



26-5 Can Trump Keep His Tariffs if the Supreme Court Invalidates Them?

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The Trump administration's trade team has announced¹ that it will employ alternative legal stratagems to keep its high tariff walls in place if the Supreme Court invalidates the sweeping "reciprocal" tariffs that President Donald J. Trump imposed in 2025,² as many legal experts expect the court to do. At issue is whether the high court will conclude that the administration's invocation of its authority under the International Emergency Economic Powers Act of 1977 (IEEPA) permits such tariffs. Yet as US Trade Representative (USTR) Jamieson Greer said in January, if the Supreme Court outlaws its current approach, the administration would "start the next day" to reestablish tariffs under other legal authorities "to respond to the problems the president has identified."³

How successful the president is in maintaining his role as the source of tariffs on everything from everywhere depends in part on whether the court in the current tariff case states unequivocally that Congress is the branch of government to which the Constitution grants the commerce and tariff powers. Will the court reject the legally unfounded proposition that the president has authority to impose tariffs at will covering a majority of US imports under any authority?

The problem for the president is that absent full use of IEEPA, he has no clear legal path to maintain his tariff wall through use of alternative statutory authorities, although he will still have other potent, but more selective, tariff authorities.

Assuming the president loses this case, much of the rest of his term's trade policy could depend on how the court frames its decision on why IEEPA does not support his broad "reciprocal" tariffs. If it is a technical decision, e.g., that the word "tariff" does not appear in IEEPA, it will not cast much of a shadow over his use

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1 Jeff Cox, "Bessent Says U.S. Has 'Lots' of Options to Use on Tariffs if It Loses Supreme Court Case," CNBC, November 4.

2 [Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits](#), Executive Order 14257, April 2, 2025.

3 Ana Swanson, "Trump's Trade Negotiator Says Response to Court Loss Would Be Immediate," *New York Times*, January 19, 2026.

of alternative authorities. Or will the court demonstrate that it appreciates the risk of the president replicating the IEEPA-based tariffs with an equally expansive interpretation of other delegated authorities? If it does, the administration is less likely to give so broad a reading to each of his other trade authorities that the president proceeds to attempt once again to usurp the role of Congress. It would be clear that the court would not accept the use of trade laws that clearly permit the application of tariffs, but where Congress never contemplated a use as sweeping as the president assumed for himself declaring the “reciprocal” tariffs.

At least twice in recent history, the court has chosen to make broad decisions clearly affecting future cases as opposed to narrower rulings that are directly applicable to the case before the justices. It made far-reaching decisions in *Loper Bright Enterprises v. Raimondo*⁴ ending broad deference to federal agencies’ interpretations of their own statutory authority (the Chevron doctrine) and in *Trump v. United States* famously immunized the president from criminal charges stemming from his official acts.⁵ Will the Supreme Court in the current IEEPA tariff case close the door on the Trump administration’s attempts to use other trade authorities to usurp the power of Congress under the Constitution to set America’s tariffs?

To prevent or slow reconstruction of the Trump tariff wall, the court should rule clearly that the separation of powers provided for in the Constitution places the tariff power squarely with Congress. The court should declare that this power cannot be and was not delegated to the president despite the pervasive power he has exercised and now seeks to extend to set the nation’s tariffs. James Madison understood fully that “when the legislative and executive powers are united in the same person. . .there can be no liberty.”⁶

The question posed and answered here: If the president loses his current tariff case, can he proceed to use other delegations from Congress to maintain the same tariffs? This Policy Brief reviews potential alternative authorities that the Trump administration might evoke, each of which comes with limitations on its use.

TRUMP’S POTENTIAL ALTERNATIVES

Largely through use of an emergency he declared under IEEPA, the average US tariff is now between 14.8 and 16.9 percent, compared with the 2.4 percent average tariff that existed previously.⁷ In April 2025, President Trump imposed a baseline across-the-board tariff of 10 percent as well as higher tariffs by country and in a number of instances by specific product. This resulted in US tariffs averaging between three and five times the tariff rates Congress enacted in implementing various previous trade agreements. This is the highest tariff level since 1932 and bears no resemblance to the tariffs put in place by Congress before Trump’s second term.

