invicta had already started "important conversations with our customs and our brokers," and she urged companies to proactively inventory "the entire universe of all of your filings and all of your entries."

NAM's Kelly captured the mood across manufacturers with a phrase that resonated throughout the discussion: "It swaps one kind of uncertainty for another."

Her point: IEEPA had enabled "extreme uncertainty" — tariffs changed "at any time," with "no time limit, no process… [and] no limit to the level of tariffs." Moving to other tools may reduce some volatility, but it does not eliminate uncertainty.

Richey echoed that comparison from the corporate side. Under IEEPA, he said, it was hard to plan because tariffs could be imposed "at any time, any amount, any place worldwide." By contrast, with more traditional authorities (e.g., 301, 232), companies at least get process: a comment period with "a chance to weigh in," which can create more runway for mitigation planning — even if outcomes remain uncertain.

The most urgent throughline for in-house counsel is not merely that IEEPA tariffs are unlawful; it's how to *recover what was paid* and avoid losing procedural rights.

Entitlement is clear; the process is the question

Shah was direct: The Supreme Court didn't resolve refunds — "Refunds was not briefed… [and] was not litigated below" — so the decision is "silent on refunds." But he added: "The legal entitlement to refunds is quite clear in the law. The big question is, how do you get them, and what the process is going to be?"

For Invicta, Drucker underscored materiality: "The refunds would be very significant for us." That significance is exactly why her advice centered on readiness: Invest now in the internal and broker-facing work needed to validate claims and preserve deadlines.

She stressed near-term triage that legal can lead:

- **Cross-functional coordination:** Refunds work must include members of the supply chain and finance teams because documentation and categorization of entries will be paramount.
- **Immediate data hygiene:** "You have got to get your house in order in terms of all of your entries, what is liquidated, what is not," she shared.
- **Watch hard deadlines:** Even with longer litigation timelines, Drucker warned that "liquidated entries have a 180-day hard deadline to file a protest… [If] you file on day 181, it's dead."

Practical questions for in-house counsel

Richey broadened the in-house counsel checklist beyond the importer-of-record posture. Yes, companies should identify what they paid directly, evaluate PSC/protest paths, and coordinate with trade counsel — but he emphasized counsel should also look at indirect tariffs embedded in supplier

pricing: Companies may pay through suppliers, so “you also may want to look at your indirect tariffs that you pay through certain suppliers,” he added.

He also highlighted a set of practical deal-and-process questions in the context of M&A — questions that apply more broadly to any organization trying to operationalize refunds:

- “If there is a refund, who’s entitled to that refund: the buyer or the seller?”
- “Who’s responsible for going out and actually doing the work to get the refund?”
- “What’s the timing… and who’s going to pay the cost of getting the refunds?”

In other words: The legal theory may be straightforward, but execution will hinge on governance, documentation, and internal ownership.

Tariff pass-through, supplier dynamics, and consumer risk

The panel saved some of the most immediately actionable nuance for the interactive portion—especially the audience questions around pass-through (what happens if tariffs were built into supplier pricing, partner pricing, or ultimately consumer prices).

You can hear Shah distinguish government refund entitlement (importers vs. downstream parties), Richey describe why downstream recovery questions can get convoluted in practice, and Drucker flag litigation risk — particularly in consumer goods — where she predicted plaintiffs’ attorneys may attempt class-action theories tied to pricing and tariff narratives.

For those details — and the full context around operational steps, timing, and risk — register to access the on-demand recording.

View the on-demand recording now

Tariffs are one thread in a larger geopolitical risk fabric

Near the end, Richey offered a framing many legal and government affairs teams are increasingly adopting: Don’t treat tariffs as a standalone risk. “Globally, [teams] ought to be looking at not just tariff risk, but what’s the overall geopolitical risk that we see,” because multiple shocks can “bleed over into tariffs,” supply chains, and market access.

That broader lens aligns with the direction ACC is signaling for the profession. ACC’s **2026 Chief Legal Officers Survey** highlighted the growing emphasis CLOs are placing on geopolitical risk — and the need for legal leaders to build cross-functional playbooks that connect trade, regulatory change, supply chain resilience, and board-level risk oversight.

Join ACC for more trade and tariffs guidance!

Disclaimer: The information in any resource in this website should not be construed as legal advice or as a legal opinion on specific facts, and should not be considered representing the views of its authors, its authors' employers, its sponsors, and/or ACC. These resources are not intended as a definitive statement on the subject addressed. Rather, they are intended to serve as a tool providing practical guidance and references for the busy in-house practitioner and other readers.

Association of Corporate Counsel

Staff

ACC