

THE PRESS KEEPS CODDLING TRUMP'S TARIFF LAWLESSNESS

Here's how Ana Swanson, one of NYT's main reporters covering Trump's trade war, referred to the legal judgment that Trump's tariffs are unlawful in a post titled, "Bluffs and Bluster Aside, Trump's Tariffs Are Here to Stay."

One remaining factor that could significantly lower Mr. Trump's tariffs are the challenges that are now proceeding through the legal system. **Federal courts have called into question** the legal authority that Mr. Trump has used to threaten his global tariffs, and they are expected to rule on that question this fall.

Mr. Trump's advisers have said that they have other legal channels to impose tariffs if the courts rule against them, but those methods were not likely to give the Trump administration as much scope and flexibility as it currently has asserted. [my emphasis]

Courts have not "called into question" Trump's legal authority to impose arbitrary sanctions. Two ruled that Trump's tariffs were unlawful.

In a piece with Tony Romm today, noting that Trade Rep Jamieson Greer was initiating an investigation, "to determine whether certain policies and actions by the Brazilian government are unreasonable or have hurt U.S. businesses" – that is, to determine whether the complaints Trump made in a letter targeting Brazil last week were even true –they describe:

By targeting Brazil, Mr. Trump nonetheless has touched off complaints that he is using his trade powers to settle political scores, regardless

of questions of legality. The president has claimed vast authority to issue steep levies even without the express approval of Congress, as he looks to combat the nation's trade deficit, address security concerns and, at times, meddle in another country's internal affairs.

Thus far, the questions have been answered: Trump's usurpation of Congress' authority is illegal, and Greer's belated investigation – an attempt to retcon Trump's claims with some flimsy findings to justify them – is itself proof of that lawlessness (and should be reported as such).

And that's what Swanson says when she *does* mention the legal challenges. In a 1400-word piece titled, "Tariffs or Deals? Trump Seems Content With Punishing Levies," she doesn't mention the legal challenges – significantly lawyered and supported by right wing groups – at all, not even in her discussion "about whether any of the president's supporters will break with him on his aggressive strategy."

A story by Swanson's NYT colleague, Jeanna Smialek, describing efforts by the EU to replace the US as a trading partner doesn't mention the legal challenges. A piece on the chaos created by Trump's prevarications, bylined by both Smialek and Swanson, doesn't mention the legal challenges. A piece on the damage Trump's trade war poses for Europe doesn't mention them.

Romm seems to be the one person at NYT who wants to talk about the law. He partnered on the piece reporting the US Court of International Trade's judgment that Trump's tariffs were unlawful that Swanson linked above, included a longer discussion of the legal problems with Trump's tariffs in the piece on Trump's tariff threats against Brazil, linked in the second block quote above and by another story on the Brazil threat links.

But other than that, the abundant coverage NYT has given Trump's trade war in the last week barely considers the legality of this all, or even the timing of Trump's delayed new tariffs, scheduled to go in effect one day after the Federal Circuit considers the legality of the tariffs anew. This coverage repeatedly obscures what the CIT already found: that the tariffs are unlawful.

NYT is not alone. Over at the WSJ, right next to a story describing that Trump's tariffs have begun to create inflation, Greg Ip has an 1100-word story declaring,

Forget TACO. Trump Is Winning His Trade War. The president wants tariffs, the higher the better. Whether that is achieved unilaterally or via deals is secondary.

Trump has won, Ip explains in ¶9, because the 10% tariffs he didn't relinquish have started making money.

[D]espite the absence of deals, he has succeeded. In June alone, Treasury collected \$27 billion in customs revenue, up \$20 billion from a year earlier, a pace that would imply \$240 billion more a year. That isn't enough to eliminate most families' income tax as Trump once promised, but it can still pay for plenty of other priorities.

Yet when Ip mentions the CIT ruling, in passing, over ten ¶¶ later (Ip makes a factual error here; *two* courts have declared Trump's tariffs illegal, though Trump's DOJ insists the CIT is the only court with jurisdiction) he doesn't mention that Trump only got a stay by promising to pay all those tariffs back if he loses.

Many of those checks and balances and norms are now gone. Trump claims the authority to raise tariffs on anyone and anything indefinitely for virtually any

reason under the International Emergency Economic Powers Act, a law intended to sanction adversaries such as Iran or Venezuela. One court has declared his use of it illegal; that decision has been stayed.

If Trump eventually loses this legal fight – Trump’s DOJ posited to even *get* this stay – importers get a refund, with interest. All that money goes away.

If tariffs imposed on plaintiffs during these appeals are ultimately held unlawful, then the government will issue refunds to plaintiffs, including any postjudgment interest that accrues.

Consumers, mind you, would be fucked. They won’t get the taxes they already paid back. But the revenue from importers, and then some, would all disappear if SCOTUS eventually rules these tariffs are unlawful. Imagine the political headache *that* would cause?

