Congressional and Presidential Authority to Impose Import Tariffs

February 27, 2025

Congressional Research Service
https://crsreports.congress.gov
R48435

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R48435

February 27, 2025

Christopher T. Zirpoli
Legislative Attorney

Congressional and Presidential Authority to Impose Import Tariffs

This report examines Congress's constitutional power over import tariffs, Congress's ability to delegate some of its authority over tariffs to the President within certain limits, the scope of specific authorities Congress has delegated to the President to impose or adjust tariffs, and the ways in which courts have resolved challenges to the President's use of those authorities.

The Constitution grants Congress the power to regulate foreign commerce, impose tariffs, and collect revenue. As discussed in this report, Congress has long enacted laws authorizing the President to adjust tariff rates on goods in certain circumstances. Courts have generally upheld these laws against constitutional challenges, holding that they do not impermissibly delegate Congress's legislative power over tariffs to the executive branch.

This report also examines how courts have resolved legal challenges to the President's use of statutory tariff authorities. The U.S. Court of Appeals for the Federal Circuit has traditionally given deference to the President in these cases, allowing the President to utilize these statutes unless he "clearly misconstrues" their scope and holding that they commit certain matters to the President's unreviewable discretion. Some litigants and commentators question if lower federal courts must revisit aspects of this approach in light of recent U.S. Supreme Court decisions, which give less deference to the executive branch to interpret its own statutory authorities.

Several statutes authorizing the President or an executive agency to impose tariffs under various circumstances are currently in effect. This report includes a legal overview of six such statutes: Section 232 of the Trade Expansion Act of 1962; Sections 122, 201, and 301 of the Trade Act of 1974; Section 338 of the Tariff Act of 1930; and the International Emergency Economic Powers Act of 1977. These laws afford varying degrees of discretion to the President. For example, some of these statutes require an executive agency to conduct an investigation and make certain findings as a prerequisite to raising tariffs. The report notes how the current and recent presidential administrations have used some of these authorities to raise tariffs on imports of steel and aluminum as well as imports from the People's Republic of China, and it explains how courts have decided certain challenges to these actions.

Finally, this report considers selected proposals by Members of Congress and others to change the current scope of the President's tariff authorities. While some Members have sought to delegate additional tariff authorities to the President, others view the President's existing authorities as overly expansive and have sought to reassert congressional control over import tariffs.

Contents

Tables

Contacts

Introduction

The U.S. Constitution gives Congress the power to regulate foreign commerce, impose import tariffs, and raise revenue.[1] Congress, in turn, has enacted laws giving the President the authority to impose tariffs under certain conditions. Federal courts, for their part, have decided legal challenges to the constitutionality of these laws and to the ways in which the President has utilized them. Thus, although Congress holds constitutional power over tariffs, all three branches of the U.S. government have come to play a role in determining when tariffs are imposed or adjusted.

This report begins by examining how courts have traditionally held that Congress has broad latitude to enact laws giving the President authority to impose tariffs for various purposes. It also examines how courts have given broad scope to the President's authority to impose and adjust tariffs under these laws.[2] The report notes how recent U.S. Supreme Court developments might foreshadow stricter approaches to judicial review of the President's tariff authorities and actions.

The second half of this report provides a legal overview of selected statutes authorizing the executive branch to impose tariffs in a number of different scenarios, including examples of how some of these statutes have been used by recent administrations. The report surveys the legal requirements to utilize each of these statutes, including how courts have resolved certain disputes about their interpretation and use.

Separation of Powers Over Tariffs

Congressional Delegations of Tariff Authorities to the President

Article I, Section 1 of the U.S. Constitution, known as the Legislative Vesting Clause, provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States."[3] Article I, Section 8 includes among Congress's specific powers the power to "regulate Commerce with foreign Nations"[4] and the power to "lay and collect Taxes, Duties, Imposts and Excises."[5] The Constitution thus gives Congress the power to enact legislation imposing tariffs on U.S. imports, although it limits this power by providing that tariffs "shall be uniform throughout the United States."[6]

In the exercise of its constitutional powers, Congress has enacted laws granting various tariff authorities to the President. The U.S. Supreme Court and lower federal courts have sometimes

[1] *See* U.S. CONST. art. I, § 8.

[2] A separate CRS report analyzes the respective roles of Congress and the President over foreign trade agreements, which often involve tariff reductions. *See* CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*, by Christopher T. Zirpoli (2024).

[3] U.S. CONST. art. I, § 1; *see* Cong. Rsch. Serv., Overview of Legislative Vesting Clause, https://constitution.congress.gov/browse/essay/artI-S1-1/ALDE_00001311/ (last visited Feb. 25, 2025).

[4] U.S. CONST. art. I, § 8, cl. 3; *see also* Cong. Rsch. Serv., Overview of Foreign Commerce Clause, Constitution Annotated, https://constitution.congress.gov/browse/essay/artI-S8-C3-8-1/ALDE_00001057/ (last visited Feb. 25, 2025).

[5] U.S. CONST. art. I, § 8, cl. 1; *see also* Cong. Rsch. Serv., Overview of Taxing Clause, Constitution Annotated, https://constitution.congress.gov/browse/essay/artI-S8-C1-1-1/ALDE_00013387/ (last visited Feb. 25, 2025).

[6] U.S. CONST. art. I, § 8, cl. 3; *see also* Cong. Rsch. Serv., Uniformity Clause and Indirect Taxes, Constitution Annotated, https://constitution.congress.gov/browse/essay/artI-S8-C1-1-3/ALDE_00013389/ (last visited Feb. 25, 2025). The Constitution also prohibits tariffs on exports. *See* U.S. CONST. art. I, § 9, cl. 5.

been faced with deciding constitutional challenges to these laws in cases where plaintiffs claimed the laws impermissibly delegated Congress's power over legislation and tariffs to the executive branch. Supreme Court decisions upholding tariff laws have become landmarks in the development of a broader "nondelegation doctrine" concerning the extent to which Congress may lawfully delegate authority to the executive branch.[7]

For example, in *Marshall Field & Co. v. Clark*,[8] the Supreme Court upheld a provision of the Tariff Act of 1890 directing the President to suspend duty-free importation of sugar, molasses, coffee, tea, and hides in the event he was "satisfied that the government of any country producing and exporting [those products], imposes duties or other exactions upon the agricultural or other products of the United States, which . . . he may deem to be reciprocally unequal and unreasonable."[9] U.S. importers adversely affected by the President's use of this suspension authority claimed that it unconstitutionally delegated Congress's legislative power to the President.[10] The Supreme Court disagreed, holding that the challenged provision "does not, in any real sense, invest the president with the power of legislation."[11] Rather, because the provision required the President to suspend duty-free treatment for certain goods if he found another country's duties were "reciprocally unequal and unreasonable," it made the President "the mere agent of the law-making department."[12] Thus, the Court explained, the challenged provision called upon the President not to make law but simply to execute a law enacted by Congress.[13]

Reinforcing the latitude *Marshall Field* afforded to Congress, the Supreme Court in *J.W. Hampton, Jr., & Co. v. United States*[14] upheld a provision of the Tariff Act of 1922 requiring the President to increase or decrease tariff rates as necessary to "equalize . . . differences in costs of production" between articles produced in the United States and "like or similar" articles produced in foreign countries.[15] As in *Marshall Field*, the Court rejected a constitutional challenge to this law from affected importers who argued Congress had impermissibly delegated its legislative power to the President.[16] The Court held that the challenged provision was "not a forbidden delegation of legislative power" since it set forth "an intelligible principle to which the person or body authorized to fix [tariff] rates is directed to conform"[17]—namely, to vary tariff rates so as to equalize production costs between the United States and foreign countries. *J.W. Hampton* set a key precedent that Congress may delegate authority to the executive branch—in tariff and other matters—provided that it sets forth an "intelligible principle" to govern the executive's actions.[18]

---

[7] *See generally* Cong. Rsch. Serv., Overview of Nondelegation Doctrine, Constitution Annotated, https://constitution.congress.gov/browse/essay/artI-S1-5-1/ALDE_00000014/ (last visited Feb. 25, 2025) ("The nondelegation doctrine seeks to distinguish the constitutional delegations of power to other branches of government that may be necessary for governmental coordination from unconstitutional grants of legislative power that may violate separation of powers principles.").

[8] 143 U.S. 649 (1892).

[9] Tariff Act of 1890, ch. 1244, § 3, 26 Stat. 567, 612.

[10] *See Marshall Field*, 143 U.S. at 681.

[11] *Id.*

[12] *Id.* at 692–93.

[13] *See id*.

[14] 276 U.S. 394 (1928).

[15] Tariff Act of 1922, ch. 356, § 315, 42 Stat. 858, 941.

[16] *See J.W. Hampton*, 276 U.S. at 409–10.

[17] *Id*.

[18] *See generally* Cong. Rsch. Serv., Origin of Intelligible Principle Standard, Constitution Annotated, https://constitution.congress.gov/browse/essay/artI-S1-5-3/ALDE_00001317/ (last visited Feb. 25, 2025).

