

Congressional and Presidential Authority to Impose Import Tariffs

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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 report also provides an overview of some of the legal debates surrounding recent tariff actions by the President.

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 that may authorize 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 Trump Administration has used some of these authorities to impose or raise tariffs, including 10% or higher tariffs on all imports from most countries as well as separate tariffs on imports from Canada, Mexico, and the People’s Republic of China, steel and aluminum, and automobiles and auto parts. It also explains how courts have decided legal challenges to some of these actions and how they might analyze potential future challenges.

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 by repealing or amending those authorities.

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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 that may authorize 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, although it qualifies this power by providing that tariffs “shall be uniform throughout the United States”⁶ and by prohibiting tariffs on U.S. exports.⁷

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 Apr. 23, 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 Apr. 23, 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 Apr. 23, 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 Apr. 23, 2025). The Constitution also prohibits tariffs on exports. See U.S. CONST. art. I, § 9, cl. 5.

⁷ U.S. CONST. art. I, § 9, cl. 5; see also Cong. Rsch. Serv., *Export Clause and Taxes*, https://constitution.congress.gov/browse/essay/artI-S9-C5-1/ALDE_00013596/ (last visited Apr. 23, 2025).

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 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.⁸

For example, in *Marshall Field & Co. v. Clark*,⁹ 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."¹⁰ 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.¹¹ The Supreme Court disagreed, holding that the challenged provision "does not, in any real sense, invest the president with the power of legislation."¹² 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."¹³ Thus, the Court explained, the challenged provision called upon the President not to make law but simply to execute a law enacted by Congress.¹⁴

Reinforcing the latitude *Marshall Field* afforded to Congress, the Supreme Court in *J.W. Hampton, Jr., & Co. v. United States*¹⁵ 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.¹⁶ 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.¹⁷ 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"¹⁸—namely, to vary tariff rates so as to equalize production costs between the United States and foreign countries. *J.W. Hampton* set a

⁸ 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 Apr. 23, 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.").

⁹ 143 U.S. 649 (1892).

¹⁰ Tariff Act of 1890, ch. 1244, § 3, 26 Stat. 567, 612.

¹¹ See *Marshall Field*, 143 U.S. at 681.

¹² *Id.*

¹³ *Id.* at 692–93.

¹⁴ See *id.*

¹⁵ 276 U.S. 394 (1928).

¹⁶ Tariff Act of 1922, ch. 356, § 315, 42 Stat. 858, 941.

¹⁷ See *J.W. Hampton*, 276 U.S. at 409–10.

¹⁸ *Id.*

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.¹⁹

Federal courts have also rejected nondelegation challenges to some of the President’s current tariff authorities. In *Federal Energy Administration v. Algonquin SNG, Inc.*,²⁰ the Supreme Court rejected a constitutional challenge to Section 232 of the Trade Expansion Act of 1962,²¹ which the President had utilized to raise license fees on imported oil.²² 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.”²³ 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.²⁴ 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.”²⁵

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. The Court has not struck down laws on any subject as violating *J.W. Hampton*’s “intelligible principle” standard since 1935.²⁶ Nevertheless, five current Justices have indicated that they would be willing to reconsider the Court’s approach to the nondelegation doctrine.²⁷ In March 2025, the Court heard arguments in a case that may provide an opportunity for such a reappraisal.²⁸ 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.²⁹

¹⁹ 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 Apr. 23, 2025).

²⁰ 426 U.S. 548 (1976).

²¹ 19 U.S.C. § 1862; see *infra* “Section 232 of the Trade Expansion Act of 1962: Tariffs to Protect National Security.”

²² *Algonquin*, 426 U.S. at 553, 559.

²³ *Id.* at 559 (quoting 19 U.S.C. § 1862(c)(1)(A)).

²⁴ 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).

²⁵ *Am. Inst. for Int’l Steel, Inc. v. United States*, 376 F. Supp. 3d 1335, 1340, 1344 (Ct. Int’l Trade 2019).

²⁶ 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 Apr. 23, 2025).

²⁷ 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.”).

²⁸ See *Consumers’ Research v. Fed. Comm’n Comm’n*, 109 F.4th 743 (5th Cir. 2024), *cert. granted*, 2024 WL 4864037 (Nov. 22, 2024); see also Supreme Court docket, available at <https://www.supremecourt.gov/docket/docketfiles/html/public/24-354.html> (last visited Apr. 23, 2025).

²⁹ 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).

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 generally has exclusive original jurisdiction over such lawsuits.³⁰ The Federal Circuit, in turn, has exclusive jurisdiction over appeals from the CIT³¹ 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,³² although some commentators have questioned whether recent U.S. Supreme Court decisions require the Federal Circuit to construe the President’s authority more narrowly.³³ 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.³⁴

Presidential Tariff Actions Reviewed for Clear Misconstruction of Law

In its 1985 decision *Maple Leaf Fish Co. v. United States*,³⁵ 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 1974,³⁶ rejecting an argument that the U.S. International Trade Commission (ITC)³⁷ report underpinning the tariffs did not provide adequate justification for the inclusion of frozen mushrooms.³⁸ 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.”³⁹ 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.”⁴⁰

³⁰ 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).

³¹ See 28 U.S.C. § 1295(a)(5).

³² See *infra* “Presidential Tariff Actions Reviewed for Clear Misconstruction of Law.”

³³ See *infra* “*Loper Bright* and the Future of Clear Misconstruction Review.”

³⁴ See *infra* “Unreviewable Acts That Are Committed to the President’s Discretion.”

³⁵ 762 F.2d 86 (Fed. Cir. 1985).