The many stories yesterday about Mark Carney conceding that Trump will make no deals that don’t involve tariffs? No mention that the Federal Circuit Court will hear Trump’s appeal of the ruling finding the tariffs unlawful *the day before* Trump’s onerous new tariffs are set to start.

Even this celebrated Jonathan Karl interview with Kevin Hassett, in which Trump’s economic advisor babbles when asked about the Brazilian tariff threat, only questions on what authority Trump threatened that 50% tariff in passing, without mentioning the court ruling that Trump cannot use tariffs to pressure other countries, as the letter clearly does.

I’m increasingly mystified by the disinterest in the legal challenges to Trump’s authority to impose these tariffs at all, particularly in a piece like Ip’s that contemplates where or if

any checks on Trump remain. There are still courts here.

It's certainly possible that journalists assume, because the Federal Circuit Court stayed the injunction imposed by the CIT (citing the Wilcox decision I discuss below), they will rule for the government. That may be the case (though unless I'm mistaken the 11-judge *en banc* panel that will hear the case in a few weeks includes no Trump appointees, whereas one of the judges on the CIT panel was a Trump judge). But observing that, "these cases present issues of exceptional importance warranting expedited *en banc* consideration of the merits in the first instance," the Federal Circuit committed to weigh in definitively and quickly, whereas most other Trump challenges have only just reached the merits stage in the District Courts (one exception – the challenges to Trump's attempt to cow law firms – hasn't even and won't set an appellate briefing schedule yet). However they're inclined to weigh in on the merits claim before them, the Federal Circuit does view this entire situation as exceptional.

It's certainly possible that journalists assume, like a bunch of random social media people, that the Supreme Court will back the President on this as they have in many – but by no means all – legal challenges to his abuse of power. That's perfectly reasonable. SCOTUS' Republican majority has rubber-stamped unprecedented abuses from Trump already (even ignoring their opinion giving Trump criminal immunity that got him this far), so it is conceivable they'll let Trump usurp Congressional authority to impose tariffs.

Yet several things distinguish the challenges to Trump's tariffs from the other SCOTUS rulings, which have allowed Trump to dismantle agencies mandated by Congress or fire people Congress attempted to grant independence. The one area where SCOTUS has already invented an over-determined exception (in the Wilcox opinion the Circuit Court cited to explain granting a stay) to their general rule of granting Trump more

power, in which they distinguished the hypothetical firing of the Federal Reserve Chair from the firing of officials mandated to protect labor interests, is understood to serve the stability of the economy. The same commitment to serving corporate interests may tip the scale against Trump on this point.

Furthermore, on the tariff challenges, SCOTUS will have to pick between those it normally caters to. A goodly number of right wing legal stars are arguing both the lead case and weighing in as Amici representing right wing entities like the Chamber of Commerce or AEI-linked economists, which may make SCOTUS' right wingers weigh John Sauer's claims more critically. This is the rare case where the right and left are unified in opposing Trump.

Plus, things have changed since the Circuit ordered an expedited schedule five weeks ago. Trump's recent stunts may irk the courts. For example, to *get* the two month stay of the injunction that even permits him to keep sending out letters, Trump made the same claims his discredited economic advisors keep making on TV – that he was on the verge of dozens of deals, deals that might be be jeopardized by a stay.

As members of the President's Cabinet have attested, the CIT's order would irreparably harm the economic and national security of the United States. The Secretary of Commerce explained that the injunction "would undermine the United States-United Kingdom trade deal that was negotiated in reliance on the President's emergency tariff authority," plus the recent "China trade agreement," and "would jeopardize the dozens of similar arrangements with foreign-trading partners that" are being negotiated. A76. "Each of these negotiations," the declaration explained, "is premised on the credible threat of enforcement of the IEEPA tariffs," and the injunction could

compromise that threat, so that “foreign counterparts will have reduced incentives to reach meaningful agreements[.]”

The declarations that CIT blew off but which the Federal Circuit apparently heeded in granting a stay brag repeatedly of the “dozens” of trade negotiations ongoing (though they point solely to the UK framework as proof that their tantrum is working). Howard Lutnick claimed that “scores of countries immediately reached out” on April 2, following Trump’s initial tariff panic. “[F]oreign-trading partners that have run trade deficits in goods for years, and helped hollow out the American manufacturing base, immediately came to the negotiating table.” He claimed, “an adverse ruling would jeopardize the dozens of [] arrangements [similar to the UK deal] that I am negotiating.” Marco Rubio claimed back in May, “In some cases, we have reached frameworks with our trading partners,” but in the time since, it appears that by “some” Rubio meant “two.” Rubio also warned of “diplomatic embarrassment” if Trump’s claim to have the power to set tariffs were rebuffed by courts, which I can understand posing a concern to Rubio but is not a legal principle. All these declarations claimed to be negotiating with Canada and Mexico, in addition to China.

