

# Tariff Refunds and the Consumer Justice Gap: The Tariff Refund Illusion, Distributional Injustice, and the Limits of Importer-Centric Trade Remedy Law

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**Abstract:** On February 20, 2026, the United States Supreme Court ruled 6-3 in *Learning Resources, Inc. v. Trump*, Nos. 24-1287 & 25-250, 607 U.S. \_\_\_ (2026), that tariffs imposed under the International Emergency Economic Powers Act (IEEPA) exceeded statutory authorization. The ruling immediately sparked a debate over refunds for an estimated \$133.5 billion in assessed duties and up to \$175 billion in total exposure. This commentary argues that this debate is fundamentally misframed: it conflates legal obligation, which remitted duties, with economic burden, which absorbed the cost. Drawing on tax incidence theory, distributional economics, sociological frameworks of structural inequality, and supply-chain analysis, this commentary establishes that between 86 and 96 percent of the IEEPA tariff burden was borne by U.S. firms and consumers, with tariff-attributable household costs estimated at \$1,500-\$1,800 in nominal 2025 dollars. The commentary further demonstrates that tariffs operate as a regressive fiscal instrument, disproportionately burdening low-income households, communities of color, and small businesses, and that the emerging refund architecture replicates this asymmetry by channeling restitution exclusively to importers and large businesses. This systematic disjunction between legal and equitable restitution is theorized as the consumer justice gap. The commentary concludes with a policy framework that encompasses conditional refund statutes, income-adjusted consumer tax credits, and Federal Trade Commission oversight, all designed to align restitution with economic harm.

**Keywords:** tariff incidence, regressive taxation, consumer justice gap, IEEPA, structural inequality, racialized fiscal stratification, small business asymmetry, supply-chain pass-through, equitable restitution

## Introduction

The Supreme Court's February 20, 2026, decision in *Learning Resources, Inc. v. Trump* represents a defining moment in U.S. trade and constitutional law. In holding that the IEEPA does not authorize the President to impose tariffs, the Court's 6-3 majority resolved a question that had convulsed the trade policy community throughout 2025. Chief Justice Roberts, writing for the majority, concluded plainly: IEEPA's grant of authority to 'regulate . . . importation' falls short of authorizing tariffs; the statute contains no reference to tariffs or duties, and until the Trump administration, no President had read IEEPA to confer such power (*Learning Resources*, slip op. at 20). The ruling immediately triggered a refund process involving an estimated \$133.5 billion in assessed IEEPA duties (Pacheco & Deng, 2026) and up to \$175- \$179 billion in total exposure (Boller et al., 2026; Lawder, 2026).

Yet the dominant policy and media framing of this ruling as a legal correction that will deliver monetary restitution to aggrieved parties obscures a deeper distributional problem. The refund process contemplated by the Court of International Trade (CIT) and existing customs law is architecturally designed to return duties to importers: the legal entities that remitted them. This legal framework does not inquire into, and cannot by its structure address, the prior question of who economically bore those costs. Tariff incidence theory provides a clear answer to that question: the burden of tariffs is transmitted downstream through supply chains and, in the aggregate, settles on households (Fajgelbaum et al., 2020; Amity et al., 2019; Amity et al., 2026). The party most likely to receive formal restitution and the party that sustained the primary economic harm are, in most cases, not the same party.

This commentary advances three interrelated arguments. First, as an economic matter, tariffs function as consumption-based levies that are largely passed through to end consumers rather than absorbed by importers or foreign exporters. Second, as a matter of distributional justice, tariffs are a regressive fiscal instrument: their burden, expressed as a percentage of income, falls most heavily on low-income households, communities of color, and small businesses, groups that are also the least positioned to navigate the legal machinery required to claim restitution. Third, as a normative matter, a refund architecture that channels \$133.5 to \$175 billion exclusively to importers, who bore 4 to 14 percent of the economic burden, while offering no mechanism for restitution to households that bore 86 to 96 percent, constitutes a consumer justice gap: a systematic divergence between legal restitution and equitable restitution.