³⁶ 19 U.S.C. § 2251; see *infra* “Section 201 of the Trade Act of 1974: Tariffs to Safeguard Domestic Industries.”

³⁷ 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).

³⁸ See *Maple Leaf*, 762 F.2d at 89.

³⁹ *Id.*

⁴⁰ *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 *Corus Group*, 352 F.3d at 1364.

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*,⁴¹ 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.⁴² 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.⁴³

Similarly, in *USP Holdings, Inc. v. United States*,⁴⁴ the Federal Circuit upheld the President's imposition of national security tariffs under Section 232 of the Trade Expansion Act of 1962.⁴⁵ 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."⁴⁶ It also held that Section 232's requirement that the President "determine the nature and duration of the action"⁴⁷ did not prevent the President from imposing tariffs indefinitely, with no specified end date.⁴⁸ 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."⁴⁹

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.⁵⁰ For example, in *USP Holdings*, the court held that a report by the Secretary of Commerce finding a threat to national security was reviewable under the Administrative Procedure Act (APA).⁵¹ The APA applies across the executive branch, providing a general avenue for courts to review final agency actions.⁵² The *USP Holdings* court concluded the Secretary of Commerce's report was a final agency action because it was a separate, legally required "predicate to the President's authority to act" under Section 232.⁵³ 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"⁵⁴—i.e., clear misconstruction of the statute—and that the Secretary's determination was not reviewable under

⁴¹ 892 F.3d 1340 (Fed. Cir. 2018).

⁴² *See id.* at 1346.

⁴³ *Id.* (citing, *inter alia*, *Corus Group*, 352 F.3d at 1356).

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

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

⁴⁶ *USP Holdings*, 36 F.4th at 1368–69.

⁴⁷ 19 U.S.C. § 1862(c)(1)(A)(ii).

⁴⁸ *USP Holdings*, 36 F.4th at 1370–71.

⁴⁹ *Id.* at 1365 (quoting *Corus Group*, 352 F.3d at 1356).

⁵⁰ *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.").

⁵¹ *See* 5 U.S.C. § 704 (defining reviewable actions); CRS Legal Sidebar LSB10558, *Judicial Review Under the Administrative Procedure Act (APA)*, by Jonathan M. Gaffney (2024).

⁵² *See* Gaffney, *supra* note 51; CRS In Focus IF12386, *Defining Final Agency Action for APA and CRA Review*, by Valerie C. Brannon (2023).

⁵³ *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).

⁵⁴ *USP Holdings*, 36 F.4th at 1369.

normal APA standards.⁵⁵ 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.⁵⁶ 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.”⁵⁷

***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*.⁵⁸ In *Loper Bright*, the Supreme Court overturned its 1984 precedent *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,⁵⁹ which had afforded some deference to executive agencies to interpret ambiguous terms in statutes they administer.⁶⁰ 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.”⁶¹ 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.⁶²

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*,⁶³ 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.⁶⁴ 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.”⁶⁵

⁵⁵ 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.”).

⁵⁶ See *Corus Group*, 352 F.3d at 1361.

⁵⁷ *Id.* at 1362 (discussing 19 U.S.C. § 2252(f)).

⁵⁸ 603 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.

⁵⁹ 467 U.S. 837 (1984).

⁶⁰ 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).

⁶¹ *Loper Bright*, 603 U.S. at 412.

⁶² See Beline et al., *supra* note 58, 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.”).

⁶³ 86 F.4th 885 (Fed. Cir. 2023) (“*Solar Energy I*”), *reh’g granted*, 111 F.4th 1349 (Fed. Cir. 2024) (“*Solar Energy II*”).

⁶⁴ See *Solar Energy I*, 86 F.4th at 897–98.

⁶⁵ *Id.* at 894, 897–98.

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*."⁶⁶ 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.⁶⁷ The court reasoned that the President's interpretation of his Section 232 tariff authorities in this case was correct, not merely permissible under *Maple Leaf*.⁶⁸ Thus, the court noted, the case was not an "appropriate vehicle for deciding whether the *Maple Leaf* standard should be retained."⁶⁹

Some commentators observe that ongoing or future litigation may shed light on whether *Maple Leaf* is still good law following *Loper Bright*.⁷⁰ *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.⁷¹

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."⁷²

Nine years after *Maple Leaf*, the U.S. Supreme Court held in *Dalton v. Specter*⁷³ 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 1990.⁷⁴ 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.⁷⁵ Observing that the statute "does not at all limit the President's discretion in approving or disapproving the Commission's recommendations,"⁷⁶ the Court rejected the plaintiffs' argument that "the President's authority to close bases depended on . . . the Commission's compliance with statutory procedures."⁷⁷ 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."⁷⁸

⁶⁶ *Solar Energy II*, 111 F.4th at 1351, 1357.

⁶⁷ *See id.* at 1351.

⁶⁸ *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.").

⁶⁹ *Id.* at 1358.

⁷⁰ *See* Jennifer Doherty, *3 International Trade Cases To Watch: Midyear Report*, LAW360, Aug. 13, 2024.

⁷¹ *Cf.* Beline et al., *supra* note 58, at 31 ("*Loper Bright* might not be a 'game changer' for trade litigation.").

⁷² *Maple Leaf*, 762 F.2d at 89 (quoting *Florsheim Shoe Co. v. United States*, 744 F.2d 787, 795 (Fed. Cir. 1984)).

⁷³ 511 U.S. 462 (1994).

⁷⁴ Pub. L. No. 101-510, 104 Stat. 1808 (10 U.S.C. § 2687 note); *see Dalton*, 511 U.S. at 464.

⁷⁵ *See Dalton*, 511 U.S. at 464–65.

⁷⁶ *Id.* at 476.