4 *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al.*, Supreme Court of the United States, Docket No. 22-451, Argued January 17, 2024—Decided June 28, 2024.

5 *Trump v. United States*, Supreme Court of the United States, Docket No. 23-939, Argued April 25, 2024—Decided July 1, 2024.

6 Avalon Project, *The Federalist Papers: No. 47*, Yale Law School. See also Montesquieu’s *Spirit of the Laws* (1748).

7 The Budget Lab, *State of Tariffs*, Yale University, January 19, 2026.

Only four possible tariff authorities have been delegated to the president by Congress from which the president could try to reconstruct his tariff wall. Of these, two have lain dormant, unremarked upon or consulted for 50 and 100 years, respectively. Section 122 of the Trade Act of 1974 allows the president to impose temporary tariffs to deal with balance of payments (BOP) deficits, but this authority has never been used in the 50 years since its enactment. Likewise, section 338 of the Tariff Act of 1930 authorizes tariffs to retaliate against foreign discrimination against American goods.⁸ This authority has never been used since its enactment nearly a century ago in the infamous Smoot-Hawley Tariff Act of 1930, which raised tariffs on a broad array of imports and thereby contributed to lengthening and deepening the Great Depression. Two other US tariff authorities, currently in use, are very familiar to trade policy officials in most capitals: (1) national security import restrictions under section 232 of the Trade Expansion Act of 1962 (for decades used only to restrict imports of oil but now used for steel, aluminum, copper, automobiles, wood products, and potentially a long and growing list of other products) and (2) retaliatory authority against foreign unfair trade acts under section 301 of the Tariff Act of 1974 (a major source of the tariffs on goods from China). Each of these authorities comes with requirements that make them unsuitable for restoring a tariff wall, although they can be deployed in individual instances to restrict trade. There is no statutory limit to the number of times these selective authorities can be used.

There is only one precedent of a president assuming broad tariff powers, but it does not help President Trump. President Richard Nixon imposed a 10 percent import surcharge in 1971 during a BOP emergency. The legal authority he invoked was not the emergency authority that preceded IEEPA. More circumspect, he attempted to suspend prior presidential trade agreement proclamations to allow tariff rates to rise temporarily to a maximum 10 percent level to compel other nations to allow the United States to devalue the dollar. The courts rejected the authority cited by the president. They held that the phrase “[to] terminate a proclamation in whole or in part” did not include the power to suspend implementation of trade agreements so he could temporarily increase the rate by an additional 10 percentage points (provided prior statutory rates were not below the resulting level). The prior trade agreement rates provided a ceiling on the authority invoked by the president. If the Supreme Court disallows IEEPA as a basis for imposing his tariffs, the question will ultimately be put before the courts to determine whether Trump can use the other delegated tariff authorities listed above to impose tariffs on America’s global trade with few limits.

INVOKING SECTION 122 (BALANCE OF PAYMENTS AUTHORITY) WOULD BE PROBLEMATIC

The closest possible fallback authority is section 122. It addresses the primary reason the president gave for imposing his “reciprocal” tariffs, which was to correct BOP deficits. Trump’s executive order imposing the “reciprocal” tariffs was entitled “Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods

⁸ Legal Information Institute, [19 U.S. Code § 1338: Discrimination by Foreign Countries](#), Cornell Law School.

Trade Deficits.”⁹ But there are limits to presidential latitude if he goes this route. To use section 122,¹⁰ the president must find

“fundamental international payments problems [that] require special import measures to restrict imports

(1) to deal with large and serious United States balance-of-payments deficits;

(2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets; or

(3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium.”

If the court invalidates the IEEPA tariffs by invoking the doctrine of the separation of powers between Congress and the president when it comes to tariffs—upholding that Congress possesses the tariff power—the court may approach any invocation of section 122 with some skepticism. But the court could also find that the administration has met the first criterion cited above to use section 122, reflected in the president’s assertions when he invoked IEEPA. Trump certainly views the country as having fundamental BOP problems that require special measures to restrict imports. The court would be hard-pressed to reject the president’s determination that the statutory conditions have been met even though expert economists will no doubt argue that more is required given current robust US economic conditions.