The commentary proceeds in six sections. Section I reconstructs the standard economic case for tariffs and consumption taxes, engaging with those arguments charitably before proceeding to critique. Section II applies tax incidence theory and vertical equity analysis to establish the regressive character of the IEEPA tariff regime. Section III situates distributional harm within structural theories of racial and economic inequality, demonstrating that the severity of the tariff burden is conditioned by preexisting wealth stratification. Section IV examines the specific vulnerabilities of small businesses within the tariff and refund architecture. Section V proposes a policy framework for consumer-centered restitution. Section VI concludes.

### **Reconstructing the Economic Justification for Tariffs and Consumption Taxes**

Before critically assessing the IEEPA tariff regime's distributional consequences, intellectual honesty demands a charitable reconstruction of the standard arguments in favor of tariffs and broad-based consumption taxes. These arguments are not without merit, and dismissing them without engaging with them would misrepresent the policy debate. There are three principal justifications.

The first is revenue generation. Governments have long relied on tariffs as a source of fiscal revenue, particularly in contexts where income tax administration is operationally difficult. Historically, the United States funded most of its federal expenditures through tariff revenue for over a century following the Constitution (Irwin, 2017). The Trump administration explicitly invoked revenue generation as a rationale for the IEEPA tariff regime, with administration officials projecting annual tariff revenues of approximately \$300 billion (Congressional Budget Office estimates, as cited in Lawder, 2026). The Penn-Wharton Budget Model's estimate that approximately \$500 million in IEEPA-based revenue was collected daily during the relevant period confirms the magnitude of this revenue stream (Boller et al., 2026).

The second justification is the protection of the domestic industry. Tariffs can shield nascent or strategically important industries from foreign competition that benefits from

state subsidies, lower labor standards, or currency manipulation. This rationale draws on a long tradition in trade theory, from Hamilton's (1791) Report on Manufactures to the infant industry arguments formalized by Mill (1848) and later refined by Krugman's (1984) new trade theory, which acknowledges that government intervention may be welfare-improving when economies of scale and learning effects are present. In political economy terms, tariffs can protect communities economically dependent on manufacturing sectors facing import competition, a dynamic extensively documented in the literature on the China Shock (Autor et al., 2013).

The third justification, most relevant to consumption-based levies, is administrative simplicity. Broad-based consumption taxes, including tariffs, which function as a form of selective consumption tax on imported goods, are, in principle, easier to collect at the border or point of sale than income-based levies requiring surveillance of individual earnings across complex, informal, or fragmented economic actors. Value-added taxes and tariffs require fewer enforcement resources than individual or corporate income taxes in economies with large informal sectors, which helps explain their prevalence in developing economies (Cage & Gadenne, 2018, as cited in Shambaugh, 2025).

These justifications are not specious. Revenue generation is a legitimate governmental function; infant industry protection has theoretical and empirical support in specific contexts; and administrative simplicity is a real constraint on tax system design. The problem, as this commentary will demonstrate, is that these justifications abstract from the distributional question of who bears the fiscal burden, and when distributional effects are introduced into the analysis, the case for broad-based tariffs as a welfare-enhancing policy instrument collapses for low-income households, communities of color, and small businesses.

### **Tax Incidence and Regressive Effects**

Tariff incidence, the economic question of who ultimately bears the cost of a tariff, is categorically distinct from the legal question of who remits it. As a matter of basic price theory, the statutory incidence of a tax (the legal obligation to pay) diverges systematically from its economic incidence (the actual change in real income caused by the tax). In the standard competitive model, the division of a tax burden between buyers and sellers depends entirely on the relative price elasticities of supply and demand: the more inelastic side of the market bears the larger share of the burden (Musgrave & Musgrave, 1989).

For tariffs on consumer goods in the U.S. economy, this theoretical prediction has been confirmed repeatedly across multiple independent empirical studies with striking consistency. Fajgelbaum et al. (2020), in a landmark study published in *The Quarterly Journal of Economics*, analyzed the short-run impact of the 2018 U.S. tariff regime and found that import prices targeted by tariffs did not fall, implying complete pass-through of tariffs to duty-inclusive prices. The resulting losses to U.S. consumers and firms that purchased imports totaled \$51 billion, or 0.27 percent of GDP. This finding, complete pass-through, is analytically decisive: it means that foreign exporters absorbed none of the tariff cost, essentially, and domestic buyers absorbed the entirety.