⁷⁷ *Id.* Plaintiffs alleged, for instance, noncompliance with public hearing and information requirements. *See id.* at 466–67.

⁷⁸ *Id.* at 477.

In *Motions Systems Corp. v. Bush*,⁷⁹ 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 2000.⁸⁰ The statute charged the ITC and United States Trade Representative (USTR)⁸¹ with making recommendations regarding import relief and 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.”⁸² The court held that this statute granted the President broad, unreviewable discretion not to follow USTR’s recommendation.⁸³ 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.”⁸⁴

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.”⁸⁵ In the former scenario, the CIT explained, “this court lacks the power to review the President’s lawful exercise of discretion.”⁸⁶ By contrast, “where statutory language limits the President, the court may review the executive’s actions for ‘clear misconstruction’ of such limiting language.”⁸⁷

Selected Presidential Authorities to Impose Tariffs

The following section provides a legal overview of six statutory provisions that may authorize the executive branch to impose tariffs under various circumstances.⁸⁸ 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.⁸⁹

⁷⁹ 437 F.3d 1356 (Fed. Cir. 2006).

⁸⁰ 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 (2025).

⁸¹ USTR is a Cabinet-level official in the Executive Office of the President who advises the President on trade policy and leads U.S. trade negotiations. *See* CRS In Focus IF11016, *U.S. Trade Policy: Trade Functions of Key Federal Agencies*, by Shayerah I. Akhtar (2025).

⁸² 19 U.S.C. § 2451(k)(1) (2006).

⁸³ *See Motion Sys.*, 437 F.3d at 1360.

⁸⁴ *Id.*

⁸⁵ *Severstal Export GMBH v. United States*, No. 18-00057, 2018 WL 1705298, at *8 (Ct. Int’l Trade Apr. 5, 2018).

⁸⁶ *Id.* (citing *Dalton*, 511 U.S. at 474).

⁸⁷ *Severstal*, 2018 WL 1705298 at *7 (quoting *Corus Group*, 352 F.3d at 1359).

⁸⁸ Other CRS products discuss antidumping and countervailing duties, which are not included in this report. *See, e.g.*, CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Christopher A. Casey (2024).

⁸⁹ 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)).

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

Section 232 of the Trade Expansion Act of 1962⁹⁰ 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.⁹¹

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.⁹² Subsequently, the United States reached agreements with many countries placing quotas or tariff-rate quotas⁹³ on steel and aluminum imports from those countries in lieu of tariffs.⁹⁴ 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.⁹⁵

In March 2025, President Trump announced 25% tariffs on imports of automobiles and auto parts, with limited exceptions for Canada and Mexico,⁹⁶ based on a Section 232 investigation the Secretary of Commerce concluded in 2019.⁹⁷ The Trump Administration has also initiated Section 232 investigations regarding the importation of copper; timber, lumber, and derivative products; semiconductors and related manufacturing equipment; and pharmaceuticals and pharmaceutical ingredients.⁹⁸

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.⁹⁹ The Secretary may also self-initiate Section 232 investigations.¹⁰⁰ In conducting this investigation, the

⁹⁰ Pub. L. 87-794, § 232(b)–(c), 76 Stat. 877 (codified as amended at 19 U.S.C. § 1862(b)–(c)).

⁹¹ *See id.*

⁹² *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).

⁹³ 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.

⁹⁴ *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).

⁹⁵ *See* Proclamation 10,896 and Proclamation 10,895, *supra* note 94; CRS Insight IN12519, *Expanded Section 232 Tariffs on Steel and Aluminum*, by Kyla H. Kitamura and Keigh E. Hammond (2025).

⁹⁶ *See* Proclamation 10,908, Adjusting Imports of Automobiles and Automobile Parts into the United States, 90 Fed. Reg. 14,705 (Mar. 26, 2025); CRS Insight IN12545, *Section 232 Automotive Tariffs: Issues for Congress*, by Kyla H. Kitamura (2025).

⁹⁷ *See* Publication of a Report on the Effect of Imports of Automobiles and Automobile Parts on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended, 86 Fed. Reg. 62,028 (Nov. 8, 2021).

⁹⁸ *See* Exec. Order No. 14,220, Addressing the Threat to National Security from Imports of Copper, 90 Fed. Reg. 11,001 (Feb. 28, 2025); Exec. Order No. 14,223, Addressing the Threat to National Security from Imports of Timber, Lumber, and Their Derivative Products (Mar. 1, 2025); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Semiconductors and Semiconductor Manufacturing Equipment, 90 Fed. Reg. 15,950 (Apr. 16, 2025); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Pharmaceuticals and Pharmaceutical Ingredients, 90 Fed. Reg. 15,951 (Apr. 16, 2025).

⁹⁹ 19 U.S.C. § 1862(b)(1)(A).

¹⁰⁰ *See id.*

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.¹⁰¹ 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.¹⁰² Within 270 days of initiating the investigation, the Secretary of Commerce must submit a report to the President containing findings and recommendations.¹⁰³

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.”¹⁰⁴ 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.”¹⁰⁵ 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.”¹⁰⁶ 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.”¹⁰⁷

Section 232 does not require the President to follow the Secretary’s recommendations but permits him to take alternative actions or no action.¹⁰⁸ It also does not limit the amount or duration of tariffs that the President might impose.¹⁰⁹ 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.¹¹⁰

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.¹¹¹ 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.”¹¹² 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.¹¹³ President Trump’s March 2025

¹⁰¹ *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).

¹⁰² *See id.* § 1862(b)(2)(A).

¹⁰³ *See id.* § 1862(b)(3)(A).

¹⁰⁴ *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).