What did Congress intend? The BOP authority was enacted in 1974 with the conditions very much in mind that caused President Nixon to impose his surcharge. In the summer of 1971, the dollar was backed by gold, and US gold stocks were dwindling. Congress understood that in the future, with the dollar no longer backed fully by gold, a BOP crisis would exist if the United States suffered a serious loss of foreign exchange reserves, the country required financing by foreign official acquisitions of dollars, or the United States was forced to sell its own international reserves (for example, official gold redemptions, including the Federal Reserve possibly borrowing from private markets). Were the courts to make an independent judgment, they would note that none of those conditions exists now. There is no capital flight or immediate serious threat to the value of the dollar.

Even if leading economists say that tariffs will worsen the international financial position of the US economy—not strengthen it—their arguments are unlikely to carry the day. Many of the Supreme Court justices would likely defer to the president and treasury secretary, citing a BOP problem requiring import restrictions. The test can be read as being a very low standard, and the courts may consider it to have been met.

While courts generally are opposed to a party (here, the government) switching from one statute (e.g., IEEPA) to another (e.g., section 122) to circumvent their decision that the president has no plenary tariff authority, they could be saved from a direct confrontation with the president. That is because the section 122 tariffs expire after 150 days unless Congress acts by passing a law to

9 [Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits](#), Executive Order 14257, April 2, 2025.

10 Legal Information Institute, [19 U.S. Code § 2132 - Balance-of-payments authority](#), Cornell Law School.

extend them. That expiration requirement, however, poses a political problem for the president. He or his advisers may well have decided not to resort to section 122 because of that 150-day limit. It is highly unlikely that a majority of members of Congress will be willing to reinstate unpopular Trump “reciprocal” tariffs. He already lost three separate votes on his tariffs in the Senate. By narrow majorities, including four or five Republican senators, the Senate voted to eliminate Trump’s tariffs (those imposed on Canada and Brazil and the “reciprocal” tariffs in full). The House took no similar action. The tariff issue will, to some degree, figure in every House and Senate electoral race this year if not decided before then.

Another factor complicating invocation of section 122 tariffs is that they must be nondiscriminatory. The current Trump tariff regime is anything but nondiscriminatory most-favored-nation (MFN) treatment. If he invokes section 122, he could not select higher tariffs for some imports from some countries and not others. And there is a 15 percent ceiling on temporary section 122 tariffs.

In the event the president loses his IEEPA-based emergency tariffs, it has been suggested that section 122 could be invoked on a temporary basis, a bridge to enable time for the administration to come up with alternative bases for duties under other statutes. It has even been rumored that the president could, during the continuation of tariffs under the BOP authority, utilize the licensing authority under IEEPA and charge a fee equivalent to the prior “reciprocal” tariffs to replicate the Trump tariff wall. None of these routes should survive judicial challenge. None of these alternatives can legally replicate the IEEPA-based “reciprocal tariff” wall.

SECTION 338 IS AN UNTESTED RETALIATORY TOOL

The broadest of the remaining tariff weapons is section 338 of the Tariff Act of 1930.¹¹ On the face of it, section 338 appears almost as unconstrained as IEEPA was prior to the rulings of the Court of International Trade and the Federal and DC Circuit Courts that it did not provide unfettered tariff power, if it provided authority to impose tariffs at all.

Section 338 has never been used to apply a tariff, although this was often threatened a century ago. It was designed to give the United States leverage in trade negotiations and provided the rationale for investigations by US agencies to ferret out offending practices shortly after its enactment in the 1930 Smoot-Hawley Tariff Act, as well as under a similar provision of the Tariff Act of 1922.¹² The discrimination it refers to is not simple protectionism (i.e., providing more favorable treatment to domestic products by putting a tariff or otherwise restricting imports). Rather, it was designed as a retaliatory tool specifically to counter discrimination against US trade by other countries, such as when an importing country treated US products less favorably than the products of *other* countries.