Federal courts have also rejected nondelegation challenges to some of the President's current tariff authorities. In *Federal Energy Administration v. Algonquin SNG, Inc.*,[19] the Supreme Court rejected a constitutional challenge to Section 232 of the Trade Expansion Act of 1962,[20] which the President had utilized to raise license fees on imported oil.[21] The Court held that Section 232 is constitutional because it "establishes clear preconditions to Presidential action"—namely, that an executive agency is first required to find that an article is being imported "'in such quantities or under such circumstances as to threaten to impair the national security.'"[22] In more recent cases, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has held that *Algonquin* requires it to reject nondelegation challenges to Section 232 asserted by plaintiffs seeking to enjoin (i.e., stop) the President's proclamation of steel tariffs.[23] In a lower court opinion that was affirmed in one of these cases, the U.S. Court of International Trade (CIT) held that it was bound by *Algonquin* while noting that "the broad guideposts of . . . section 232 bestow flexibility on the President and seem to invite the President to regulate commerce by way of means reserved for Congress, leaving very few tools beyond his reach."[24]

As the examples above illustrate, the Supreme Court has held that the Constitution gives Congress broad latitude to delegate authority to adjust tariffs to the President. Indeed, the Court has not struck down laws on any subject as violating *J.W. Hampton*'s "intelligible principle" standard since 1935.[25] Nevertheless, five current Justices have indicated that they would be willing to reconsider the Court's approach to the nondelegation doctrine.[26] In November 2024, the Court agreed to hear a case that may provide an opportunity for such a reappraisal.[27] If the Court were to adopt a stricter view of permissible delegations, some of the President's current tariff authorities might be subjected to new constitutional challenges.[28]

Judicial Review of Presidential Tariff Actions

In addition to constitutional challenges to Congress's delegation of tariff authorities to the executive branch, federal courts have decided legal challenges to the President's specific uses of those authorities. Parties claiming that the President has exceeded the scope of his statutory authority to impose tariffs sometimes have standing to challenge those tariffs in the CIT, which

[19] 426 U.S. 548 (1976).

[20] 19 U.S.C. § 1862; *see infra* "Section 232 of the Trade Expansion Act of 1962: Tariffs to Protect National Security."

[21] *Algonquin*, 426 U.S. at 553, 559.

[22] *Id.* at 559 (quoting 19 U.S.C. § 1862(c)(1)(A)).

[23] *See PrimeSource Building Prods., Inc. v United States*, 59 F.4th 1255, 1263 (Fed. Cir. 2023); *Am. Inst. for Int'l Steel, Inc. v. United States*, 806 Fed. App'x 982, 983 (Fed. Cir. 2020), *cert. denied*, 141 S.Ct. 133 (2020).

[24] *Am. Inst. for Int'l Steel, Inc. v. United States*, 376 F. Supp. 3d 1335, 1340, 1344 (Ct. Int'l Trade 2019).

[25] *See generally* Cong. Rsch. Serv., Origin of Intelligible Principle Standard, Constitution Annotated, https://constitution.congress.gov/browse/essay/artI-S1-5-3/ALDE_00001317/ (last visited Feb. 25, 2025).

[26] *See* Allstates Refractory Contractors, LLC v. Su, 144 S. Ct. 2490, 2491 (2024) (Thomas, J., dissenting from denial of certiorari) ("At least five Justices have already expressed an interest in reconsidering this Court's approach to Congress's delegations of legislative power.").

[27] *See* Consumers' Research v. Fed. Commc'ns Comm'n, 109 F.4th 743 (5th Cir. 2024), *cert. granted*, 2024 WL 4864037 (Nov. 22, 2024); *see also* Amy How, *Court grants challenge to FCC subsidies over nondelegation doctrine*, SCOTUSblog (Nov. 22, 2024, 5:54 PM), https://www.scotusblog.com/2024/11/court-grants-challenge-to-fcc-subsidies-over-nondelegation-doctrine/.

[28] In *Am. Inst. for Int'l Steel, Inc.*, for example, one CIT judge contrasted the "ascertainable standards" of the statutes at issue in *Marshall Field* and *J.W. Hampton* with the "virtually unbridled discretion" Section 232 gives the President, stating: "If the delegation permitted by section 232, as now revealed, does not constitute excessive delegation in violation of the Constitution, what would?" 376 F. Supp. 3d at 1351–52 (Katzmann, J., dubitante).

generally has exclusive original jurisdiction over such lawsuits.[29] The Federal Circuit, in turn, has exclusive jurisdiction over appeals from the CIT[30] and therefore has a key role in interpreting the contours of the President's tariff authorities.

As explained below, the Federal Circuit has long applied a deferential standard of review to questions regarding the scope of the President's statutory tariff authorities,[31] although some commentators have questioned whether recent U.S. Supreme Court decisions require the Federal Circuit to construe the President's authority more narrowly.[32] In addition, where tariff and other statutes commit decisions or fact-finding to the President's discretion, the Federal Circuit has held that the President's discretionary acts are not subject to judicial review.[33]

Presidential Tariff Actions Reviewed for Clear Misconstruction of Law

In its 1985 decision *Maple Leaf Fish Co. v. United States*,[34] the Federal Circuit articulated a deferential standard for reviewing claims that the President had exceeded the scope of his statutory tariff authorities. In *Maple Leaf*, the court upheld "safeguard" tariffs on mushrooms under Section 201 of the Trade Act of 1974,[35] rejecting an argument that the U.S. International Trade Commission (ITC)[36] report underpinning the tariffs did not provide adequate justification for the inclusion of frozen mushrooms.[37] The court reasoned: "In international trade controversies of this highly discretionary kind—involving the President and foreign affairs—this court and its predecessors have often reiterated the very limited role of reviewing courts."[38] Thus, the court held: "For a court to interpose, there has to be a clear misconstruction of the governing statute, a significant procedural violation, or action outside delegated authority."[39]

The Federal Circuit has applied the *Maple Leaf* standard in holding that tariffs imposed by more recent administrations did not clearly misconstrue the President's statutory tariff authority. For instance, in *Silfab Solar, Inc. v. United States*,[40] the Federal Circuit upheld the President's imposition of Section 201 tariffs on certain solar products, rejecting the appellant's argument that the ITC was required to recommend a remedy before the President could impose such tariffs.[41]

---

[29] *See* 28 U.S.C. § 1581(i). A subset of challenges to presidential proclamations that involve more than import tariffs alone have been heard by other courts. For example, the U.S. Court of Appeals for the District of Columbia Circuit held in one case that the U.S. District Court for the District of Columbia had jurisdiction over a case where a challenged license fee program did not solely involve the imposition of tariffs under trade law. *See Algonquin SNG, Inc. v. Fed. Energy Admin.*, 518 F.2d 1051, 1063 (D.C. Cir. 1975).

[30] *See* 28 U.S.C. § 1295(a)(5).

[31] *See infra* "Presidential Tariff Actions Reviewed for Clear Misconstruction of Law."

[32] *See infra* "*Loper Bright* and the Future of Clear Misconstruction Review."

[33] *See infra* "Unreviewable Acts That Are Committed to the President's Discretion."

[34] 762 F.2d 86 (Fed. Cir. 1985).

[35] 19 U.S.C. § 2251; *see infra* "Section 201 of the Trade Act of 1974: Tariffs to Safeguard Domestic Industries."

[36] The ITC is an agency headed by up to six commissioners, no three of whom may be of the same political party. *See* CRS In Focus IF12295, *An Introduction to Section 337 Intellectual Property Litigation at the U.S. International Trade Commission*, by Christopher T. Zirpoli (2024).

[37] *See Maple Leaf*, 762 F.2d at 89.

[38] *Id.*

[39] *Id.* In Corus Group PLC v. U.S. Int'l Trade Comm'n, 352 F.3d 1351 (Fed. Cir. 2003), the Federal Circuit again upheld the President's imposition of Section 201 tariffs, this time on certain tin mill products. Based on the "clear misconstruction" standard of review articulated in *Maple Leaf*, the court rejected appellants' argument that the ITC failed to provide an adequate explanation for its domestic injury determinations. *See id.* at 1364.

[40] 892 F.3d 1340 (Fed. Cir. 2018).

[41] *See id.* at 1346.

Noting that "there are limited circumstances when a presidential action may be set aside if the President acts beyond his statutory authority, but such relief is only rarely available," the court held that Section 201 conditioned the President's tariff authority only on the ITC's finding of "serious injury" and not on the ITC's remedy recommendation.[42]

Similarly, in *USP Holdings, Inc. v. United States*,[43] the Federal Circuit upheld the President's imposition of national security tariffs under Section 232 of the Trade Expansion Act of 1962.[44] The court rejected the petitioner's argument that a national security threat must be "imminent" to impose tariffs under Section 232, holding that Section 232 "provides no basis to impose an imminence requirement."[45] It also held that Section 232's requirement that the President "determine the nature and duration of the action"[46] did not prevent the President from imposing tariffs indefinitely, with no specified end date.[47] The court reasoned that "claims that the President's actions violated the statutory authority delegated to him . . . are reviewable [only] to determine whether the President 'clearly misconstrued' his statutory authority."[48]

As *Maple Leaf* illustrates, the Federal Circuit has sometimes applied the "clear misconstruction" standard not only to the President's actions but also to predicate determinations executive agencies must make before the President may act under certain statutes.[49] For example, in *USP Holdings*, the court held that a report by the Secretary of Commerce finding a threat to national security was a final, reviewable agency action under the Administrative Procedure Act (APA)[50] because the report was "a predicate to the President's authority to act" under Section 232.[51] Nevertheless, the court held that the "threat determinations of the President and the Secretary are reviewed together as a single step using an identical test"[52]—i.e., clear misconstruction of the statute—and that the Secretary's determination was not reviewable under normal APA standards.[53] In *Corus Group*, the court likewise applied the "clear misconstruction" standard—"not the traditional APA standard of review"—in reviewing the ITC's injury determination underlying Section 201 tariffs.[54] Applying this standard to Section 201's requirements for the ITC's report, the court held that the ITC must provide "an internally consistent explanation for the conclusions reached."[55]

[42] *Id.* (citing, *inter alia*, *Corus Group*, 352 F.3d at 1356).