¹⁰⁵ *Id.* § 1862(c)(1)(A).

¹⁰⁶ *Id.* § 1862(c)(2).

¹⁰⁷ *Id.* § 1862(c)(1)(B).

¹⁰⁸ *See id.* § 1862(c).

¹⁰⁹ *See id.*; *see also USP Holdings*, 36 F.4th at 1370–71 (holding that Section 232 allows the President to impose tariffs indefinitely, without specifying an end date).

¹¹⁰ 19 U.S.C. § 1862(f).

¹¹¹ *See id.* § 1862(c)(3).

¹¹² *Id.*

¹¹³ *See* Proclamation 10,896 and Proclamation 10,895, *supra* note 94.

proclamation imposing tariffs on automobile goods also appears to be based in part on this provision, as it asserts that “[USTR]’s negotiations did not lead to any agreements of the type contemplated by section 232.”¹¹⁴

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,¹¹⁵ the court held that Section 232 does not require a national security threat to be “imminent” for the President to act.¹¹⁶ In another decision, *Transpacific Steel LLC v. United States*,¹¹⁷ 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.¹¹⁸ 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.¹¹⁹ In *PrimeSource Building Products*, the court likewise upheld the President’s modification of steel tariffs to include certain derivative products like nails and staples,¹²⁰ 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.”¹²¹

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 presidential determinations” that might be based on “stale information,”¹²² it nonetheless held that Section 232 provides “no textual basis for a specific time limit on adjustments under a timely adopted plan.”¹²³ 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.¹²⁴

¹¹⁴ Proclamation 10,908, *supra* note 96; see Proclamation 9888, Adjusting Imports of Automobiles and Automobile Parts into the United States, 84 Fed. Reg. 23,433 (May 17, 2019) (directing USTR to “pursue negotiation of agreements contemplated in 19 U.S.C. 1862(c)(3)(A)(i) to address the threatened impairment of the national security with respect to imported automobiles and certain automobile parts from the European Union, Japan, and any other country the Trade Representative deems appropriate”).

¹¹⁵ See *supra* “Presidential Tariff Actions Reviewed for Clear Misconstruction of Law.”

¹¹⁶ 36 F.4th at 1368–69.

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

¹¹⁸ This initial proclamation applied to steel imports from all countries, including Turkey, except for Canada and Mexico. See Proclamation 9705, *supra* note 92, 83 Fed. Reg. at 11,626.

¹¹⁹ *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).

¹²⁰ See *PrimeSource*, 59 F.4th at 1257.

¹²¹ *Id.* at 1262.

¹²² *Transpacific Steel*, 4 F.4th 1332; accord *PrimeSource*, 59 F.4th at 1262 (“As we noted in *Transpacific*, a different question might be presented where the underlying finding or objective has become substantively stale . . .”).

¹²³ *PrimeSource*, 59 F.4th at 1262.

¹²⁴ *Id.*

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

Section 201 of the Trade Act of 1974¹²⁵ 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).¹²⁶ 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.¹²⁷ Tariffs imposed under Section 201 are sometimes referred to as "safeguard" or "escape clause" tariffs.¹²⁸ Recent administrations have used Section 201 to impose tariffs on solar cells and modules as well as residential washing machines.¹²⁹

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.¹³⁰ The ITC may also self-initiate Section 201 investigations.¹³¹ As part of its investigation, the ITC must consider what positive adjustment measures the DI has taken or planned,¹³² and petitioners and others may submit plans or commitments for the ITC's consideration.¹³³ The ITC generally must submit a report including its findings and recommendations to the President within 180 days of the start of the investigation.¹³⁴

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."¹³⁵ In making its finding, the ITC is required to "take into account all economic factors which it considers

¹²⁵ 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.

¹²⁶ See 19 U.S.C. § 2251(a).

¹²⁷ *Id.* § 2252(a), (b)(1).

¹²⁸ See *Silfab Solar*, 892 F.3d at 1342.

¹²⁹ See Office of the U.S. Trade Representative, Section 201 Investigations, <https://ustr.gov/issue-areas/enforcement/section-201-investigations> (last visited Apr. 23, 2025).

¹³⁰ 19 U.S.C. § 2252(a)(1), (b)(1)(A).

¹³¹ See *id.* § 2252(b)(1)(A).

¹³² See *id.* § 2252(a)(6)(A).

¹³³ See *id.* § 2252(a)(4), (a)(6)(B).

¹³⁴ See *id.* § 2252(f) (noting the period may be extended to 240 days "if the petition alleges that critical circumstances exist").

¹³⁵ *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).

relevant” as well as certain nonexclusive factors provided by statute.¹³⁶ As noted above,¹³⁷ 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 determination¹³⁸ or the inclusion of certain goods on the lists of products subject to tariffs.¹³⁹

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.¹⁴⁰ 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.¹⁴¹ In forming its recommendations, the ITC is required to hold a public hearing for all interested parties to present testimony and other evidence.¹⁴²

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.¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶

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

¹³⁶ *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).

¹³⁷ See *supra* “Presidential Tariff Actions Reviewed for Clear Misconstruction of Law.”

¹³⁸ See *Corus Group*, 352 F.3d at 1364 (Fed. Cir. 2003) (upholding Section 201 tariffs on tin mill products).

¹³⁹ See *Maple Leaf*, 762 F.2d at 88–90 (upholding Section 201 tariffs on frozen mushroom products).

¹⁴⁰ See 19 U.S.C. § 2252(e)(1).

¹⁴¹ See *id.* § 2252(e)(2). The ITC’s recommendation must “specify the type, amount, and duration of the action.” *Id.* § 2252(e)(3).

¹⁴² *Id.* § 2252(e).