Section 338 was enacted in a world where discrimination was the rule, not the exception, in international trade. Countries often negotiated bilateral trade

11 Legal Information Institute, [19 U.S. Code § 1338: Discrimination by Foreign Countries](#), Cornell Law School.

12 An excellent detailed compendium of all known citations to section 338, and its predecessor statute, section 317 of the Tariff Act of 1922, dating primarily from the first third of the 20th century, has been compiled and commented upon by former USTR General Counsel John Veroneau and a colleague at his law firm (see John K. Veroneau and Catherine H. Gibson, 2017, [Presidential Tariff Authority](#), *American Journal of International Law* 111, no. 4: 957-69).

agreements that limited beneficial tariff treatment to the two signatories and discriminated against the trade of others. Moreover, since there was no global rule of nondiscriminatory MFN, a country was free to treat certain foreign goods worse than it treated other's foreign goods. In 1930 the goal of section 338 was to use a strong tariff weapon to threaten other countries that treated US goods less favorably.

The language of section 338 is straightforward and without qualifications, other than that discrimination, compared to treatment given to the products of other countries, must be found:

“The President when he finds that the public interest will be served shall by proclamation specify and declare new or additional duties. . . upon . . . products of any [foreign country](#) whenever he shall find as a fact that such country . . . discriminates in fact against the commerce of the United States, directly or indirectly, . . . in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any [foreign country](#).”

The purpose of section 338 can be found in the circumstances of its enactment. The 1930 trading world was very different from the present one. In 1930, imperial preferences were a major irritant to US policymakers, and these discriminatory practices were expanding. Major colonial powers gave preferred treatment to the countries and territories they controlled. Preferences were applied by the British Empire, the French colonial system, and the Belgian, Portuguese, and Dutch colonial arrangements. Congressional debates and contemporaneous commentary make clear that British imperial preferences were front of mind for the US Congress and US policymakers.

By the late 1920s Britain's move away from nondiscriminatory tariffs under MFN rules was within sight. During the 1923 Imperial Economic Conference held in London, the dominions pressed Britain for preferential treatment. During the late 1920s the Conservative Party openly campaigned on having an imperial preference. Cause and effect were intertwined as these discriminatory preferences were framed as a response to US and continental European tariffs. Section 338 is a product of that era. It was designed as a tool to force treatment for US products no worse than that accorded to the products of other countries, primarily those who were members of trading blocs. The method of remedying the discrimination was seen as negotiation. Section 338 was a cudgel to be used to obtain equal treatment for American goods that was never actually applied.

The world of imperial preferences was eradicated by the United States immediately after World War II, joined in by (with varying degrees of enthusiasm) its allies. The victorious allies realized that restrictions on trade had worsened the Great Depression and led to global conflict. The old system was replaced by a trading system created by the United States and its allies that required nondiscriminatory MFN treatment among its members.

The major exceptions to the rule of nondiscrimination were for customs unions and free trade agreements (FTAs) among participating countries. These defined trade-liberalizing forms of discrimination, it was agreed, would be exempt from the ban on discriminatory trade under article I under their new multilateral trading arrangements. They were accepted by the United States in the postwar General Agreement on Tariffs and Trade (GATT) and the subsequent World Trade Organization (WTO) agreements of the 1990s.

The United States also made ample use of the FTA exception to the nondiscrimination requirements of the GATT and WTO before Trump, with 14 comprehensive FTAs with 20 countries.¹³ Subsequently, President Trump negotiated and implemented his signature United States-Mexico-Canada Agreement (USMCA) during his first administration. The United States also championed the Trans-Pacific Partnership, a broad FTA, and wished the other participants well in moving forward when the United States chose not to do so due to congressional inaction needed to implement the agreement. This history does a great deal to eviscerate any potential characterization of FTAs as a form of discrimination actionable under section 338.