[43] 36 F.4th 1359 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 1056 (2023).

[44] 19 U.S.C. § 1862; *see infra* "Section 232 of the Trade Expansion Act of 1962: Tariffs to Protect National Security."

[45] *USP Holdings*, 36 F.4th at 1368–69.

[46] 19 U.S.C. § 1862(c)(1)(A)(ii).

[47] *USP Holdings*, 36 F.4th at 1370–71.

[48] *Id.* at 1365 (quoting *Corus Group*, 352 F.3d at 1356).

[49] *See, e.g.*, *Maple Leaf*, 762 F.2d at 90 ("We cannot . . . turn this [review of the ITC's determination under Section 201] into the ordinary administrative review in other areas in which the court looks to see if substantial evidence supports the agency's findings.").

[50] *See* 5 U.S.C. § 704 (defining reviewable actions); *see also* CRS Legal Sidebar LSB10558, *Judicial Review Under the Administrative Procedure Act (APA)*, by Jonathan M. Gaffney (2024).

[51] *USP Holdings*, 36 F.4th at 1366–68; *see also Corus Group*, 352 F.3d at 1358–59 (holding that predicate findings by the ITC were reviewable in a challenge to Section 201 tariffs).

[52] *USP Holdings*, 36 F.4th at 1369.

[53] *See id.* at 1369–70 ("USP . . . criticizes the Secretary's threat determination as unsupported by substantial evidence. But the Secretary's threat determination is not reviewable under the APA arbitrary and capricious standard.").

[54] *See Corus Group*, 352 F.3d at 1361.

[55] *Id.* at 1362 (discussing 19 U.S.C. § 2252(f)).

Loper Bright and the Future of Clear Misconstruction Review

Some litigants and commentators have questioned if the Federal Circuit must reevaluate its deferential *Maple Leaf* standard in light of the Supreme Court's 2024 decision *Loper Bright Enterprises v. Raimondo*.[56] In *Loper Bright*, the Supreme Court overturned its 1984 precedent *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,[57] which had afforded some deference to executive agencies to interpret ambiguous terms in statutes they administer.[58] The Supreme Court held in *Loper Bright* that courts must "exercise their independent judgment in deciding whether an agency has acted within its statutory authority" and "may not defer to an agency interpretation . . . simply because a statute is ambiguous."[59] Although *Maple Leaf* did not expressly rely on or cite *Chevron*, it was decided less than 11 months after *Chevron* and arguably gives similar deference to the President's interpretations of his statutory tariff authorities.[60]

A recent case involving tariffs on solar products illustrates the debate over *Maple Leaf*'s continued viability. In *Solar Energy Indus. Assoc. v. United States*,[61] the Federal Circuit upheld the President's imposition of increased Section 201 tariffs on bifacial solar panels. Applying the *Maple Leaf* standard, the court held that presidential authority to modify existing Section 201 tariffs under 19 U.S.C. § 2254(b)(1)(B) includes trade-restricting as well as trade-liberalizing changes.[62] Noting differences between Section 2254(b)(1)(A) (permitting only reduction or termination of a safeguard when U.S. industry has not made adequate efforts to adjust to import competition) and Section 2254(b)(1)(B) (permitting reduction, *modification*, or termination of a safeguard where such efforts have been made), the court held that "the President did not clearly misconstrue Section 2254(b)(1)(B) when he interpreted it as permitting trade-restrictive modifications."[63]

Following *Loper Bright*, the *Solar Energy* plaintiffs asked the Federal Circuit to revisit its decision. Petitioning the court to rehear the case en banc (i.e., before all of the court's judges), the plaintiffs argued that "the full court should reevaluate and replace" *Maple Leaf*, which they noted was "even more deferential than the now-discarded standard of *Chevron*."[64] The court denied en banc rehearing, but the original panel of judges issued a supplemental opinion explaining why the outcome of the case would not change if the court interpreted Section 232 de novo (i.e., without deference) instead of applying *Maple Leaf*'s "clear misconstruction" standard.[65] The court reasoned that the President's interpretation of his Section 232 tariff authorities in this case was

[56] 603 U.S. 369 (2024); *see* Thomas M. Beline, Neil R. Ellis, Ron Kendler & Brooke M. Ringel, *Is Trade Special? Trade Law and Deference After* Loper Bright, Presentation to the 22nd Judicial Conference of the U.S. Court of International Trade (Oct. 2024), https://www.cit.uscourts.gov/sites/cit/files/CIT22_Is_Trade_Special_%20Trade_Law_Judicial_Deference_After_Loper_Bright.pdf.

[57] 467 U.S. 837 (1984).

[58] *See Loper Bright*, 603 U.S. at 412 ("*Chevron* is overruled."); CRS Legal Sidebar LSB11189, *Supreme Court Overrules Chevron Framework*, by Benjamin M. Barczewski (2024).

[59] *Loper Bright*, 603 U.S. at 412.

[60] *See* Beline et al., *supra* note 56, at 2 ("[A]lthough not relying on *Chevron*, the [Federal Circuit] in cases such as *Maple Leaf* . . . applied a standard of judicial review of equal, if not greater, deference, to Presidential action.").

[61] 86 F.4th 885 (Fed. Cir. 2023) ("*Solar Energy I"*), *reh'g granted*, 111 F.4th 1349 (Fed. Cir. 2024) ("*Solar Energy II*").

[62] *See Solar Energy I*, 86 F.4th at 897–98.

[63] *Id.* at 894, 897–98.

[64] *Solar Energy II*, 111 F.4th at 1351, 1357.

[65] *See id.* at 1351.

correct, not merely permissible under *Maple Leaf*.[66] Thus, the court noted, the case was not an "appropriate vehicle for deciding whether the *Maple Leaf* standard should be retained."[67]

Some commentators observe that ongoing or future litigation may shed light on whether *Maple Leaf* is still good law following *Loper Bright*.[68] *Solar Energy* demonstrates, however, that replacing *Maple Leaf* with a stricter standard of review would not necessarily change the outcome in a given lawsuit challenging presidential tariff actions.[69]

Unreviewable Acts That Are Committed to the President's Discretion

While the Federal Circuit reviews claims that the President acted outside the scope of his statutory tariff authorities for "clear misconstruction" of those authorities, it has held that certain presidential decisions are not reviewable at all. In *Maple Leaf*, for instance, the court noted that "'the President's findings of fact and the motivations for his action are not subject to review.'"[70]

Nine years after *Maple Leaf*, the U.S. Supreme Court held in *Dalton v. Specter*[71] that judicial review is not available to challenge decisions that a statute commits to the President's discretion. In *Dalton*, plaintiffs sued to prevent the closure of a naval shipyard pursuant to the Defense Base Closure and Realignment Act of 1990.[72] That statute charged a commission with making recommendations on military base closures and gave the President authority to approve or disapprove those recommendations in their entirety.[73] Observing that the statute "does not at all limit the President's discretion in approving or disapproving the Commission's recommendations,"[74] the Court rejected the plaintiffs' argument that "the President's authority to close bases depended on . . . the Commission's compliance with statutory procedures."[75] Further, it held: "Where a statute, such as [this one], commits decision-making to the discretion of the President, judicial review of the President's decision is not available."[76]

In *Motions Systems Corp. v. Bush*,[77] the Federal Circuit held that *Dalton* precluded judicial review of the President's decision not to grant import relief to a domestic industry pursuant to Section 103 of the U.S.-China Relations Act of 2000.[78] The statute charged the ITC and United States Trade Representative (USTR)[79] with making recommendations regarding import relief and

[66] *See id.* at 1354 ("Our review of the plain text of Section 2254(b)(1)(B), other provisions and the overall structure of the Trade Act, and legislative history leads us to agree with the government that 'modify' here includes trade-restrictive changes. We reach this determination without according any deference to the President's interpretation.").

[67] *Id.* at 1358.

[68] *See* Jennifer Doherty, *3 International Trade Cases To Watch: Midyear Report*, LAW360, Aug. 13, 2024.

[69] *Cf.* Beline et al., *supra* note 56, at 31 ("*Loper Bright* might not be a 'game changer' for trade litigation.").

[70] *Maple Leaf*, 762 F.2d at 89 (quoting Florsheim Shoe Co. v. United States, 744 F.2d 787, 795 (Fed. Cir. 1984)).

[71] 511 U.S. 462 (1994).

[72] Pub. L. No. 101-510, 104 Stat. 1808 (10 U.S.C. § 2687 note); *see Dalton*, 511 U.S. at 464.

[73] *See Dalton*, 511 U.S. at 464–65.

[74] *Id.*, 511 U.S. at 476.

[75] *Id.* Plaintiffs alleged, for instance, noncompliance with public hearing and information requirements. *See id.* at 466–67.

[76] *Id.* at 477.

[77] 437 F.3d 1356 (Fed. Cir. 2006).

[78] Pub. L. No. 106-286, § 103, 114 Stat. 880 (codified at 19 U.S.C. § 2451 (2006)). This provision lapsed 12 years after the PRC's accession to the World Trade Organization, *see id.*, which occurred in 2001, *see* CRS In Focus IF11284, *U.S.-China Trade Relations*, by Karen M. Sutter (2024).