¹⁴³ *Id.* § 2253(a)(1)(A), (a)(4).

¹⁴⁴ *Id.* § 2253(a)(3).

¹⁴⁵ 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)).

¹⁴⁶ 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.”¹⁴⁷ Actions in effect for more than one year must be “phased down at regular intervals.”¹⁴⁸ 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.¹⁴⁹

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.¹⁵⁰ 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.¹⁵¹ 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.¹⁵² 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.¹⁵³ 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.¹⁵⁴

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

Section 301 of the Trade Act of 1974¹⁵⁵ 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.¹⁵⁶ In 2018, USTR used 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.¹⁵⁷ In a separate investigation, USTR found in January 2025 that the PRC’s practices in the shipbuilding industry justified action under Section 301.¹⁵⁸ In December 2024, USTR initiated additional Section 301 investigations involving the PRC and Nicaragua.¹⁵⁹

¹⁴⁷ 19 U.S.C. § 2253(e)(3); *see also id.* § 2253(e)(4) (setting limits on “quantitative restrictions,” or import quotas).

¹⁴⁸ *Id.* § 2253(e)(5).

¹⁴⁹ *See id.* §§ 2253(e)(1), 2254(c).

¹⁵⁰ *See id.* § 2254(a), (b).

¹⁵¹ *See id.* § 2254(a)(2).

¹⁵² *See id.* § 2254(b)(1)(A).

¹⁵³ *See id.* § 2254(b)(1)(B).

¹⁵⁴ *See 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).

¹⁵⁵ 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.

¹⁵⁶ *See* 19 U.S.C. § 2411(a), (b).

¹⁵⁷ *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).

¹⁵⁸ *See* Proposed Action in Section 301 Investigation of China’s Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance, 90 Fed. Reg. 10,843 (Feb. 27, 2025).

¹⁵⁹ *See* Initiation of Section 301 Investigation; Hearing; and Request for Public Comments: China’s Acts, Policies, and Practices Related to Targeting of the Semiconductor Industry for Dominance, 89 Fed. Reg. 106,725 (Dec. 30, 2024); (continued...)

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.¹⁶⁰ Generally, USTR must request consultations with the foreign country upon initiating an investigation.¹⁶¹ USTR’s deadline to complete the investigation varies according to the basis and nature of the investigation.¹⁶² 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.¹⁶³

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 (“mandatory action”) 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” (“discretionary action”).¹⁶⁴ 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.¹⁶⁵

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.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸

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

Initiation of Section 301 Investigation, Hearing, and Request for Public Comments: Nicaragua’s Acts, Policies, and Practices Related to Labor Rights, Human Rights, and Rule of Law, 89 Fed. Reg. 101,088 (Dec. 13, 2024); *see also* CRS In Focus IF12958, *Section 301 and China: Mature-Node Semiconductors*, by Karen M. Sutter (2025). For additional 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 Apr. 23, 2025).

¹⁶⁰ *See* 19 U.S.C. § 2412.

¹⁶¹ *See id.* § 2413.

¹⁶² *See id.* § 2414(a).

¹⁶³ *See id.* § 2414(b).

¹⁶⁴ *See id.* § 2411(a)(1) (mandatory action), (b)(1) (discretionary action).

¹⁶⁵ *See id.* § 2411(d)(2), (3)(B).

¹⁶⁶ *See id.* § 2411(c).

¹⁶⁷ *See id.* § 2417(a), (b).

¹⁶⁸ *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).

which case USTR may extend the action.¹⁶⁹ For example, in 2022, USTR determined that the tariffs first imposed in 2018 on imports from the PRC would remain in effect.¹⁷⁰

Ongoing litigation regarding Section 301 tariffs begun under the first Trump Administration has raised questions about the scope of USTR's authority to modify previously imposed tariffs as well as the scope of judicial review for Section 301 actions. Following USTR's initial action imposing tariffs on certain imports from the PRC in 2018, the PRC imposed retaliatory import tariffs on certain articles from the United States.¹⁷¹ USTR responded, in turn, by imposing tariffs on additional lists of PRC imports.¹⁷² As authority for these additional tariffs, USTR cited, in part, Section 301's provision authorizing USTR to "modify or terminate any action" if "the burden or restriction on United States commerce of the denial [of] rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased."¹⁷³

In a set of lawsuits consolidated as the *Section 301 Cases*, plaintiffs argued that PRC retaliation was not a valid basis to modify Section 301 tariffs since it was not part of the subject matter of USTR's original investigation, which involved PRC intellectual property and technology transfer practices. The CIT disagreed, holding that Section 301's modification provision permitted USTR to impose tariffs on additional products based on the PRC's retaliation.¹⁷⁴ The court also held, however, that the modification was procedurally defective under the APA.¹⁷⁵ The APA generally outlines procedural requirements agencies must follow to promulgate rules.¹⁷⁶ The CIT concluded that USTR failed to meet these requirements because it did not adequately respond to critical comments.¹⁷⁷ After giving USTR an opportunity to provide additional explanation for the modification, the court upheld the additional tariffs.¹⁷⁸

The parties to the *Section 301 Cases* disputed the applicable standard for judicial review of Section 301 actions, given that the statute grants authority not directly to the President but rather to USTR, "subject to the specific direction, if any, of the President."¹⁷⁹ Courts have held that the APA does not authorize review of presidential actions.¹⁸⁰ The CIT held that USTR's action was a reviewable agency action under the APA, rejecting the government's argument that it represented nonreviewable presidential action.¹⁸¹ The court also applied the standard of review set forth in the APA, requiring the court to interpret statutory provisions and set aside "arbitrary and capricious"

¹⁶⁹ 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.