But Trump has instead shown that he himself is disrupting actual negotiations in process to simply send his demands; he basically intervened to forestall a deal with the EU. As Trump confessed the other day, “Am I right when I say I don’t want deals, I just want the paper to get sent?” After laughing, he worried, “I don’t know if this is on television,” as if he has something to hide. Then later in the day, when asked if he would release details of the purported deal with Vietnam, Trump opined, “I don’t think it matters how much you release of the deal.” (There may be reason for that; as we get further from the deal with China that purported to be asymmetrical in US favor, China

has both gotten Nvidia chips and imposed licensing on battery technology, meaning Trump continues to trade away America's manufacturing strengths.)

That's a point the Chamber of Commerce made in its amicus brief. The whiplash is "crippling" businesses.

These harms are compounded considerably by the unlimited, unilateral nature of the President's asserted IEEPA tariff authority, which fosters deep uncertainty and makes it extremely difficult for American businesses—large and small—to plan for the future. And in business, uncertainty creates hardship.

[snip]

The President's "pause" in enforcing some of these tariffs provides little reprieve for businesses. Because international orders must often be made far in advance, many businesses are holding off making orders fearing that, by the time the order arrives in the United States, tariff enforcement will have resumed. Recent statements by the President and his advisors have only magnified this uncertainty. Just this week, the President announced 25% tariffs against South Korea and Japan if they do not negotiate a trade deal by August 1. Elisabeth Buchwald & John Liu, Trump announces new tariffs of up to 40% on a growing number of countries, CNN Business (July 8, 2025), <https://www.cnn.com/2025/07/07/economy/trump-letterstariffs>. Meanwhile, Secretary of the Treasury Scott Bessent stated that the paused April 2 tariffs would "boomerang back" on August 1 for countries that do not negotiate a deal. Ari Hawkins, Trump team moves goalposts on tariffs again, Politico (July 6, 2025), <https://www.politico.com/news/2025/07/06>

/bessent-trumptariffs-deadline-august-00440522. For businesses, this uncertainty is crippling.

Trump's demand letter to Brazil, with which the US has no trade deficit, is still worse. It aims to coerce an entirely personal goal, help for his fellow coup plotter – precisely the kind of arbitrary leverage the CIT used to distinguish Trump's use of tariff threats from any limited use of tariffs under IEPPA. And the fact that Jamieson Greer is only now investigating whether the claims in the letter are true – normally the first step to imposing tariffs under an existing *legal* means – is a tell that Trump is simply making shit up.

The arbitrariness and coerciveness of the Brazil letter is a point that – as Romm reported in the NYT – plaintiffs plan to bring up during the appeal (which I also predicted here).

Jeffrey Schwab, senior counsel for the Liberty Justice Center, which is representing a set of small businesses suing the government, said Mr. Trump's renewed tariff threats seemed only to affirm their arguments in the case.

"This is exactly why these tariffs are a problem," he said. "They can change at the drop of a hat, and our clients can't keep track of what the tariffs are going to be because they change so quickly."

Mr. Schwab said he also expected the political threat against Brazil, in particular, to come up during the legal challenge. He said that the president's primary justification for issuing tariffs under the federal economic-emergency law is to respond to a trade deficit, and that Mr. Trump's attempts to protect Mr. Bolsonaro had "nothing to do with that."

Even after his tariffs were deemed illegal, even

during this grace period where Trump is still permitted to negotiate tariffs already deemed unlawful, Trump is making his legal case far worse. At the very least, that may give either the Federal Circuit or SCOTUS the proof needed to declare that Trump is just making shit up. If not, if SCOTUS ultimately upholds his arguments, the sanction for Trump's utter contempt for the law would be even greater.

But if they do that, they'll do that in siding against the business community, right alongside ruling against Democrats in Congress and Democratic states.

And that's the kind of drama that should present a hook for coverage – or at least careful consideration in coverage claiming Trump has no checks.

The business press has been publishing near daily stories about Trump's attempt to bully Jerome Powell, most recently with plans to announce his replacement early, possibly with the babbling Hassett. But the principles underlying the legality of Trump's tariffs are of equal import to the stability of the business world, and might resolve, one way or another, even before Powell is replaced next year. Yes, Trump's sycophants have told people like Swanson they have other means via which Trump can set tariffs, but as I understand it those take time and require facts of the sort Trump wants to avoid. They don't assert the same kind of unreviewable authority to just make shit up that Trump has so consistently relied on in his power grabs and is increasingly flexing here.

I'm not saying I have the answers to this question. I'm definitely not predicting how the courts will weigh in.

What I'm saying is that something almost unique is brewing in these dockets, with the business community standing up to Trump in ways more visible than in coverage – to say nothing of Congress.

Ultimately, within a year (even if SCOTUS takes

the case without expediting it and stalls, like they did for Trump's immunity claims), there will likely be a binary legal decision about whether or not the President can just make shit up to claim an economic emergency and in so doing, destroy small businesses and even enact his own personal vengeance. Or, SCOTUS will impose a check on Trump's authority that will gut his bid to subjugate the rest of the world to a weakening US economy.

Whichever it is, it's an eventuality far more certain than anything else Trump is up to.