[79] USTR is a Cabinet-level official in the Executive Office of the President who advises the President on trade policy (continued...)

required the President to implement them "unless the President determines that provision of such relief is not in the national economic interest of the United States."[80] The court held that this statute granted the President broad, unreviewable discretion not to follow USTR's recommendation.[81] Thus, the court rejected the plaintiff's argument that the President disregarded USTR's recommendation to impose import relief tariffs "without sufficient evidentiary support," holding that the plaintiff had "no colorable claim that the President exceeded his statutory authority."[82]

Summarizing the foregoing precedents, the CIT has noted a "distinction between reviewing the substance of an exercise of discretion and reviewing an action for clear misconstruction of [a] statute, so that the authority delegated by Congress is exceeded."[83] In the former scenario, the CIT explained, "this court lacks the power to review the President's lawful exercise of discretion."[84] By contrast, "where statutory language limits the President, the court may review the executive's actions for 'clear misconstruction' of such limiting language."[85]

Selected Presidential Authorities to Impose Tariffs

The following section provides a legal overview of six statutory provisions that authorize the executive branch to impose tariffs under various circumstances. The first three provisions in this survey—Section 232 of the Trade Expansion Act of 1962 and Sections 201 and 301 of the Trade Act of 1974—require a specific federal agency to conduct an investigation and make certain findings before tariffs may be imposed. The other three provisions—Section 122 of the Trade Act of 1974, Section 338 of the Tariff Act of 1930, and the International Emergency Economic Powers Act of 1977—do not contain such requirements.[86]

Section 232 of the Trade Expansion Act of 1962: Tariffs to Protect National Security

Section 232 of the Trade Expansion Act of 1962[87] authorizes the President to adjust the importation of articles that the Secretary of Commerce finds are being imported in such a way as to threaten to impair national security.[88] The first Trump Administration used Section 232 to impose tariffs on steel (25%) and aluminum (10%) imports from most trading partners while creating a process to request exclusions from the tariffs for specific products.[89] Subsequently, the

and leads U.S. trade negotiations. *See* CRS In Focus IF11016, *U.S. Trade Policy Functions: Who Does What?*, by Shayerah I. Akhtar (2024).

[80] 19 U.S.C. § 2451(k)(1) (2006).

[81] *See Motion Sys.*, 437 F.3d at 1360.

[82] *Id.*

[83] Severstal Export GMBH v. United States, No. 18-00057, 2018 WL 1705298, at *8 (Ct. Int'l Trade Apr. 5, 2018).

[84] *Id.* (citing *Dalton*, 511 U.S. at 474).

[85] *Severstal*, 2018 WL 1705298 at *7 (quoting *Corus Group*, 352 F.3d at 1359).

[86] Whereas the statutes surveyed in this report all allow the President to *raise* tariffs, the most recent iteration of Trade Promotion Authority—a law allowing the President to proclaim certain tariff *reductions*—expired in 2021. *See* Zirpoli, *supra* note 2, at 5–8 (discussing, *inter alia*, provisions and expiration of Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Pub. L. No. 114-26, 129 Stat. 319 (codified at 19 U.S.C. §§ 4201–4210)).

[87] Pub. L. 87-794, § 232(b)–(c), 76 Stat. 877 (codified as amended at 19 U.S.C. § 1862(b)–(c)).

[88] *See id.*

[89] *See* Proclamation 9705, Adjusting Imports of Steel into the United States, 83 Fed. Reg. 11,625 (Mar. 8, 2018); Proclamation 9704, Adjusting Imports of Aluminum into the United States, 83 Fed. Reg. 11,619 (Mar. 8, 2018).

United States reached agreements with many countries placing quotas or tariff-rate quotas[90] on steel and aluminum imports from those countries in lieu of tariffs.[91] In February 2025, President Trump modified these Section 232 actions to impose 25% tariffs on both steel and aluminum while terminating the exclusion process, certain previously granted exclusions, and alternative arrangements reached with certain countries.[92]

Section 232 requires the Secretary of Commerce to conduct "an appropriate investigation to determine the effects on the national security of imports of the [subject] article" following a petition by an "interested party" or a request by the head of any U.S. department or agency.[93] The Secretary may also self-initiate Section 232 investigations.[94] In conducting this investigation, the Secretary must consult on "methodological and policy questions" with the Secretary of Defense, who may be required to provide an assessment of defense requirements for the subject article.[95] The Secretary of Commerce must also seek information from other officers, hold public hearings, and afford interested parties an opportunity to be heard, as appropriate.[96] Within 270 days of initiating the investigation, the Secretary of Commerce must submit a report to the President containing findings and recommendations.[97]

For the President to take action under Section 232, the Secretary of Commerce must "find[] that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security."[98] Within 90 days after the Secretary reports an affirmative finding, the President must determine whether he concurs and—if he does—determine "the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security."[99] Within 30 days of the President's determination, he must give Congress "a written statement of the reasons why the President has decided to take action, or refused to take action."[100] If the President decides to take action, he must "implement that action by no later than . . . 15 days after . . . the President determines to take action."[101]

Section 232 does not require the President to follow the Secretary's recommendations but permits him to take alternative actions or no action.[102] It also does not limit the amount or duration of

[90] Whereas "absolute (or quantitative) quotas" strictly limit the quantity of a good that may enter the United States (e.g., from a particular country), "tariff-rate quotas" allow a specified quantity of the good to enter at a reduced tariff rate. *See* 19 C.F.R. § 132.1.

[91] *See* Proclamation 10,896, Adjusting Imports of Steel into the United States, 90 Fed. Reg. 9817 (Feb. 10, 2025); Proclamation 10,895, Adjusting Imports of Aluminum into the United States, 90 Fed. Reg. 9807 (Feb. 10, 2025).

[92] *See* Proclamation 10,896 and Proclamation 10,895, *supra* note 91.

[93] 19 U.S.C. § 1862(b)(1)(A).

[94] *See id*.

[95] *Id.* § 1862(b)(2)(A). The Secretary of Commerce must also immediately notify the Secretary of Defense when any Section 232 investigation is initiated. *See id.* § 1862(b)(1)(B).

[96] *See id.* § 1862(b)(2)(A).

[97] *See id.* § 1862(b)(3)(A).

[98] *Id.* § 1862(c)(1)(A). In making this determination, the Secretary must consider certain non-exclusive factors including the domestic production capacity needed to meet national defense requirements and the impact of foreign competition on the economic welfare of domestic industries. *See id.* § 1862(d).

[99] *Id.* § 1862(c)(1)(A).

[100] *Id*. § 1862(c)(2).

[101] *Id.* § 1862(c)(1)(B).

[102] *See id.* § 1862(c).

tariffs that the President might impose.[103] If the President takes import-adjusting actions pertaining to "imports of petroleum or petroleum products," Congress may override the action via a specified joint resolution of disapproval, which is subject to the President's signature or veto.[104]

Section 232 contemplates that the President may respond to an affirmative finding by the Secretary by negotiating foreign agreements to adjust importation of the articles at issue.[105] It provides that, if "no such agreement is entered into" by 180 days after the President's determination to take such action, or if an agreement is entered into but "is not being carried out or is ineffective in eliminating the threat," then "the President shall take such other actions as the President deems necessary to adjust the imports of such article."[106] This provision may provide some legal support for the President's February 2025 proclamations imposing across-the-board 25% tariffs on steel and aluminum to the extent they criticize the effectiveness of "alternative" agreements previously reached with certain countries.[107]

Legal challenges to Section 232 steel tariffs have required the Federal Circuit to address interpretive disputes about the statute. In *USP Holdings*, as noted above,[108] the court held that Section 232 does not require a national security threat to be "imminent" for the President to act.[109] In another decision, *Transpacific Steel LLC v. United States*,[110] the court upheld the President's decision to double tariffs on steel imports from Turkey five months after his initial proclamation imposing a 25% tariff on steel.[111] The court held that Section 232's time limits—requiring the President to determine "the nature and duration of [his] action" within 90 days after the Secretary's report and to "implement" that action within 15 days of that determination—do not prevent the President from adopting "a continuing course of action" that may entail further increasing tariffs on particular countries after those time limits expire.[112] In *PrimeSource Building Products*, the court likewise upheld the President's modification of steel tariffs to include certain derivative products like nails and staples,[113] holding that Section 232 allowed the President to "take action against derivative products regardless of whether the Secretary has investigated and reported on such derivatives."[114]

Transpacific Steel and *PrimeSource* may provide additional legal support for the President's February 2025 modifications to steel and aluminum tariffs, such as raising the duty rate on aluminum from 10% to 25% seven years after the Secretary's investigation. While the Federal Circuit noted that these decisions did not "prejudg[e] the scope of judicial reviewability of

[103] *See id*.; *see also USP Holdings*, 36 F.4th at 1370–71 (holding Section 232 allows the President to impose tariffs indefinitely, without specifying an end date).

[104] 19 U.S.C. § 1862(f).

[105] *See id.* § 1862(c)(3).

[106] *Id*.

[107] *See* Proclamation 10,896 and Proclamation 10,895, *supra* note 91.

[108] *See supra* "Presidential Tariff Actions Reviewed for Clear Misconstruction of Law."

[109] 36 F.4th at 1368–69.

[110] 4 F.4th 1306 (Fed. Cir. 2021), *cert. denied*, 142 S. Ct. 1414 (2022).

[111] This initial proclamation applied to steel imports from all countries, including Turkey, except for Canada and Mexico. *See* Proclamation 9705, *supra* note 89, 83 Fed. Reg. at 11,626.