The same pattern holds even more strongly for the 2025 IEEPA tariff regime, which was substantially larger in both scope and magnitude. Research from the Federal Reserve Bank of New York, analyzing over 12 months of import price data, found that nearly 90 percent of the economic burden of the 2025 tariffs fell on U.S. firms and consumers, with foreign exporters absorbing only 10-14 percent (Amiti et al., 2026). The Kiel Institute for the World Economy, drawing on over 25 million shipment-level bill-of-lading records totaling nearly four trillion dollars in U.S. imports, reached an even starker finding: foreign exporters absorbed approximately four percent of the tariff burden, with the remaining 96

percent passing through to U.S. buyers (Hinz et al., 2026). The Federal Reserve Bank of Richmond summarized the broader empirical literature: “the pass-through rate is generally high (often near 100 percent), meaning that the burden of tariffs typically falls on domestic consumers and firms rather than foreign exporters” (Azzimonti et al., 2025, para. 4).

These aggregate pass-through figures, however, do not capture the distributional dimension of tariff incidence, specifically whether the burden is distributed proportionately across income levels or falls disproportionately on lower-income households. This is the domain of vertical equity analysis: the normative principle that a fair tax system should impose burdens proportionate to (or progressive with respect to) ability to pay (Musgrave & Musgrave, 1989; Stiglitz, 2000). By this standard, tariffs are a deeply inequitable instrument.

Tariffs are regressive because lower-income households spend a larger share of their income on tradeable consumer goods, particularly apparel, footwear, household items, electronics, and food, than higher-income households, who allocate a larger share of their income to services, financial assets, and non-tradeable goods. This consumption pattern means that a uniform percentage tariff translates into a higher effective tax rate on income for lower-income households. The Budget Lab at Yale’s distributional analysis of the 2025 tariff regime is particularly precise on this point: the tariff burden on the second income decile was 2.5 times greater as a share of income than for households in the top decile, 4.0 percent versus 1.6 percent of disposable income (The Budget Lab at Yale, 2025). In absolute dollar terms, this translated to estimated annual costs of \$1,700 for households in the second decile, \$3,000 for middle-income households, and \$8,100 for households in the top decile, underscoring the paradox that in nominal terms higher-income households pay more, but as a share of income the burden on low-income households is comparatively far heavier (The Budget Lab at Yale, 2025).

The Budget Lab’s commodity-level analysis further reveals the mechanisms of this regressivity. Short-run price increases of 24 percent for leather goods and apparel, 16-18 percent for electronics, and 1.9 percent for food are particularly burdensome for lower-income households, which spend a disproportionate share on these categories (The Budget Lab at Yale, 2025). The American Enterprise Institute (AEI) reached consistent conclusions through a different methodological approach: matching import duties to consumer expenditure data. AEI analysts found that low- and middle-income households spend a higher fraction of both income and non-housing consumption on tariffed goods, confirming the regressive incidence pattern (AEI, 2022).

From a public finance perspective, these findings situate tariffs alongside other consumption-based levies, such as value-added taxes, excise taxes on tobacco and alcohol, and sales taxes, in a category of fiscal instruments that systematically violate the principle of vertical equity when applied without progressive offsets. Musgrave & Musgrave’s (1989) classical framework distinguishes between benefit taxation (where tax burdens are proportional to benefits received) and ability-to-pay taxation (where tax burdens are proportional to fiscal capacity). Tariffs satisfy neither criterion: lower-income households do not receive proportionately greater benefits from the revenue generated by IEEPA tariffs, nor are their tariff burdens proportionate to their income. The refund architecture, which channels restitution through the importer-plaintiff pathway of the CIT, does not address this mismatch; it merely restores the nominal duty remittance to the legal obligor, leaving the underlying distributional harm entirely intact.

### **Structural Inequality and Racialized Economic Stratification**

The regressive character of tariff incidence documented in Section II does not operate in a distributional vacuum. Its severity is substantially conditioned by the preexisting landscape

of racial and economic stratification in the United States. To understand why tariff-driven price increases disproportionately affect communities of color, it is necessary to situate them within the sociological literature on structural inequality and racialized wealth gaps, which demonstrates that formally race-neutral fiscal instruments produce materially differentiated outcomes when applied across a racially stratified wealth distribution.