Where does section 338 fit in today's trading world? The cardinal rule governing world trade—other than how the Trump administration deploys tariffs and what it requires from others in its bilateral deals—is that when it comes to tariffs, nondiscrimination (MFN) must be accorded. The current US government view is that MFN is a policy of the past. In December 2025 it even filed a formal statement at the WTO that MFN, nondiscrimination, is unsuitable for the current era.¹⁴ Eighty years of MFN under the GATT and the WTO mean that for all members other than the United States at present, there has been pervasive compliance as a general matter, overall, by other countries with the rule of nondiscrimination. For this reason, there will likely not be any large targets for section 338, unlike the imperial preferences of the 1930s, for which section 338 was primarily designed. This does not mean that there will not be numerous specific instances where a section 338 duty might be applied to individual examples of discrimination. With some effort, US trade agencies will no doubt find instances, product by product, country by country, in which some discrimination exists within the meaning of section 338. Section 338 can only be used in circumstances where a trading partner provides differential treatment for US goods that is detrimental to the US product and grants more favorable treatment to other countries. The clearest area to explore for potential targets of Section 338 would be product standards.¹⁵

To illustrate: there was a time during the 1970s when Japan applied taxes on automobile imports based on engine size. This was a measure, the Japanese government maintained, that was based on environmental concerns. The United States viewed the tax as trade discrimination. Certainly, numerous examples of this kind of potential trade discrimination exist in the world today. But not as many as might appear at first glance. What the United States has labeled as discrimination in trade negotiations is most often protection—that is, worse treatment for imports than that accorded to the importing country's domestic products or services, not worse treatment for US products as compared with the products of other countries. It was to combat this latter practice that Section 338 was enacted, not the former.

Most such practices fall under the heading of sanitary and phytosanitary (SPS) measures applied to agricultural trade. SPS measures are invoked to

13 Office of the US Trade Representative, [Free Trade Agreements](#).

14 World Trade Organization, [On WTO Reform: Communication from the United States](#), December 15, 2025, Geneva.

15 For numerous examples of investigations under section 338 and its predecessor about specific products where discrimination against US products was said to exist, see John K. Veroneau and Catherine H. Gibson, 2017, [Presidential Tariff Authority](#), *American Journal of International Law* 111, no. 4: 957-69.

protect the health and safety in countries that apply them, but they often serve as a proxy for outright protectionism. Countries such as China, India, Mexico, and Turkey are alleged to apply SPS and regulatory standards that the USTR describes as not only *nonscience based* (a WTO requirement) but also more stringent on US products (e.g., poultry, agricultural biotech, shellfish), making it harder for US exporters to compete. Some nations, including China and Indonesia, are widely accused of maintaining burdensome registration requirements for food, dairy, meat, and agricultural products that are said to be not transparently applied or that disproportionately affect US suppliers.

The largest clash with other countries that may involve the future use of section 338 could come over access to artificial intelligence and cloud services or with respect to digital services taxes (DSTs); for example, Canada's 3 percent DST has been criticized for specifically targeting digital revenues of US tech firms while exempting or sparing domestic or third-country firms, violating trade obligations under USMCA and WTO rules.

These numerous potential instances of product discrimination would constitute bricks for a tariff wall but not enough to construct a wall of the breadth that the Trump administration has in place today.

An indicator that a broad use of section 338 is unwarranted is that, during this first year of proliferating tariffs under IEEPA, the Trump administration has not mentioned a single instance of an entire nation (or the European Union) discriminating against US commerce across the board, although at least dozens of individual products could readily be alleged to be discriminated against. The courts would be rightly skeptical of a sudden finding of massive discrimination that warrants anything like reimposition of Trump's "reciprocal" tariffs. If the Supreme Court bases its IEEPA decision in part on nondelegation and separation of powers, it would not be surprising if the president lost on a motion for summary judgment if the Trump administration seeks to use section 338 to recreate the IEEPA-based tariff wall in some broad fashion.