¹⁷⁰ 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).

¹⁷¹ See *In re Section 301 Cases*, 570 F. Supp. 3d 1306, 1318 (Ct. Int'l Trade 2022) ("*Section 301 Cases I*").

¹⁷² See Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 47,974 (Sept. 21, 2018); Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 43,304 (Aug. 20, 2019).

¹⁷³ 19 U.S.C. § 2417(a)(1)(B).

¹⁷⁴ See *Section 301 Cases I*, 570 F. Supp. 3d at 1332–35.

¹⁷⁵ See *id.* at 1343.

¹⁷⁶ See *id.* at 1338.

¹⁷⁷ See *id.* at 1340–41.

¹⁷⁸ See *In re Section 301 Cases*, 628 F. Supp. 3d 1235 (Ct. Int'l Trade 2023).

¹⁷⁹ 19 U.S.C. § 2411(a)(1)(B), (b)(2).

¹⁸⁰ See, e.g., *Franklin v. Massachusetts*, 505 U.S. 788, 800–01 (1992).

¹⁸¹ See *Section 301 Cases I*, 570 F. Supp. 3d at 1323–26 (citing, *inter alia*, 5 U.S.C. § 704). The court also rejected the government's contention that the case presented a nonjusticiable "political question." *Id.* at 1326–28.

agency actions.¹⁸² The court determined that Section 301 unambiguously granted USTR the authority to make the challenged tariff modifications and therefore declined to decide whether USTR's interpretation of the statute was entitled to any deference under *Maple Leaf* or *Chevron*.¹⁸³ At this writing, an appeal of the *Section 301 Cases* is pending before the Federal Circuit, which heard oral arguments on January 8, 2025.¹⁸⁴

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

Section 122 of the Trade Act of 1974¹⁸⁵ 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.”¹⁸⁶ 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.¹⁸⁷

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 specified circumstances, “(B) temporary limitations through the use of quotas on the importation of articles into the United States.”¹⁸⁸ 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 ITC¹⁸⁹ or Department of Commerce,¹⁹⁰ nor does it directly commit the tariff authority to an agency, such as USTR.¹⁹¹

¹⁸² 5 U.S.C. § 706; see *Section 301 Cases I*, 570 F. Supp. 3d at 1328–29; cf. *supra* “Presidential Tariff Actions Reviewed for Clear Misconstruction of Law” (discussing cases in which the Federal Circuit held that this APA standard did not apply to judicial review of certain tariff actions under other statutory authorities).

¹⁸³ See *Section 301 Cases I*, 570 F. Supp. 3d at 1328–29.

¹⁸⁴ *HMTX Indus. LLC v. United States*, No. 23-1891 (Fed. Cir.), docket information available at <https://www.courtlistener.com/docket/67394063/hmtx-industries-llc-v-united-states/> (last visited Apr. 23, 2025).

¹⁸⁵ Pub. L. 93-618, § 122, 88 Stat. 1987 (codified at 19 U.S.C. § 2132).

¹⁸⁶ 19 U.S.C. § 2132(a).

¹⁸⁷ 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 . . .”).

¹⁸⁸ 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).

¹⁸⁹ Cf. *supra* “Section 201 of the Trade Act of 1974: Tariffs to Safeguard Domestic Industries.”

¹⁹⁰ Cf. *supra* “Section 232 of the Trade Expansion Act of 1962: Tariffs to Protect National Security.”

¹⁹¹ Cf. *supra* “Section 301 of the Trade Act of 1974: Tariffs Addressing Trade Agreement Violations and Certain Other Practices.”

Some have suggested that Section 122 might authorize the President to impose tariffs in response to U.S. trade deficits,¹⁹² which occur when the value of imports in goods and services exceeds that of exports.¹⁹³ 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.¹⁹⁴ 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 1976.¹⁹⁵ 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.¹⁹⁶ 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 balance-of-payments deficit”¹⁹⁷; a later report stated the House Ways and Means Committee had considered and rejected such formulas.¹⁹⁸

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.”¹⁹⁹ A court might presume that this distinction was intentional and infer that Congress meant these terms to have different meanings.²⁰⁰ 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

¹⁹² 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.”).

¹⁹³ 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).

¹⁹⁴ 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”).

¹⁹⁵ 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).

¹⁹⁶ 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.”).

¹⁹⁷ 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 . . .”).

¹⁹⁸ 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.”).

¹⁹⁹ 19 U.S.C. § 2132(c).

²⁰⁰ See CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon, at 55 (2023) (regarding the presumption of consistent usage).

make this distinction.²⁰¹ In a previously introduced version of Section 122, both subsections referred to the “balance-of-payments,”²⁰² but a Senate Finance Committee report explained that this term was deliberately amended to “balance-of-trade” in what became Section 122(c).²⁰³

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.²⁰⁴ 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,”²⁰⁵ 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 1930²⁰⁶ 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.²⁰⁷ 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.²⁰⁸ Some news reports indicate Section 338 might be a potential means for the Trump Administration to impose tariffs in response to other countries’ tariffs and nontariff barriers.²⁰⁹

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.²¹⁰ Section 338 also permits the President to “suspend, revoke, supplement, or amend any such proclamation” if he deems it is in the public interest.²¹¹ Tariffs under Section 338 may not exceed 50% of the value of the goods.²¹²

²⁰¹ See *id.* at 39–44 (regarding the use of legislative history in statutory interpretation).

²⁰² Trade Reform Act of 1973, 93 H.R. 10710, 93d Cong. (as introduced in House, Oct. 3, 1973).

²⁰³ 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).