The racial wealth gap in the United States is both large and persistent. According to the Federal Reserve Board's 2022 Survey of Consumer Finances (SCF), for every \$100 in wealth held by white households, Black households held only \$15 (Perry et al., 2024, citing 2022 SCF data; Alandangady et al., 2023). Both the White-Black and White-Hispanic median wealth gaps reached over \$220,000 in 2022, up approximately \$50,000 from the 2019 survey (Alandangady et al., 2023). Importantly, this increase occurred during a period of broad-based wealth gains, underscoring that aggregate economic growth does not automatically narrow structural disparities. As economists Derenoncourt et al. (2022) have written, under current conditions, "wealth convergence is not only a distant scenario, but an impossible one" absent specific policy interventions.

These wealth gaps are not the product of individual-level behavioral differences but reflect compounding historical and contemporary structural mechanisms (Bhutta et al., 2020). Historically, policies including the systematic exclusion of Black Americans from federally supported homeownership programs, the exploitation of Black labor through forced and underpaid work, and explicit discrimination in financial markets created divergent wealth trajectories that compound across generations (American Bar Association, 2023; Dean, 2024). Contemporarily, documented discrimination in hiring (Bertrand & Mullainathan, 2004, as cited in American Bar Association, 2023), labor market segmentation that channels Black workers into lower-wage and more precarious positions (American Bar Association, 2023), and lower returns to homeownership in segregated communities (Dean, 2024) perpetuate these gaps through mechanisms that operate independently of formal legal equality.

The relevance of this structural context to tariff incidence is direct. Because lower-wealth households, disproportionately households of color, have smaller financial buffers, less access to credit at non-predatory rates, and fewer liquid assets to absorb cost shocks, the same absolute tariff-driven price increase produces a larger proportional disruption to their material welfare. A \$1,700 annual tariff burden on a household in the second income decile the Budget Lab's estimate for the 2025 IEEPA tariffs (The Budget Lab at Yale, 2025) represents a substantially larger percentage of liquid resources for a Black or Hispanic household with a median net worth of approximately \$44,000 or \$61,000 (Alandangady et al., 2023) than it does for a white household with a median net worth of approximately \$285,000. This is not merely an abstract ratio: it means that lower-wealth households face a greater probability of debt accumulation, reduced investment in education and health, and foregone asset accumulation because of tariff-driven price increases, harms that are temporally embedded and cannot be reversed by importer refunds.

Furthermore, the geographic and sectoral incidence of the IEEPA tariff regime amplified these disparities. Denham (2025) found that lower-income states and metropolitan areas faced disproportionate tariff burdens because their populations spend larger shares of income on non-discretionary goods, the precise categories most heavily affected by the 2025 tariffs. These geographic patterns correlate with racial composition: historically redlined and segregated neighborhoods, disproportionately populated by communities of color, tend to have limited retail competition and fewer substitution options, meaning that tariff-driven price increases face less competitive pressure in these markets than in wealthier, more commercially diverse areas.

The consumer justice gap, as this commentary theorizes it, therefore has a racialized dimension that is invisible to legal frameworks focused exclusively on importer standing. A

refund architecture that ignores the downstream incidence of tariffs not only fails to correct the economic harm but also reproduces, through the mechanism of restitution, the same structural asymmetry that characterizes the broader distribution of wealth. When the government collects revenue from a broadly regressive and racially differentiated fiscal burden and then channels restitution exclusively to corporate importers, it completes a redistributive cycle that runs in precisely the wrong direction from the standpoint of equity: from low-income and minority households upward to the institutional actors positioned to navigate legal proceedings.

This analysis draws on and extends classical theories of fiscal incidence within a structurally stratified economy. Piketty and Saez's (2003) framework for analyzing the distributional effects of tax systems and Stiglitz's (2000; 2016) work on inequality and public finance both underscore that formally neutral tax instruments produce systematically unequal outcomes in economies where wealth and income are unequally distributed. The specific mechanisms of racialized wealth stratification documented by Alandangady & Forde (2021) and Alandangady et al. (2023), Perry et al. (2024), and Harris & Schreiner Wertz (2022) add an additional, structural layer to this analysis: they establish not merely that tariff burdens fall more heavily on lower-income households but that the households most exposed to those burdens are disproportionately households of color a distribution that reflects the accumulated effects of discriminatory policy rather than individual economic choices.