[112] *Transpacific Steel*, 4 F.4th at 1318. A dissenting opinion in this case emphasized separation-of-powers concerns. Noting that "the subject matter of § 232 flows directly [from] Congress's constitutional power over the Tariff," Judge Jimmie Reyna argued that "extra care should be taken to avoid unduly expanding that delegation" and that the plain language of Section 232 prevents the President from taking new actions outside the statutory time limits. *Id.* at 1338–40 (Reyna, J., dissenting).

[113] *See PrimeSource*, 59 F.4th at 1257.

[114] *Id.* at 1262.

presidential determinations" that might be based on "stale information,"[115] it nonetheless held that Section 232 provides "no textual basis for a specific time limit on adjustments under a timely adopted plan."[116] It further stated that staleness is not a concern when subsequent modifications are made "in pursuit of the same goal" as the initial action and are based on "current information" from the Secretary.[117]

Section 201 of the Trade Act of 1974: Tariffs to Safeguard Domestic Industries

Section 201 of the Trade Act of 1974[118] authorizes the President to impose tariffs or take certain other actions if the ITC finds that a surge in imports is causing or threatening serious injury to a U.S. domestic industry (DI).[119] Presidential action under Section 201 is meant to facilitate the DI's "positive adjustment to import competition," meaning that dislocated workers can make "an orderly transition to productive pursuits" and the DI itself either becomes able to compete successfully with the imports or transfers its resources to other productive pursuits.[120] Tariffs imposed under Section 201 are sometimes referred to as "safeguard" or "escape clause" tariffs.[121] Recent administrations have used Section 201 to impose tariffs on solar cells and modules as well as residential washing machines.[122]

The ITC is required to conduct Section 201 investigations following a petition by a party representing a DI, a request by the President or USTR, or a resolution of the House Ways and Means Committee or Senate Finance Committee.[123] The ITC may also self-initiate Section 201 investigations.[124] As part of its investigation, the ITC must consider what positive adjustment measures the DI has taken or planned,[125] and petitioners and others may submit plans or commitments for the ITC's consideration.[126] The ITC generally must submit a report including its findings and recommendations to the President within 180 days of the start of the investigation.[127]

Before the President may take action under Section 201, the ITC must find based on its investigation that "an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article."[128] In making its

[115] *Transpacific Steel*, 4 F.4th 1332; *accord PrimeSource*, 59 F.th at 1262 ("As we noted in *Transpacific*, a different question might be presented where the underlying finding or objective has become substantively stale . . . .").

[116] *PrimeSource*, 59 F.th at 1262.

[117] *Id*.

[118] Pub. L. 93-618, § 201, 88 Stat. 2011 (codified as amended at 19 U.S.C. § 2251). As used in this report, "Section 201" refers generally to all of Title II, Chapter 1 of the Trade Act of 1974, which is codified at 19 U.S.C. §§ 2251–55.

[119] *See* 19 U.S.C. § 2251(a).

[120] *Id.* § 2252(a), (b)(1).

[121] *See Silfab Solar*, 892 F.3d at 1342.

[122] *See* Office of the U.S. Trade Representative, Section 201 Investigations, https://ustr.gov/issue-areas/enforcement/section-201-investigations (last visited Feb. 25, 2025).

[123] 19 U.S.C. § 2252(a)(1), (b)(1)(A).

[124] *See id.* § 2252(b)(1)(A).

[125] *See id.* § 2252(a)(6)(A).

[126] *See id.* § 2252(a)(4), (a)(6)(B).

[127] *See id.* § 2252(f) (noting the period may be extended to 240 days "if the petition alleges that critical circumstances exist").

[128] *Id.* § 2252(b)(1)(A). Section 201 defines "substantial cause" as "a cause which is important and not less than any other cause." *Id.* § 2252(b)(1)(B).

finding, the ITC is required to "take into account all economic factors which it considers relevant" as well as certain nonexclusive factors provided by statute.[129] As noted above,[130] the Federal Circuit has rejected challenges to Section 201 tariffs in cases where plaintiffs alleged that the ITC did not provide an adequate explanation for its injury determination[131] or the inclusion of certain goods on the lists of products subject to tariffs.[132]

If the ITC makes an affirmative determination, it must recommend what action would be most effective to facilitate the DI's positive adjustment to import competition.[133] The ITC's recommendation may include any or a combination of increased tariffs, tariff-rate quotas, quantitative restrictions (i.e., absolute quotas), trade adjustment assistance, international negotiations, and other measures.[134] In forming its recommendations, the ITC is required to hold a public hearing for all interested parties to present testimony and other evidence.[135]

Section 201 directs the President, within 60 days of receiving a report from the ITC with an affirmative finding of injury, to take "all appropriate and feasible action within his power" to facilitate positive adjustment by the DI.[136] The President is not required to follow the ITC's recommendation but may take any of the types of actions (e.g., imposing tariffs) the ITC is authorized to recommend.[137] Moreover, the Federal Circuit has held that, even if the ITC fails to recommend a course of action, the President may take action so long as the ITC makes the requisite injury finding.[138] If the President takes action under Section 201, he must submit a report to Congress describing those actions and his reasons for taking them, including the reasons for any differences between his actions and the ITC's recommendation.[139]

Section 201 places several limitations on the magnitude and duration of remedial actions. For instance, tariffs imposed under Section 201 may not "increase a rate of duty to (or impose a rate) which is more than 50 percent ad valorem above the rate (if any) existing at the time the action is

[129] *Id.* § 2252(c). To find that a DI has been seriously injured, the ITC must consider factors concerning the idling of DI facilities, the inability of DI firms to earn reasonable profits, and unemployment within the DI. *Id.* § 2252(c)(1)(A). To find, alternatively, that a DI is threatened with serious injury, the ITC must consider factors concerning trends in sales, market share, inventory, production, profits, wages, productivity, and employment in the DI; inability of DI firms to generate capital or maintain research and development expenditures; and "the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets." *Id.* § 2252(c)(1)(B). Finally, to find that the increased imports are a substantial cause of the injury or threat to the DI, the ITC must consider whether there is "an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers." *Id.* § 2252(c)(1)(C).

[130] *See supra* "Presidential Tariff Actions Reviewed for Clear Misconstruction of Law."

[131] *See Corus Group*, 352 F.3d at 1364 (Fed. Cir. 2003) (upholding Section 201 tariffs on tin mill products).

[132] *See Maple Leaf*, 762 F.2d at 88–90 (upholding Section 201 tariffs on frozen mushroom products).

[133] *See* 19 U.S.C. § 2252(e)(1).

[134] *See id.* § 2252(e)(2). The ITC's recommendation must "specify the type, amount, and duration of the action." *Id.* § 2252(e)(3).

[135] *Id.* § 2252(e).

[136] *Id.* § 2253(a)(1)(A), (a)(4).

[137] *Id.* § 2253(a)(3).

[138] *See Silfab Solar*, 892 F.3d at 1346. In *Silfab Solar*, the ITC did not make an official recommendation because the four then-serving Commissioners disagreed as to the correct remedy, and "no recommendation received the assent of 'a majority of the commissioners voting' or of 'not less than three commissioners.'" *Id.* at 1343 (quoting 19 U.S.C. § 1330(d)(2)).

[139] *See* 19 U.S.C. § 2253(b). In *Silfab Solar*, the Federal Circuit noted that "[t]he question of whether the President's action here 'differs from the action recommended by the Commission' when the ITC makes no recommendation is a matter for Congress," *Silfab Solar*, 892 F.3d at 1346 (quoting 19 U.S.C. § 2253(b)), apparently acknowledging that the current text of Section 201 does not address this scenario.

taken."[140] Actions in effect for more than one year must be "phased down at regular intervals."[141] Actions also may not stay in effect for more than four years unless the ITC makes certain findings in a follow-on proceeding, in which case the President may extend the actions up to an additional four years.[142]

The President has limited authority to modify previously imposed Section 201 tariffs, which is generally triggered by a "midpoint review" the ITC must conduct for longer actions.[143] If the period of an initial action or an extension exceeds three years, the ITC must submit a report by the midpoint of that period regarding the DI's progress toward positive adjustment.[144] Only after receiving this report, the President may reduce or terminate the action if he determines that the DI has not made adequate efforts toward positive adjustment or that changed circumstances make the action ineffective.[145] Alternatively, if the majority of DI representatives petition the President to modify, reduce, or terminate the action, he may do so if he determines that the DI has made a positive adjustment.[146] As noted above, the Federal Circuit has held that this limited authority to "modify" a previous safeguard if the DI has made a positive adjustment allows the President to increase tariffs and withdraw previously granted exclusions for certain products.[147]

Section 301 of the Trade Act of 1974: Tariffs Addressing Trade Agreement Violations and Certain Other Practices

Section 301 of the Trade Act of 1974[148] allows USTR to impose tariffs in response to actions by foreign countries that violate U.S. rights under international trade agreements or that burden or restrict U.S. commerce in "unjustifiable," "unreasonable," or "discriminatory" ways.[149] In recent administrations, USTR has invoked Section 301 to impose tariffs on many imports from the People's Republic of China (PRC) based on findings that the PRC government engaged in certain conduct relating to forced technology transfers, intellectual property, and innovation.[150] In a separate investigation, USTR found in January 2025 that the PRC's practices in the shipbuilding industry justified action under Section 301.[151]

[140] 19 U.S.C. § 2253(e)(3); *see also id.* § 2253(e)(4) (setting limits on "quantitative restrictions," or import quotas).

[141] *Id.* § 2253(e)(5).

[142] *See id.* §§ 2253(e)(1), 2254(c).