²⁰⁴ See CRS Legal Sidebar LSB11281, *Legal Authority for the President to Impose Tariffs Under the International Emergency Economic Powers Act (IEEPA)*, by Christopher T. Zirpoli (2025); 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 (2025).

²⁰⁵ S. REP. NO. 93-1298, at 88 (1974) (emphasis in original).

²⁰⁶ Tariff Act of 1930, ch. 497, § 338, 46 Stat. 704 (codified at 19 U.S.C. § 1338).

²⁰⁷ See 19 U.S.C. § 1338(a).

²⁰⁸ See John K. Veroneau & Catherine H. Gibson, *Presidential Tariff Authority*, 111 AM. J. INT’L LAW 957, 958 (2017).

²⁰⁹ See David Lawder, *Trump May Dust Off 1930 Trade Discrimination Law to Back Reciprocal US Tariffs*, REUTERS, Feb. 12, 2025.

²¹⁰ 19 U.S.C. § 1338(a).

²¹¹ *Id.* § 1338(c).

²¹² See *id.* § 1338(d), (e).

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.²¹³ Unlike Section 301, Section 338 does not appear to require any agency investigation or determination as a prerequisite to imposing tariffs.²¹⁴ Section 338 charges the ITC with "ascertain[ing]" and informing the President of relevant instances of discrimination:

It shall be the duty of the [ITC] to ascertain and at all times to be informed whether any of the discriminations against the commerce of the United States enumerated in . . . this section are practiced by any country; and if and when such discriminatory acts are disclosed, it shall be the duty of the commission to bring the matter to the attention of the President, together with recommendations.²¹⁵

This provision, together with Section 338's placement in Part II of the Tariff Act of 1930 (concerning the ITC), may raise a question as to whether the ITC must find that discrimination has occurred before the President may impose tariffs.²¹⁶ By authorizing the President to impose tariffs "whenever *he* shall find as a fact" that discrimination has occurred,²¹⁷ however, Section 338 does not appear to condition the President's authority on such a finding by the ITC.

International Emergency Economic Powers Act of 1977

Even though it does not specifically mention tariffs, the International Emergency Economic Powers Act of 1977 (IEEPA)²¹⁸ gives the President extensive economic powers in a national emergency declared under the National Emergencies Act (NEA),²¹⁹ including to "regulate" or "prohibit" imports.²²⁰ 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,²²¹ although no President had used IEEPA to impose tariffs until this year. A separate CRS publication examines legal debates, congressional responses, and historical background regarding whether and under what circumstances IEEPA may authorize the President to impose tariffs.²²²

In February 2025, President Trump invoked IEEPA as a basis to impose tariffs on imports from Canada, Mexico, and the PRC.²²³ In his executive orders invoking IEEPA, President Trump

²¹³ See *supra* "Section 301 of the Trade Act of 1974: Tariffs Addressing Trade Agreement Violations and Certain Other Practices."

²¹⁴ See Veroneau & Gibson, *supra* note 208, at 3 ("Because a recommendation by the Commission is not a necessary condition for presidential action under Section 338, it appears the president *could* make the factual findings and adjust tariffs unilaterally.") (emphasis in original).

²¹⁵ 19 U.S.C. § 1338(g).

²¹⁶ See generally Veroneau & Gibson, *supra* note 208, at 3 ("The extent to which the Commission may constrain the president's authority under Section 338 . . . is unclear.").

²¹⁷ 19 U.S.C. § 1338(a) (emphasis added).

²¹⁸ Pub. L. 95-223, 91 Stat. 1626 (codified as amended at 50 U.S.C. §§ 1701 *et seq.*).

²¹⁹ Pub. L. 94-412, 90 Stat. 1255 (codified as amended at 50 U.S.C. §§ 1601 *et seq.*).

²²⁰ See 50 U.S.C. § 1702(a)(1)(B).

²²¹ See CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, coordinated by Christopher A. Casey (2024).

²²² See CRS Legal Sidebar LSB11281, *Legal Authority for the President to Impose Tariffs Under the International Emergency Economic Powers Act (IEEPA)*, by Christopher T. Zirpoli (2025).

²²³ See, e.g., 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 (continued...)

proclaimed national emergencies relating to, inter alia, illegal immigration, illicit drugs, and alleged failures of those countries' governments to ameliorate these problems.²²⁴ In April 2025, President Trump invoked IEEPA to impose what he characterized as “reciprocal” tariffs (referred to in this report as global tariffs) of at least 10% on imports from almost all U.S. trading partners, with higher, country-specific tariffs applied to imports from over 50 countries.²²⁵ As the basis for these global tariffs, President Trump proclaimed a national emergency relating to “a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners’ economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits.”²²⁶

Plaintiffs have filed multiple lawsuits in the U.S. Court of International Trade and other courts challenging tariffs President Trump has imposed under IEEPA.²²⁷ The government has moved to transfer at least one of these lawsuits to the CIT, arguing that the CIT has exclusive jurisdiction over lawsuits against the United States “arising out of any law . . . providing for” tariffs.²²⁸ To decide such motions, courts could potentially be faced with considering some of the substantive claims in these lawsuits—i.e., plaintiffs’ claims that IEEPA is not in fact a law “providing for” tariffs.

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.”²²⁹ 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.”²³⁰ The NEA provides that an emergency may be terminated either by presidential proclamation or by enactment into law of a joint resolution of Congress.²³¹ 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

Opioid Supply Chain in the People’s Republic of China, 90 Fed. Reg. 9121 (Feb. 1, 2025); Exec. Order No. 14,228, Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China, 90 Fed. Reg. 11,463 (Mar. 3, 2025). At this writing, President Trump has suspended IEEPA tariffs on certain imports from Canada and Mexico. See Exec. Order No. 14,231, Amendment to Duties to Address the Flow of Illicit Drugs Across Our Northern Border, 90 Fed. Reg. 11,785 (Mar. 6, 2025); Exec. Order No. 14,232, Amendment to Duties to Address the Flow of Illicit Drugs Across Our Southern Border, 90 Fed. Reg. 14,232 (Mar. 6, 2025).