### **Implications for Small Businesses**

The consumer justice gap extends beyond household consumers to encompass small businesses, which occupy an intermediate position in the distribution of tariff burdens: they are both importers (and therefore nominally positioned to receive refunds) and enterprises operating at the downstream end of supply chains with structural vulnerabilities that the refund architecture does not address. Understanding the specific mechanisms by which the IEEPA tariff regime and its refund process interact with small-business economics requires attention to three interrelated phenomena: price pass-through asymmetry, input cost increases, and competitive asymmetry relative to large corporations.

The first mechanism, price pass-through asymmetry, reflects a fundamental structural difference between large and small businesses in their ability to adjust pricing in response to cost shocks. When large retailers raised prices to accommodate tariff-driven cost increases, smaller businesses faced a dilemma: pass through the full cost increase and risk customer defection or absorb the costs and accept margin compression. Recent evidence indicates that tariff-related cost pass-through varies systematically by firm size. Analysis drawing on the Federal Reserve Bank of Atlanta's Business Inflation Expectations survey shows that small businesses are expected to offset approximately 54% of increased tariff costs through price increases through 2025, compared with 65% for larger firms (Amaru, 2025). This gap reflects well-documented differences in pricing power across firm sizes, as smaller firms are generally less able to pass through cost shocks to customers than larger firms (Waddell et al., 2021). Collectively, these findings suggest that smaller enterprises face greater price-setting constraints, making them more vulnerable to externally imposed cost pressures, such as tariffs. This asymmetry means that small businesses absorb a larger share of tariff costs through margin compression than large corporations do, resulting in profit erosion that is not offset by any refund mechanism.

Kafoe's (2025) comparative case study of Walmart and Target provides rare empirical precision into the firm-level dynamics of this asymmetry. When confronted with the 2025 tariff regime, both Walmart and Target found that upstream cost redistribution, renegotiating with suppliers to share tariff costs, was essentially unavailable: Walmart

“unsuccessfully tried to distribute the cost burden with other stakeholders (suppliers) in the value supply chain” (Kafoe, 2025, p. 639). If one of the world’s largest retailers, with dominant purchasing power and extensive supplier relationships, could not achieve meaningful upstream redistribution, small businesses lacking comparable scale, financial reserves, or negotiation leverage face a structurally foreclosed path to absorbing costs through the supply chain. They must either pass through, compress margins, or exit.

The second mechanism, input cost increases, affects small businesses that use imported goods or globally sourced components as inputs into their own production or service delivery. The American Action Forum estimated the direct tariff costs to U.S. small businesses at approximately \$85 billion annually under the IEEPA tariff regime, with indirect costs including regulatory compliance burdens, trade compliance expenses, and customs broker fees adding billions more (American Action Forum, 2025). Small businesses tend to buy supplies far less frequently than large retailers, sometimes ordering only one to two shipping containers per year, which makes it difficult for them to spread fixed trade compliance costs across volume the way large importers can (Milligan, 2025). This infrequency also means that small businesses are more likely to have orders in transit that span tariff rate changes, exposing them to unexpected cost spikes that cannot be hedged or planned for.

The third mechanism, competitive asymmetry, produces what may be the most consequential long-run harm for small businesses. Large corporations with financial scale can absorb tariff-driven increases in input costs without fully passing them on to consumers, maintaining lower retail prices and thereby gaining market share against smaller competitors forced to raise prices. Small Business Majority documented this dynamic explicitly: “Large tariffs like 25% would mean most small businesses have no choice but to pass their costs on to customers. Larger businesses, however, are more likely to have the flexibility to absorb increased overhead, keeping prices lower and undercutting their smaller competition” (Small Business Majority, 2025). This competitive asymmetry is self-reinforcing: as small businesses lose market share to price-advantaged large competitors, they face declining revenue, further constraining their ability to absorb future cost shocks.