[143] *See id.* § 2254(a), (b).

[144] *See id.* § 2254(a)(2).

[145] *See id.* § 2254(b)(1)(A).

[146] *See id.* § 2254(b)(1)(B).

[147] *Solar Energy I*, 86 F.4th at 889–90, 894, *reh'g granted in part*, *Solar Energy II*, 111 F.4th 1349 (Fed. Cir. 2024) (providing additional reasoning for decision).

[148] Pub. L. 93-618, § 301, 88 Stat. 2041 (codified as amended at 19 U.S.C. § 2411). As used in this report, "Section 301" refers generally to all of Title III of the Trade Act of 1974, which is codified at 19 U.S.C. §§ 2411–20.

[149] *See* 19 U.S.C. § 2411(a), (b).

[150] *See*, *e.g.*, Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 28,710 (June 20, 2018).

[151] Press Release, USTR Finds That China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance Is Actionable Under Section 301 (Jan. 20, 2025), https://ustr.gov/about-us/policy-offices/press-office/press-releases/2025/january/ustr-finds-chinas-targeting-maritime-logistics-and-shipbuilding-sectors-dominance-actionable-under. For information on these and other Section 301 investigations, see Office of the U.S. Trade Representative, Section 301 Investigations, available at https://ustr.gov/issue-areas/enforcement/section-301-investigations (last visited Feb. 17, 2025).

USTR is authorized but not required to conduct Section 301 investigations based on petitions filed by "any interested person," and it may also self-initiate Section 301 investigations.[152] Generally, USTR must request consultations with the foreign country upon initiating an investigation.[153] USTR's deadline to complete the investigation varies according to the basis and nature of the investigation.[154] Procedural requirements include providing an opportunity for interested persons to give a "presentation of views," including a public hearing if requested by an interested person.[155]

To impose tariffs or other remedies under Section 301, USTR must determine that either (a) a foreign country is violating or denying benefits or rights to the United States under a trade agreement or (b) an act, policy, or practice of a foreign country both (i) is "unjustifiable," "unreasonable," or "discriminatory" and (ii) "burdens or restricts [U.S.] commerce."[156] Section 301 provides nonexclusive examples of foreign government practices that would trigger USTR's authority, including subsidizing the construction of commercial vessels for shipping goods between the United States and other countries, denying adequate and effective protection of intellectual property rights, failing to provide a minimum working age for the employment of children, or denying workers' rights to organize and collectively bargain.[157]

Upon an affirmative determination, USTR is authorized, under the direction of the President, to impose duties or other import restrictions, withdraw or suspend trade agreement concessions, or enter into an agreement with a foreign government to stop the offending conduct or compensate the United States.[158] Section 301 does not set a maximum rate for tariffs that USTR may impose. Under certain circumstances, USTR may modify or terminate the action, subject to the President's direction, provided it solicits views from any petitioners, DI representatives, and other interested persons and reports its reasons to Congress.[159] For example, in 2024, USTR modified the above-referenced action regarding imports from the PRC to impose higher tariff rates on certain products, including a 100% rate on electric vehicles.[160]

Actions taken under Section 301—including any tariffs—terminate automatically after four years unless any petitioner or representative of a DI benefiting from the action requests continuation, in which case USTR may extend the action.[161] For example, in 2022, USTR determined that the tariffs first imposed in 2018 on imports from the PRC would remain in effect.[162]

The fact that Section 301's authority belongs not directly to the President but rather to USTR, "subject to the specific direction, if any, of the President,"[163] has raised questions regarding the standard of review applicable to recent legal challenges involving tariffs on imports from the

[152] *See* 19 U.S.C. § 2412.

[153] *See id.* § 2413.

[154] *See id.* § 2414(a).

[155] *See id.* § 2414(b).

[156] *See id.* § 2411(a)(1) (mandatory action), (b)(1) (discretionary action).

[157] *See id.* § 2411(d)(2), (3)(B).

[158] *See id.* § 2411(c).

[159] *See id.* § 2417(a), (b).

[160] *See* Notice of Modification: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76,581 (Sept. 18, 2024).

[161] *See* 19 U.S.C. § 2417(c). Unlike Section 201, Section 301 does not limit the number of times a continuation may be requested or granted.

[162] *See* Continuation of Actions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 87 Fed. Reg. 55,073 (Sept. 8, 2022).

[163] 19 U.S.C. § 2411(a)(1)(B), (b)(2).

PRC.[164] For instance, following its initial action imposing tariffs on certain imports from the PRC, USTR promulgated and imposed tariffs on lists of additional products, citing its modification authority.[165] In the consolidated *Section 301 Cases* challenging the additional tariffs, the Court of International Trade held that USTR's action was reviewable under the APA, rejecting the government's argument that it represented nonreviewable presidential discretion.[166] Because the court found the case did not present any statutory ambiguity, it declined to decide whether USTR's interpretation was entitled to any deference under *Maple Leaf* or *Chevron*.[167]

In the *Section 301 Cases*, the court held that Section 301's modification authority permitted USTR to impose tariffs on additional products based on retaliatory tariffs the PRC had imposed on U.S. products after USTR's initial action.[168] The court held that the modification was procedurally defective, however, because USTR did not adequately respond to critical comments.[169] After giving USTR an opportunity to provide additional explanation for the modification, the court upheld the modified tariffs.[170] At this writing, an appeal to the Federal Circuit is pending, and at least one commentator has noted that the question of USTR's modification authority may give that court occasion to reevaluate *Maple Leaf* deference post-*Loper Bright.*[171]

Section 122 of the Trade Act of 1974: Tariffs Addressing International Payments Problems

Section 122 of the Trade Act of 1974[172] directs the President to take measures that may include a temporary import surcharge (tariff) when necessary to address "large and serious United States balance-of-payments deficits" or certain other situations that present "fundamental international payments problems."[173] Section 122 has never been used, and therefore courts have had no occasion to interpret its language. Some news reports have noted this provision appears to authorize the President to impose across-the-board tariffs on imports in some circumstances.[174]

Section 122(a) provides that, "[w]henever fundamental international payments problems require special import measures to restrict imports" in order "(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," the President "shall proclaim, for a period not exceeding 150 days," either or both of "(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties . . . on articles imported into the United States" or, under

[164] *See supra* "Judicial Review of Presidential Tariff Actions."

[165] *See* In re Section 301 Cases, 570 F. Supp. 3d 1306, 1317–21 (Ct. Int'l Trade 2022); 19 U.S.C. § 2417(a).

[166] *See Section 301 Cases*, 570 F. Supp. 3d at 1323–26. The court also rejected the government's contention that the case presented a nonjusticiable "political question." *Id.* at 1326–28.

[167] *Section 301 Cases*, 570 F. Supp. 3d at 1328–29.

[168] *See Section 301 Cases*, 570 F. Supp. 3d at 1332–35.

[169] *See id.* at 1338–43.

[170] In re Section 301 Cases, 628 F. Supp. 3d 1235 (Ct. Int'l Trade 2023).

[171] *See* Doherty, *supra* note 68; *see also supra* "*Loper Bright* and the Future of Clear Misconstruction Review."

[172] Pub. L. 93-618, § 122, 88 Stat. 1987 (codified at 19 U.S.C. § 2132).

[173] 19 U.S. Code § 2132(a).

[174] *See, e.g.*, Alexander Panetta & Katie Simpson, *Canada Is Already Preparing for Trump's Potential Tariff Threats*, CBC NEWS, Mar. 25, 2024 ("[A] . . . trade lawyer with Coalition For A Prosperous America, a pro-domestic manufacturing group . . . expects Trump would invoke the Trade Act of 1974. Its section 122 allows a president to set a maximum 15 per cent tariff, for up to 150 days, in the event of a balance-of-payments deficit with other nations . . . .").

specified circumstances, "(B) temporary limitations through the use of quotas on the importation of articles into the United States."[175] Unlike the tariff statutes surveyed above, Section 122 does not condition the President's authority to impose tariffs on any investigation or factual finding by an executive agency, such as the ITC[176] or Department of Commerce,[177] nor does it directly commit the tariff authority to an agency, such as USTR.[178]

Some have suggested that Section 122 might authorize the President to impose tariffs in response to U.S. trade deficits,[179] which occur when the value of imports in goods and services exceeds that of exports.[180] The term "balance-of-payments deficits" in Section 122, however, likely refers not to trade deficits but to more inclusive measures of international payments including certain capital flows as well as goods and services trade.[181] The U.S. government regularly reported three such "overall" measures of the U.S. balance of payments in the years surrounding Section 122's enactment but ceased to report them in 1976.[182] Some commentators noted at the time that the end of the post-World War II international monetary system of fixed exchange rates (the Bretton Woods system) in 1973 had rendered the overall balance-of-payments measures obsolete.[183] An earlier-introduced version of Section 122 specified that a substantial deficit in either of two of the overall balance-of-payments measures for four consecutive quarters would qualify as a "serious

[175] 19 U.S.C. § 2132(a). Section 122(b) provides, though, that if "the President determines that the imposition of import restrictions under subsection (a) will be contrary to the national interest of the United States, then he may refrain from proclaiming such restrictions," in which case he shall "immediately" inform Congress of that determination and engage in certain consultations "as to the reasons for such determination." *Id.* § 2132(b).

[176] *Cf. supra* "Section 201 of the Trade Act of 1974: Tariffs to Safeguard Domestic Industries."

[177] *Cf. supra* "Section 232 of the Trade Expansion Act of 1962: Tariffs to Protect National Security."