Nondiscrimination is still the rule for global trade despite the US view. But that could change. Maroš Šefčovič, EU trade commissioner, recently commented on MFN and nondiscrimination: "We need a frank discussion on the link between MFN status and reciprocity, taking into account [WTO] members' actual levels of market openness. . . . This must include exploring options to allow for more agile and targeted adjustments of tariff treatment in response to changing realities and threats to our economies."¹⁶ Were the European Union to embark on the path the United States has chosen of trade discrimination, it could awaken section 338 from its current dormancy as a tool to deal with gross instances of discrimination.

Section 338 could play a role in conflicts between the great powers, as recently described by Odd Arne Westad, Yale professor of global affairs, in the *Financial Times*.¹⁷ Resurrecting section 338, which is outmatched by the European Union's trade bazooka, the Anti-Coercion Instrument, could accelerate the creation of the conflict-ridden world Westad describes. But at present, the key point is that no trading partner fits the section 338 requirement for

¹⁶ Maroš Šefčovič, "The WTO Needs an Overhaul," *Financial Times*, January 21, 2026.

¹⁷ Odd Arne Westad, "Greenland, America and the End of Atlanticism," *Financial Times*, January 23, 2026.

discrimination of a kind that would support the nation-specific broad tariff that is applied by the United States to China under section 301.

CAN THE “RECIPROCAL” TARIFF WALL BE RESTORED BY RELYING ON SECTIONS 301 AND 232, TWO WELL-KNOWN US TOOLS FOR IMPOSING TARIFFS?

The problem for the president is that the remaining authorities are ill-equipped to maintain in full his current tariff program. It is like playing a round of golf with half the clubs missing. The United States has invoked a trade retaliation authority—namely, section 301 of the Trade Act of 1974, which empowers the USTR to investigate unfair foreign trade practices and retaliate with tariffs. The provision has been used, for example, against China for specific allegations of violating US intellectual property and technology rights. Were Trump to invoke this section for across-the-board tariffs on all or many trading partners, it would meet with great skepticism by the courts when challenged, not least because the statute requires an investigation first and then a finding of an unreasonable or unjustifiable practice. Invoking it would make blatantly clear that the president was trying to circumvent the loss of IEEPA’s emergency authority with a tool ill-suited to its stated purpose. How much of America’s foreign trade is subject to unfair trading practices? How many times can the president utilize retaliatory authority for measures that he or his USTR find to be unjustifiable or unreasonable and burdensome to US commerce—the triggers for use of section 301 retaliatory authority. If the attempt is to recreate the IEEPA-based tariff wall, the administration may find it difficult to use section 301 without appearing to be ignoring the court’s ruling in the IEEPA case, assuming the court’s decision is based on the separation of powers and not a technical basis that only applies the use of IEEPA?

The remaining authority, familiar to US trading partners, is section 232. For how many products can the president find that imports are entering the country in sufficient quantity to threaten the nation’s security? There is currently an extensive list of section 232 cases through which he can adjust imports through applying increased tariffs, ostensibly to deal with national security concerns. At some point, the courts will step in, one assumes, to find that he is circumventing the Supreme Court its decision in IEEPA? In addition, there are some procedural hurdles to clear, investigations to be held, and findings to be made.

CURES FOR PRESIDENTIAL OVERREACH

The use of these last two authorities, sections 301 and 232, can prove to be somewhat more cumbersome than the IEEPA’s instant use, even if these procedures are not insuperable barriers to an administration bent on imposing tariffs.

IEEPA and the president’s explicit tariff authorities (sections 122, 338, and 232) share a common defect not perceived as a possibility when they were enacted, and only now coming to be understood. Congress, working with its partner, the executive branch, did not envision that there would ever be a president who would seek to supplant it entirely when it came to wielding the tariff power. If it is found to have delegated some tariff authority in the context of an economic sanctions statute, IEEPA, it was intended to be a supplement

to other forms of regulation—to obtain compliance with a sanction—not as a transfer of the complete tariff authority from the legislature to the executive. Congress extended a hand, and the president took an arm.