Within the refund process, these structural vulnerabilities are compounded by procedural barriers that effectively exclude many small businesses from recovery. The refund architecture requires documentation-intensive entry management, 180-day protest windows under 19 U.S.C. § 1514(c)(3), and CIT litigation processes that presuppose operational infrastructure for customs compliance that many small businesses lack (Casey & Zirpoli, 2026). The Congressional Research Service notes explicitly that “the potential requirement that an importer file a lawsuit to obtain judicial relief may make it difficult for small and medium-sized enterprises, particularly those who made use of the informal entry process, to obtain a refund” (Casey & Zirpoli, 2026, p. 4). Small businesses using informal entry, the simplified customs process for goods valued under \$2,500, face entries deemed liquidated upon payment, often without adequate documentation for a protest, and lack the legal resources to navigate the CIT. The advocacy group “We Pay the Tariffs,” representing 800 small businesses, described how IEEPA tariffs “had damaged small businesses by forcing them to take out loans and freeze hiring” (Cerullo, 2026, para. 6) harms that importer refunds, even if received, will not retroactively remedy for businesses that did not survive, reduced their workforces, or accumulated debt.

The political economy of tariff and trade policy design further illuminates the exclusion of small businesses. Large corporations have both the resources and incentive to lobby for product-specific tariff exemptions, creating a two-tier tariff landscape in which well-connected firms obtain exemptions from inputs subject to tariffs while smaller competitors remain exposed. The American Action Forum noted that such exemptions “also create barriers to entry for smaller firms with less access to capital, as they now face

even greater costs to entry in a market dominated by large tariff-exempt corporations” (American Action Forum, 2025). This dynamic mirrors the broader pattern in tax policy, in which nominally general rules produce systematically differentiated outcomes for actors with unequal resources to navigate them, a pattern that vertical equity analysis identifies as a structural deficiency rather than an incidental artifact.

### **Toward a More Equitable Fiscal Framework**

The analytical case for intervention is, at this point, overdetermined: tariffs are regressive fiscal instruments, their burden is borne disproportionately by low-income households and communities of color, small businesses face structural vulnerabilities not addressed by the refund architecture, and the emerging restitution process will return money to the parties that bore the smallest share of the economic burden. Closing the consumer justice gap requires policy intervention that is simultaneously theoretically grounded, legally feasible, and administratively implementable. This section proposes a three-tier framework.

The first tier is a conditional refund statute requiring downstream pass-through accountability. Congress has the authority to condition importer receipt of IEEPA tariff refunds on demonstration that tariff costs were not transmitted to downstream purchasers, or alternatively to require that importers who did transmit costs distribute a proportionate share of refunds as price reductions, consumer credits, or direct payments to their downstream customers. This mechanism has direct analogs in antitrust law, where courts routinely order disgorgement of unlawfully obtained overcharges and their redistribution to injured parties (Restatement Third, § 1; cf. Clayton Act remedial framework). The administrative feasibility of documenting pass-through is supported by the evidentiary record: as Kafoe (2025) notes, large retailers such as Walmart publicly attributed specific price increases to tariff policy, thereby establishing a documented causal chain. For smaller, less documented supply chains, the empirical incidence literature provides a basis for presumptive pass-through rates of 86 to 96 percent (Amiti et al., 2026; Hinz et al., 2026; Fajgelbaum et al., 2020) that could be applied as rebuttable presumptions in administrative proceedings.

The second tier is a targeted, income-adjusted consumer tax credit indexed to tariff-related household expenditure. The Budget Lab at Yale’s commodity-level price impact estimates (2025) provide sufficient granularity for calculating category-specific household cost impacts by income stratum. A refundable credit structured analogously to the Earned Income Tax Credit (EITC) with benefit amounts declining as income rises, funded through a set-aside from the importer refund pool rather than general revenues, could deliver restitution proportionate to both tariff exposure and economic vulnerability without requiring individual consumers to document their purchases. The aggregate incidence evidence establishes the population-level distribution of harm; individual credits can be derived from that distribution through income-strata targeting. This approach is administratively cleaner than individual consumer claims, which would face the transaction-cost and documentation barriers that make small consumer suits impractical. It is also precedented: the Earned Income Tax Credit and Child Tax Credit already use income-strata adjustments to deliver targeted fiscal relief through the federal tax system.

The third tier is Federal Trade Commission (FTC) oversight and adjudication of consumer restitution claims arising from documented pass-through. Under Section 5 of the FTC Act (15 U.S.C. § 45), the FTC has authority to pursue consumer redress for unfair or deceptive acts or practices, and its Bureau of Consumer Protection has administered large-scale redress funds in analogous cases of widespread consumer harm. Extension of this authority to the tariff restitution context would provide an enforcement backstop for cases where importers received refunds but declined to pass them through to downstream buyers

despite documented cost transmission. The FTC's existing infrastructure for claims administration, including certified claims administrators, pro rata distribution systems, and cy-près arrangements for unclaimed funds, is directly applicable. The FTC's expertise in market monitoring would also position it well to identify industries in which refund receipts are not accompanied by pass-through reductions and to flag such cases for enforcement.