[178] *Cf. supra* "Section 301 of the Trade Act of 1974: Tariffs Addressing Trade Agreement Violations and Certain Other Practices."

[179] Gavin Bade, *Trump Trade Advisers Plot Dollar Devaluation*, POLITICO, Apr. 15, 2024 ("One legal tool that's been floated is Section 122 of the Trade Act of 1974, which authorizes tariffs of up to 15 percent against countries that have 'large and serious' trade surpluses with the U.S.").

[180] *See* CRS In Focus IF10156, *U.S. Trade Policy: Background and Current Issues*, by Shayerah I. Akhtar, Cathleen D. Cimino-Isaacs, and Karen M. Sutter (2024).

[181] *See* U.S. DEP'T OF COMMERCE, BEA, THE BALANCE OF PAYMENTS OF THE UNITED STATES: CONCEPTS, DATA SOURCES, AND ESTIMATING PROCEDURES 17 (May 1990), https://apps.bea.gov/scb/pdf/internat/bpa/meth/bopmp.pdf, at 17 (contrasting "overall balances, measuring balance of payments surpluses or deficits," with "partial balances," including "merchandise trade" and "goods and services").

[182] *See, e.g.*, U.S. Dep't of Commerce, BEA, *Report of the Advisory Committee on the Presentation of Balance of Payments Statistics*, SURVEY OF CURRENT BUSINESS, June 1976, at 20–21 (recommending the Department of Commerce cease publishing all three previously reported "overall" measures: the net liquidity balance, the balance on current account and long-term capital, and the official reserve transactions (ORT) balance).

[183] *See* Janice M. Westerfield, *A Lower Profile for the U.S. Balance of Payments*, FED. RESERVE BANK OF PHILADELPHIA BUS. REVIEW, Nov.–Dec. 1976, at 15 ("The new international monetary system not only reduces the importance of balance-of-payments measures but also makes the old reporting system obsolete. . . . As the international monetary system moved to floating exchange rates, these overall measures came to be misinterpreted by the public."); Edwin L. Dale, Jr., *U.S. to End Some of Payments Data*, N.Y. Times, May 17, 1976, at 43 ("All three of these measures of surplus or deficit published up to now will be dropped because they are no longer meaningful, particularly in a world of floating currency exchange rates. . . . In brief, the balance of payments is no longer a serious preoccupation of the Government . . . . [T]here is no longer any need to seek to 'balance' the nation's total international payments by Government action, even if the total payments picture could be accurately measured.").

balance-of-payments deficit"[184]; a later report stated the House Ways and Means Committee had considered and rejected such formulas.[185]

Section 122 provides some contextual evidence that "balance-of-payments deficits" does not refer to trade deficits. While Section 122(a) refers to the "balance-of-payments," Section 122(c)—which allows tariff *reductions* in some scenarios—refers to the "balance-of-trade."[186] A court might presume that this distinction was intentional and infer that Congress meant these terms to have different meanings.[187] To the extent that legislative history may be relevant to determining the legal meaning of Section 122, it may corroborate the presumption that Congress intended to make this distinction.[188] In a previously introduced version of Section 122, both subsections referred to the "balance-of-payments,"[189] but a Senate Finance Committee report explained that this term was deliberately amended to "balance-of-trade" in what became Section 122(c).[190]

Section 122 was enacted following a temporary 10% tariff President Richard Nixon proclaimed in 1971 with a stated goal of improving the U.S. balance of payments.[191] In 1974, the year Congress passed Section 122, the Senate Finance Committee reported that "under present circumstances [Section 122] authority is not likely to be utilized,"[192] possibly referring to the recent collapse of the Bretton Woods system.

Section 338 of Tariff Act of 1930: Tariffs to Address Discrimination Against the United States

Section 338 of the Trade Act of 1930[193] directs the President to impose tariffs on articles produced by, or imported on the vessels of, foreign countries that discriminate against U.S. commerce in certain ways.[194] As of the time of this writing, the United States has never imposed tariffs under Section 338, although some international trade lawyers observe the statute has sometimes been used as "leverage" in negotiations with other countries.[195] Some news reports indicate Section

[184] *See* Trade Reform Act of 1973, 93 H.R. 6767, 93d Cong. (as introduced in House, Apr. 10, 1973) ("[A] serious balance-of-payments deficit shall be considered to exist whenever the President determines that—(A) the balance of payments (as measured either on the official reserve transactions basis or by the balance on current account and long-term capital) has been in substantial deficit over a period of four consecutive calendar quarters . . . .").

[185] H. REP. NO. 93-571, at 28–29 (Oct. 10, 1973) ("The committee considered various formulas for defining a serious balance-of-payments deficit, including a specific formulation based on the existence of a substantial deficit over a certain period of time, but . . . it is not possible to formulate a definition with mathematical exactness.").

[186] 19 U.S.C. § 2132(c).

[187] *See* CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon, at 55 (2023) (regarding the presumption of consistent usage).

[188] *See* Brannon, *supra* note 187, at 39–44 (regarding the use of legislative history in statutory interpretation).

[189] Trade Reform Act of 1973, 93 H.R. 10710, 93d Cong. (as introduced in House, Oct. 3, 1973).

[190] *See* S. REP. NO. 93-1298, at 89 (1974) ("It is possible, indeed likely, that there will be a large influx of short term and long term funds from oil-producing countries which could create a large *payments* surplus while at the same time, the United States may be suffering a large *trade* deficit. In these circumstances, eliminating or reducing barriers to U.S. imports would not be a proper remedy . . . .") (emphasis in original).

[191] See CRS Insight IN11129, *The International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and Tariffs: Historical Background and Key Issues*, by Christopher A. Casey (2024).

[192] S. REP. NO. 93-1298, at 88 (1974) (emphasis in original).

[193] Tariff Act of 1930, ch. 497, § 338, 46 Stat. 704 (codified at 19 U.S.C. § 1338).

[194] *See id.* § 1338(a).

[195] *See* John K. Veroneau & Catherine H. Gibson, *Presidential Tariff Authority*, 111 AM. J. INT'L LAW 957, 958 (2017).

338 might be a potential means for the Trump Administration to impose "reciprocal" tariffs in response to other countries' tariffs and nontariff barriers.[196]

Section 338 directs the President to impose tariffs "whenever he shall find as a fact" that a foreign country either (1) imposes on U.S. products "any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like articles of every foreign country" or (2) disadvantages and discriminates against U.S. commerce "by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition"—provided he finds that doing so will serve the public interest.[197] Section 338 also permits the President to "suspend, revoke, supplement, or amend any such proclamation" if he deems it is in the public interest.[198] Tariffs under Section 338 may not exceed 50% of the value of the goods.[199]

The President's authority under Section 338 appears to overlap with that of USTR under Section 301 of the Trade Act of 1974, which also authorizes tariffs in response to certain "discriminatory" practices by foreign countries.[200] Unlike Section 301, Section 338 does not require any agency investigation or determination as a prerequisite to imposing tariffs, although it charges the ITC with ascertaining and informing the President of relevant instances of discrimination.[201]

International Emergency Economic Powers Act of 1977

Even though it does not specifically mention tariffs, the International Emergency Economic Powers Act of 1977 (IEEPA)[202] gives the President extensive economic powers in a national emergency declared under the National Emergencies Act (NEA),[203] including to "regulate" or "prohibit" imports.[204] Presidents have invoked IEEPA on many occasions to impose sanctions such as asset freezes and prohibitions on unlicensed transactions directed to foreign countries, entities, and individuals,[205] although no President had used IEEPA to impose tariffs until this year. In February 2025, President Trump invoked IEEPA as a basis to impose tariffs on imports from Canada, Mexico, and the PRC,[206] although only the tariffs on PRC imports have gone into effect

[196] *See* David Lawder, Trump May Dust Off 1930 Trade Discrimination Law to Back Reciprocal US Tariffs, REUTERS, Feb. 12, 2025.

[197] 19 U.S.C. § 1338(a).

[198] *Id.* § 1338(c).

[199] *See* 19 U.S.C. § 1338(d), (e).

[200] *See supra* "Section 301 of the Trade Act of 1974: Tariffs Addressing Trade Agreement Violations and Certain Other Practices."

[201] *See* 19 U.S.C. § 1338(g).

[202] Pub. L. 95-223, 91 Stat. 1626 (codified as amended at 50 U.S.C. §§ 1701 *et seq.*).

[203] Pub. L. 94-412, 90 Stat. 1255 (codified as amended at 50 U.S.C. §§ 1601 *et seq.*).

[204] *See* 50 U.S.C. § 1702(a)(1)(B).

[205] See CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, coordinated by Christopher A. Casey (2024).

