

EXECUTIVE SUMMARY

Maritime Reindustrialization and the Dormant Duty
Activating 46 U.S.C. Chapter 605 in the Post-IEEPA Tariff Landscape
Maritime Opportunity Investment Company (MOIC) | Houston, Texas | May 2026

THE SITUATION

The Supreme Court's February 2026 decision in *Learning Resources, Inc. v. Trump* invalidated all IEEPA-based tariffs, erasing an estimated \$170 billion in annual tariff revenue and stripping the Executive Branch of its most flexible trade instrument. The administration has responded by activating Sections 122, 232, and 301: each of which carries meaningful structural limitations:

- ▶ Section **122** carries a 150-day statutory hard cap expiring July 24, 2026; extension requires affirmative congressional action.
- ▶ Section **232** is a goods tariff; it has no mechanism to impose duties on vessels as carriers of commerce.
- ▶ Section **301** maritime fees are vessel-specific but face a four-year sunset review, ongoing APA challenges, and SCOTUS review of the underlying List 3/4A tariffs.

Key Finding: The answer to the administration's tariff enforcement problem may not require new legislation. It may require enforcing the law already on the books.

THE STATUTE: 46 U.S.C. §60502

Enacted in 1815 and restated in 2006 without substantive change, §60502 imposes a 10% *ad valorem* duty on goods imported in **any vessel not of the United States unless the vessel's flag state holds a qualifying Friendship, Commerce and Navigation (FCN) treaty** granting vessel-duty parity with U.S. vessels, or an equivalent Act of Congress extends that exemption.

The statute is unique among all current tariff authorities in three respects:

- ▶ **Direct congressional enactment:** not an executive delegation. It cannot be invalidated under the major questions doctrine that struck down IEEPA. It sits at the top of the post-Learning Resources constitutional hierarchy.
- ▶ **Permanent and self-executing:** no sunset, no emergency declaration, no USTR investigation required. The duty is operative as written.
- ▶ **Additive :** it stacks on top of Section 301 goods tariffs, Section 301 maritime port fees, and Section 232 product tariffs, operating on a distinct legal object (the vessel-as-carrier) that none of the other authorities reach.

210+ Years in force Enacted 1815 · Restated 2006	22 FCN qualifying treaties Navigation-clause confirmed
10% Ad valorem duty rate Additive to all other duties	~55% Global tonnage exposed No qualifying treaty shield

THE PRC POSITION

The People's Republic of China has no FCN treaty with the United States. Its bilateral relationship is governed by the 1979 trade agreement, WTO/PNTR accession terms (P.L. 106-286), and the Phase One agreement of January 2020. None of these instruments creates the vessel-duty parity required by §60502.

WTO/GATT MFN status governs the tariff treatment of goods under the Harmonized Tariff Schedule. It does not govern the treatment of the vessels that carry those goods. GATT Articles III and V do not create vessel-specific duty-parity entitlements. The U.S. maintains broad MFN exemptions for maritime transport in its GATS schedule specifically to preserve this policy space.

Statutory Conclusion: PRC-flagged vessels and goods imported in PRC-flagged vessels are subject to the 10% discriminating duty under §60502 as a matter of current law. This is not a new authority. It has simply never been systematically enforced.

THE TREATY-EXEMPTION GAP

The §60502 exemption requires a treaty specifically granting vessel-entry duty parity which is a navigation clause conferring national treatment on vessel-carried goods duties. The following major flag states and registries have no such qualifying instrument:

Flag State / Registry	Global Tonnage Share	FCN Treaty?	§60502 Shield?
Marshall Islands	~16%	None	No
Liberia	~12%	None	No
Panama	~17%	Narrow canal treaty only	No
Bahamas	~5%	None	No
China (PRC)	~18% (flag + controlled)	None	No
Total exposed	>65% of global fleet	—	—

COMPARATIVE AUTHORITY ASSESSMENT

The post-Learning Resources tariff landscape ranks surviving authorities by constitutional durability and maritime applicability as follows:

Authority	Source	Durability	Maritime Reach
46 U.S.C. §60502	Congress (1815/2006)	★★★★★ Minimal risk	Vessel-as-carrier (direct)
Section 301 Maritime Fees	Congress (1974)	★★★★☆ 4-yr sunset + APA	Vessel-as-service-provider
Section 232	Congress (1962)	★★★★☆ SCOTUS validated	Goods only (not vessels)
Section 122	Congress (1974)	★★★☆☆ Expires Jul 24, 2026	No vessel mechanism
IEEPA Tariffs	Executive (emergency)	X Struck down Feb 2026	N/A

POLICY RECOMMENDATIONS

Administrative Actions (No New Legislation Required)

- ▶ **CBP Enforcement Guidance:** Direct U.S. Customs and Border Protection to issue formal guidance clarifying that §60502 applies to all vessels not holding a qualifying treaty and to begin systematic collection.

- ▶ **MARAD/CBP Treaty Audit:** Commission a joint legal audit of flag-state FCN treaty coverage across the ~95,000 commercial vessel calls to U.S. ports annually, to be completed within 180 days.
- ▶ **Section 301 Record Deployment:** Use the USTR maritime Section 301 investigation record as evidentiary context in any §60502 administrative proceeding.

Legislative Reinforcement (Congress)

- ▶ **Codify the Treaty Standard:** Enact explicit language denying the treaty-exemption carve-out to any country not party to a qualifying maritime agreement meeting current standards by activating the dormant duty as a collection requirement.
- ▶ **Escalate the Rate:** Increase the §60502 rate from 10% to 25–35% (commensurate with prevailing Section 301 China tariff levels), or authorize graduated rates by vessel type, trade route, or flag state.
- ▶ **Close the Beneficial Ownership Loophole:** Amend §60502 to apply to vessels with PRC beneficial ownership regardless of flag-state registration, using the CFIUS 'control' standard to prevent structuring evasion.
- ▶ **Unify the Maritime Duty Regime:** Replace expiring Section 122 authority with a permanent balance-of-payments-linked vessel surcharge codified within Chapter 605.

Congressional Oversight Priorities

- ▶ **Committee Jurisdiction:** Primary referral to Senate Finance / House Ways and Means (tariff/revenue); sequential referral to Senate Commerce and House Transportation & Infrastructure (maritime administration).
- ▶ **Revenue Score:** Commission a CBO score prior to Senate Finance consideration; estimated annual revenue is material given tonnage exposure.
- ▶ **Allied-Nation Carve-Out:** Consult Senate Foreign Relations on COFA-partner implications (Marshall Islands); draft a State Department waiver mechanism for allied-nation beneficial owners using flag-of-convenience registries.
- ▶ **CBP Administrative History:** Request a formal CBP ruling history under 19 U.S.C. §1625 to establish the enforcement baseline before any Senate testimony.

CONCLUSION

The post-Learning Resources tariff landscape presents a paradox: the Executive Branch's most flexible trade instrument has been invalidated, while a constitutionally superior congressional instrument sits dormant in the United States Code. Section 60502 of Title 46 requires no emergency declaration, survives any major questions challenge, is unanswerable by any treaty China currently holds, and stacks additively on top of every surviving tariff authority.

Its activation through CBP enforcement guidance, a MARAD/CBP treaty audit, and targeted legislative reinforcement would constitute the most constitutionally durable contribution the current policy environment could make to American maritime renewal.

For Investors: The legal architecture described in this paper represents not merely a policy argument but a structural feature of the competitive landscape: a permanent statutory barrier to adversarial vessel dominance that has never been enforced, never been repealed, and never been more relevant.

This executive summary has been prepared by Maritime Opportunity Investment Company (MOIC) for discussion and informational purposes only. It does not constitute legal advice, investment advice, or a solicitation of any investment. Recipients should consult qualified legal counsel before relying on any legal analysis for any purpose. Governed by the laws of the State of Texas.