Beyond these three specific mechanisms, this commentary recommends a broader structural reform: *ex ante* distributional impact analysis as a required component of any future tariff policy proposal. The Budget Lab's distributional modeling demonstrates that granular income-stratum analysis of tariff impacts is computationally feasible prior to policy implementation (The Budget Lab at Yale, 2025). Requiring such analysis as a precondition for IEEPA or Section 232 tariff imposition, analogous to the Congressional Budget Office's required scoring of revenue and spending legislation, would institutionalize distributional equity as a criterion in trade policy design rather than leaving it as an afterthought to be addressed after judicial invalidation.

These proposals are not without implementation challenges. Justice Kavanaugh's characterization of the refund process as a likely "mess" (Learning Resources, slip op., Kavanaugh, J., dissenting) applies with greater force to a process extended to encompass consumer restitution. The temporal gap between tariff payments and household-level restitution means that many affected consumers will not be the same individuals who pay their annual taxes in the year when credits become available. Small businesses that exited or restructured may no longer exist as legal entities. And the evidentiary record for individual household cost attribution will, in many cases, be inferential rather than directly documented. These are real complications, but they are objections to implementation design, not objections in principle. The alternative, doing nothing, is not distributional neutrality; it is a choice to allow the consumer justice gap to persist.

## Conclusion

This commentary has argued that the public and legal discourse following *Learning Resources, Inc. v. Trump* has systematically failed to engage with the most consequential distributional question raised by the ruling: not whether importers should receive refunds of duties they remitted, but whether the parties who actually bore the economic cost of the IEEPA tariff regime will receive any restitution at all. The evidence assembled here from landmark peer-reviewed studies in economics journals (Fajgelbaum et al., 2020), independent distributional analysis (The Budget Lab at Yale, 2025), Federal Reserve Bank research (Amiti et al., 2026; Azzimonti et al., 2025), Kiel Institute shipment-level data (Hinz et al., 2026), and firm-level supply chain analysis (Kafae, 2025) establishes with convergent rigor that between 86 and 96 percent of the IEEPA tariff burden was borne by U.S. firms and consumers downstream rather than by the importing firms that are the exclusive beneficiaries of the current refund architecture.

The commentary has further demonstrated that this distributional pattern is not merely regrettable but unjust in multiple, theoretically grounded senses. According to tax incidence theory, tariffs are regressive instruments that impose a 2.5 times greater income burden on households in the second income decile than on households in the top decile (The Budget Lab at Yale, 2025). As a matter of structural inequality analysis, this regressivity is compounded by preexisting racial wealth gaps where the White-Black median wealth gap stands at over \$220,000 (Alandangady et al., 2023), which makes the same absolute tariff burden produce categorically larger proportional harm for households of color. As a matter of small-business economics, tariffs generate structural competitive disadvantages, input-cost pressures, and procedural exclusions that are independent of refund eligibility and not corrected by importer restitution.

The consumer justice gap is not an unintended artifact of legal technicality. It is the predictable consequence of applying a customs-law remedial framework designed to correct errors between importers and the government to a situation in which the primary harm occurred several nodes downstream, at the household and small-business level. Closing this gap requires deliberate policy choice: conditional refund statutes that create pass-through accountability, income-adjusted consumer tax credits that target restitution to the parties who bore the greatest burden, and FTC oversight that provides an enforcement backstop where market mechanisms fail to transmit restitution downstream.

The Supreme Court has held that the 2025 IEEPA tariff regime was unconstitutionally enacted. That determination resolves the legal question. It does not, by itself, resolve the equity question. Legal restitution and economic justice are not the same thing, and the failure to distinguish between them risks converting a constitutional vindication into a distributional injustice of equivalent scale. If the purpose of declaring the IEEPA tariffs unlawful is to correct wrong, then the correction must extend to all of those who bore the cost of that wrong, not merely to those who possessed the legal standing to litigate it.

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