

## The Supremes sing a new tune: U.S. Supreme Court tariff decision, energy prices

By **Robert McCullough**

Law360 Canada (February 24, 2026, 1:33 PM EST) -- The Supremes' number one hit was *Stop! In the Name of Love*. This was never truer than it is today.

On Feb. 20, the Supremes (the American judges, not the musicians) announced that they have rejected President Donald Trump's wild misuse of the *International Emergency Economic Powers Act*. As I have noted before, the bizarre emergency orders that initiated a trade war with much of the planet might well have been written while on drugs, not simply responding to drugs.

As I have remarked in a previous column, the January 2025 executive order that set tariffs on energy imports from Canada used the term "kinetic movement of flowing water." This AI terminology represented a random scrape of the internet and could be traced to a blog of an individual discussing his dislike of using soap in the shower.



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While amusing, the implications of a trade war in energy — commodities where Canada and the U.S. are completely integrated — are terrifying. In the west, the Columbia River Treaty protects downstream cities from catastrophic floods and power outages. In the Midwest, the presence of massive reservoirs north of the border keeps electricity rates low. In the east, of course, power interruptions would have been far worse without energy transactions that kept the lights on in Montreal last month.



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The Supremes have opined, correctly, that the *International Emergency Economic Powers Act* violated the U.S. Constitution by moving the “power of the purse” from Congress to the president. This is certainly true. Trump’s response in his rambling press conference Friday morning identified two answers to the “disgraceful decision of the Supreme Court.” They are the *Trade Act of 1974* emergency tariff authorization and a decision to resort to the fact-based administrative process for unfair trade practices at the Department of Commerce.

Twenty years or so ago, I finished a presentation on Enron’s market manipulations, and a senior federal official commented that “I knew too much history.” I think he was being critical, but I took it as a compliment. One of the worst decisions ever made by the U.S. Congress was the passage of the *Smoot-Hawley Tariff Act of 1930*. The resulting trade wars with U.S. trading partners decimated U.S. business and threw millions out of work.

Trump clearly knows far too little history. He has alienated America’s most important trading partners — Canada and Mexico. This has angered its important NATO allies and provided additional leverage to China in international competition.

So, what is going to happen with the *Trade Act of 1974* and the *Trade Expansion Act of 1962*? First, of all, today’s 10 per cent tariff under the *Trade Act of 1974* is going to be litigated and will face the same 6-to-3 review at the Supreme Court. Lawyers will have their say. A year from now, we will have their answer.

Second, unfair trade practices are an administrative procedure with expert testimony and careful review by the officials at the Department of Commerce. I have enjoyed the tender mercies of these folks, and the results often represent well-reasoned and calculated results. This is not an arena where President Trump shines. Bringing the issue of “using soap in the shower” in a debate about unfair trade practices will neither be decisive nor effective.

In the meantime, keep singing, Supremes. I will be humming *Stop! In the Name of Love* for the rest of the day.

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