[206] *See* Exec. Order No. 14,193, Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border, 90 Fed. Reg. 9113 (Feb. 1, 2025); Exec. Order No. 14,194, Imposing Duties to Address the Situation at Our Southern Border, 90 Fed. Reg. 9117 (Feb. 1, 2025); Exec. Order No. 14,195, Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China, 90 Fed. Reg. 9121 (Feb. 1, 2025); Exec. Order No. 14,200, Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China, 90 Fed. Reg. 9277 (Feb. 5, 2025).

as of the time of this writing.[207] In his executive orders invoking IEEPA, President Trump proclaimed national emergencies relating to, inter alia, illegal immigration and illicit drugs.[208]

The President may use IEEPA's authorities "to deal with an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat."[209] The NEA authorizes the President to declare a national emergency and requires that "[s]uch proclamation shall immediately be transmitted to the Congress and published in the Federal Register."[210]

Courts typically give some deference to the President's determination that there exists an unusual and extraordinary threat under IEEPA. One federal court, noting the government's interest in national security, stated that courts "owe unique deference to the executive branch's determination that we face 'an unusual and extraordinary threat to the national security' of the United States."[211] Another court, faced with a challenge to an IEEPA emergency declaration regarding access of foreign parties to U.S. goods and technology, opined that the court "cannot question the President's political decision to deem this threat 'unusual and extraordinary.'"[212] Some scholars argue that IEEPA and Section 232, by empowering the President to impose tariffs in response to purported national security threats, have eroded the distinction between Congress's constitutional power over tariffs and foreign commerce and the President's national security and foreign affairs powers, ceding too much control over tariffs to the President.[213]

The NEA provides that an emergency may be terminated either by presidential proclamation or by enactment into law of a joint resolution of Congress.[214] In addition, a declared emergency automatically terminates on its anniversary unless the President notifies Congress within the 90 days prior to the anniversary that the emergency is to continue and publishes that notice in the *Federal Register*;[215] provided these notifications are made, the emergency may continue indefinitely.[216] IEEPA also requires the President to make regular reports to Congress.[217]

Some commentators have criticized the use of IEEPA to impose tariffs on the grounds that it may be used to circumvent the substantive and procedural limits found in other, more targeted tariff authorities.[218] As explained in this report, some of those authorities require an executive agency to conduct an investigation and make predicate findings before the President or the agency may

[207] David Alire Garcia, Trevor Hunnicutt & David Ljunggren, Trump Pauses Tariffs on Mexico and Canada, But Not China, REUTERS, Feb. 3, 2025.

[208] *See* Exec. Order Nos. 9113, 9114, and 9115, *supra* note 206.

[209] 50 U.S.C. § 1701.

[210] *See* 50 U.S.C. § 1621(a). Regarding the NEA's legislative history and the meaning of "national emergency," see CRS Legal Sidebar LSB10267, *Definition of National Emergency under the National Emergencies Act*, by Jennifer K. Elsea (2019).

[211] Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of Treasury, 686 F.3d 965, 980 (9th Cir. 2012).

[212] U.S. v. Groos, 616 F. Supp. 2d 777, 788–89 (N.D. Ill. 2008).

[213] Kathleen Claussen & Timothy Meyer, *Economic Security and the Separation of Powers*, 172 U. PENN. L. REV. 1, 13–14, 24, 35 (2024).

[214] *See* 50 U.S.C. § 1622(a).

[215] *See id.* § 1622(d).

[216] *See* Casey, *supra* note 205, at 17 (noting that the first emergency invoking IEEPA, declared in 1979 in response to the Iranian hostage crisis, is still in effect, and that "the number of ongoing national emergencies has grown nearly continuously since the enactment of IEEPA and the NEA").

[217] *See* 50 U.S.C. § 1703.

[218] Peter E. Harrell, *The Case Against IEEPA Tariffs*, LAWFARE (Jan. 31, 2025), https://www.lawfaremedia.org/article/the-case-against-ieepa-tariffs.

raise tariffs, and some limit the duration or magnitude of any tariffs.[219] The President's broad latitude to declare national emergencies under IEEPA may obviate the need for the President to rely on trade-specific laws and thereby vitiate their constraints on executive action.[220] More generally, the possible lack of judicially enforceable standards as to what may constitute a national emergency may give the President practically unlimited authority to impose tariffs.

On the other hand, some commentators argue that, in addition to serving other economic and policy functions, tariffs may provide leverage for the United States in international negotiations. For tariffs to serve this function, one commentator reasoned, "the executive needs flexibility to act, without waiting for Congress."[221] On this view, the flexibility and speed afforded by IEEPA might be seen as helping the President to conduct foreign policy effectively.

Comparison of Selected Tariff Authorities

Table 1 compares the statutory tariff authorities surveyed above in terms of their subject matter, which agency (if any) is required to make findings as a prerequisite to imposing tariffs, the maximum duration and rate (if any) of tariffs, and selected examples of their use.

Table 1. Selected Authorities to Impose Tariffs

Summary of Key Provisions and Examples

	Section 232	Section 201	Section 301	Section 122	Section 338	IEEPA
***U.S. Code* Reference**	19 U.S.C. § 1862	19 U.S.C. §§ 2251–55	19 U.S.C. §§ 2411–20	19 U.S.C. § 2132	19 U.S.C. § 1338	50 U.S.C. §§ 1701–10
Subject Matter	Threats to national security	Injury to domestic industry	Trade agreement violations; certain other practices	International payments problems	Discrimination against U.S. commerce	National emergency
Agency Required to Make Findings	Secretary of Commerce	ITC	USTR	None	None	None
Maximum Limit on Duration of Action	None	4 years; may be extended to 8 years in total	4 years; may be extended with no upper limit	150 days	None	None
Maximum Limit on Tariff Rate	None	50%; note phasedown requirement	None	15%	50%	None
Selected Tariff Examples	Steel and aluminum, 2018–	Solar cell products, 2018–2026	Certain imports from PRC, 2018–	Never used to impose tariffs	Never used to impose tariffs	Imports from PRC, 2025–

Source: Compiled by CRS based on *U.S. Code* and CRS analysis of selected tariff actions.

[219] *See infra* "Comparison of Selected Tariff Authorities."

[220] *See* Harrell, *supra* note 218 ("IEEPA's appeal is clear: Unlike most laws that delegate authority over trade to the president, IEEPA requires minimal procedural hurdles.").

[221] Oren Cass, *O Canada! Time to Talk Tariffs*, UNDERSTANDING AMERICA (Feb. 3, 2025), https://www.understandingamerica.co/p/o-canada-time-to-talk-tariffs.

Considerations for Congress

The U.S. Constitution grants the tariff power to Congress. Although the Supreme Court has held that Congress has wide latitude to delegate tariff authority to the President, Congress is ultimately responsible for determining what tariff authorities the President should have and what limitations they place on presidential discretion.

Congress may consider whether the President's existing tariff authorities are adequate, inadequate, or overly broad. If Congress believes existing authorities are inadequate or insufficiently specific, it may consider legislation delegating additional authorities to the President. For example, one bill introduced in the 119th Congress would authorize the President to determine whether a foreign country imposes tariff rates or nontariff barriers that are significantly higher than those of the United States as to particular goods and, if so, to impose U.S. tariffs on those goods up to the rate applied by the foreign country.[222] Congress could potentially also expand the President's authority under existing authorities, such as by removing some of the above-described procedural requirements in various tariff statutes.

Alternatively, Congress may repeal, amend, or place restrictions on existing presidential tariff authorities. One bill introduced in the 119th Congress, for example, would amend IEEPA so that it did not give the President authority to impose tariffs, tariff-rate quotas, or other quotas on imports.[223] Other proposals seek to condition certain exercises of the President's tariff authorities on the enactment of a joint resolution of approval, permitting a simple majority of both houses of Congress to decide whether to allow (or continue) executive tariff actions.[224] For instance, one bill introduced in the 119th Congress would require a joint resolution of approval before the President could impose new tariffs on imports from countries with which the United States has a free trade agreement, member countries of the North Atlantic Treaty Organization (NATO), and certain non-NATO allies, in addition to requiring the President to submit specific information to Congress.[225] Certain bills that were introduced in the 118th Congress would have generally prevented the executive branch from imposing any tariffs under various statutes unless Congress enacted a joint resolution of approval.[226] Some scholars have proposed that tariffs imposed under certain statutes should sunset automatically after a set period of time (possibly 90 or 180 days) unless Congress enacts a joint resolution of approval, arguing that this reform would restore some of Congress's control over tariffs while providing flexibility for the President to act swiftly when necessary.[227]

[222] U.S. Reciprocal Trade Act, H.R. 735, 119th Cong. (2025). This bill also provides that Congress may terminate the President's action via enactment of a joint resolution of disapproval. *See id.*

[223] Prevent Tariff Abuse Act, H.R. 407, 119th Cong. (2025).

[224] *Cf.* Casey, *supra* note 205, at 11, 37, 53 (discussing the contrast between this approach and the current requirement for a joint resolution of disapproval to terminate an emergency declaration supporting tariffs under IEEPA).

[225] Stopping Tariffs on Allies and Bolstering Legislative Exercise of (STABLE) Trade Policy Act, S. 348, 119th Cong. (2025), text available at https://www.coons.senate.gov/imo/media/doc/stable_trade_policy_act_bill_text.pdf.

[226] *See* Global Trade Accountability Act of 2023, H.R. 2549, 118th Cong. (2023) (making a "temporary authority" exception for the President to take unilateral action for up to 90 days if he makes and notifies Congress of certain determinations); Global Trade Accountability Act, S. 1060, 118th Cong. (2023).

[227] *See* Claussen & Meyer, *supra* note 213, at 27–29.

In light of judicial precedent that has given the President broad latitude to exercise his tariff authorities, Congress may consider whether existing tariff authorities provide suitable guardrails around executive action. Since the Federal Circuit has traditionally permitted the President to act under his tariff authorities unless he "clearly misconstrues" their scope, Congress may consider whether limitations on presidential authority in these statutes are sufficiently clear. In addition, since courts have held that presidential actions and fact-findings are unreviewable when committed to his discretion by statute, Congress may consider whether existing authorities give too little or too much discretion to the President, including whether and in what manner executive agencies should be required to conduct investigations and make findings before the President may act.

Author Information

Christopher T. Zirpoli
Legislative Attorney

Disclaimer