The four statutes that the president's staff are no doubt considering as replacements for IEEPA—if the Supreme Court declares that statute unable to support his “reciprocal” tariffs—are, on their face, at least clearly tariff authorities. But they suffer from deficiencies that lend themselves to the executive branch overestimating their value as broad tariff authorities. It is true that section 122 does not have a rigorous test for when the nation's BOP must be defended with a tariff, assuming that doing so even makes sound economic sense. The statute refers to a BOP “problem,” a term it does not define. The use of the word *problem* does not require that there be an economic crisis. Congress may have made an error in trusting the president to make that judgment without giving him more specific guidance as to the conditions allowing its use. That lapse, visible only with hindsight, is remedied only by the short duration of the authority or the self-restraint of a president.

It may be that the authority of section 338, so clearly applicable during the time of imperial preferences a century ago, will be said to apply in some broad fashion in today's world. Here, the problem is not poor drafting of the statute. The hurdle will be factual. A future Congress is likely to allow the president to make only a preliminary judgment and employ a provisional remedy, if it is felt to be a needed authority at all in this modern world, having been in disuse since it was enacted in 1930.

This leaves two other sources of authority that will require reconsideration. One is that of national security import restrictions. With a uniform executive, which the executive branch is becoming, pliant bureaucrats can make political rather than independent national security judgments, depriving statutory thresholds of meaning. The problem with section 232 is the temptation to abuse the finding of impairment of the nation's security. This can be repaired by a future Congress making the relief provisional or by defining more fully when national security is threatened.

Lastly, there is section 301, the retaliatory authority. Whether a foreign measure is unreasonable or even unjustifiable, policy or practice, is an entirely subjective judgment. A future Congress will have to judge how best to curtail that particular authority.

A FINAL WORD

Is this the end of Trump tariffs?

No. A multitude of section 301 and section 232 cases can be launched, and then litigated at length, absent—or perhaps even with a strong stance by the Supreme Court in the IEEPA case on—the separation of powers. Targeted use can motivate individual trading partners settling for deals, as they did in 2025. Moreover, unfortunately for them, those countries that signed deals with this president will be open to retaliation under Section 301 if they try to drop the deals, as violating a trade agreement with the United States likely meets the conditions for invoking that statute.

Nevertheless, the era of unlimited presidential tariffing may be coming to an end if the president can no longer use IEEPA. And just possibly, with

administration overreach to replicate the current global tariffs, the Court of International Trade would issue an injunction to prevent reimposition of the Trump “reciprocal” tariffs and be upheld by the Supreme Court.

The uncertainty over access to the US market that will be adversely affecting the American economy in 2026 may worsen rather than improve—with dozens or more cases under the remaining tariff statutes—after IEEPA is ruled out of bounds.

The world is adjusting to the uncertainties induced by US tariffs. Other countries (including the European Union as one prominent trading bloc) are entering into closer trading arrangements that do not include the United States. The EU-Mercosur and EU-India agreements, reached on an accelerated timetable, are two examples, as are closer coordination between the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the European Union as well as trade talks between Canada and China and the United Kingdom and China, all by-products of the “reciprocal” tariffs and whatever comes next for US trade measures.

In the midst of assessing the full range of US trade weaponry, it should be noted that there is no statutory authority designed to defend US trade interests against a foreign consumer backlash against US products and services, stimulated by US tariff policies, insults to foreign nations, and other provocations causing resentment, and not least, the unreliability of access to the US market. A few years ago there was much talk in the world of trade policy about de-risking against reliance on Chinese products because China used trade coercion too freely. Certainly, both private and government de-risking of trade with the United States is taking place, sometimes more benignly termed *reducing excessive dependence* on a particular country for supplies. This is part of the rupture referred to at Davos, a condition that is the successor to fracture, just more serious.

As is the case for trade with China, trade with the United States cannot be done wholly without. The United States is too important a market. But lack of reliability and inflamed national sensibilities abroad will also take their toll. There is no complete defense against it, other than the passage of time and the restoration of a better policy environment. The US tariff wall, which can be and is changed at will, has been a large part of the problem in current international relations, not the solution.

The likelihood is that the blanket US tariff imposed by President Trump—based on his own reading of his trade authority—cannot be restored. And, if the United States attempts to reconstruct its tariff wall, it will damage the world economy to a degree but the US economy foremost.



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