²²⁴ See Exec. Order Nos. 14,193, 14,194, and 14,195, *supra* note 223.

²²⁵ Exec. Order 14,257, Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits, 90 Fed. Reg. 15,041 (Apr. 2, 2025). At this writing, President Trump has temporarily suspended country-specific tariffs exceeding 10%, except on certain imports from the PRC. See Exec. Order No. 14,266, Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment, 90 Fed. Reg. 15,625 (Apr. 9, 2025).

²²⁶ Exec. Order 14,257, *supra* note 225.

²²⁷ See, e.g., *Emily Ley Paper, Inc. d/b/a Simplified v. Donald J. Trump, et al.*, No. 25-00464 (N.D. Fla., filed Apr. 3, 2025); *Webber, et al. v. U.S. Dep’t of Homeland Security, et al.*, No. 25-00026 (D. Mont., filed Apr. 4, 2025); *V.O.S. Selections, Inc., et al. v. Donald J. Trump, et al.*, No. 25-00066 (Ct. Int’l Trade, filed Apr. 14, 2025); *State of California v. Donald J. Trump, et al.*, No. 25-03372 (N.D. Cal., filed Apr. 16, 2025).

²²⁸ 28 U.S.C. § 1581(i); see *Simplified v. Trump*, Defendants’ Motion to Transfer and Memorandum in Support, Docket No. 5 (Apr. 14, 2025).

²²⁹ 50 U.S.C. § 1701.

²³⁰ 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).

²³¹ See 50 U.S.C. § 1622(a).

and publishes that notice in the *Federal Register*;²³² provided these notifications are made, the emergency may continue indefinitely.²³³ IEEPA also requires the President to make regular reports to Congress.²³⁴

Some legal scholars argue that, to the extent that IEEPA may empower the President to impose tariffs to address purported national security threats, IEEPA (as well as Section 232) may erode 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.²³⁵ Others 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 authorities.²³⁶ As explained in this report, some tariff authorities require an executive agency to conduct an investigation and make predicate findings before the President or the agency may raise tariffs, and some limit the duration or magnitude of any tariffs.²³⁷ 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.²³⁸ In addition, 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.²³⁹

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."²⁴⁰ 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 Statutory Authorities

Table 1 compares the statutory 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.

²³² See *id.* § 1622(d).

²³³ See Casey, *supra* note 221, 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").

²³⁴ See 50 U.S.C. § 1703.

²³⁵ Kathleen Claussen & Timothy Meyer, *Economic Security and the Separation of Powers*, 172 U. PENN. L. REV. 1, 13–14, 24, 35 (2024).

²³⁶ Peter E. Harrell, *The Case Against IEEPA Tariffs*, LAWFARE (Jan. 31, 2025), <https://www.lawfaremedia.org/article/the-case-against-ieepa-tariffs>.

²³⁷ See *infra* "Comparison of Selected Statutory Authorities."

²³⁸ See Harrell, *supra* note 236 ("IEEPA's appeal is clear: Unlike most laws that delegate authority over trade to the president, IEEPA requires minimal procedural hurdles.").

²³⁹ See, e.g., *Al Haramain Islamic Foundation, Inc. v. U.S. Dept. of Treasury*, 686 F.3d 965, 980 (9th Cir. 2012) (stating 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"); *U.S. v. Groos*, 616 F. Supp. 2d 777, 788–89 (N.D. Ill. 2008) (stating that the court "cannot question the President's political decision to deem this threat 'unusual and extraordinary'").

²⁴⁰ Oren Cass, *O Canada! Time to Talk Tariffs*, UNDERSTANDING AMERICA (Feb. 3, 2025), <https://www.understandingamerica.co/p/o-canada-time-to-talk-tariffs>.

Table 1. Selected Statutory Authorities

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
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
Limit on Tariff Rate	None	50%; note phasedown requirement	None	15%	50%	None
Selected Tariff Examples	Steel and aluminum, 2018–; automobiles and auto parts, 2025–	Solar cell products, 2018–2026	Certain imports from PRC, 2018–	Never used to impose tariffs	Never used to impose tariffs	Imports from PRC, Canada, Mexico, 2025–; 10% or greater global tariffs, 2025–

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

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 those authorities 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.²⁴¹ 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.

²⁴¹ 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.*

Alternatively, Congress may repeal, amend, or place restrictions on existing statutory authorities. One bill introduced in the 119th Congress, for example, would amend IEEPA to state that it does not give the President authority to impose tariffs, tariff-rate quotas, or other quotas on imports.²⁴² Another bill introduced in the 119th Congress would repeal Section 338.²⁴³

Other proposals in the 119th Congress seek to condition certain exercises of the President's tariff authorities on the enactment of a joint resolution of approval, permitting simple majorities of both houses of Congress to decide whether to allow (or continue) executive tariff actions.²⁴⁴ For instance, one bill introduced in the Senate and the House would cause tariffs imposed by the President to expire after 60 days unless Congress enacts a joint resolution of approval.²⁴⁵ Another bill would require a joint resolution of approval before the President could impose tariffs under certain statutes 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.²⁴⁶ A different bill would require a joint resolution of approval for the President to take action under Section 232 while restricting the kinds of imported articles to which that statute may apply, among other reforms.²⁴⁷

Similarly, certain bills that were introduced in the 118th Congress would have generally prevented the executive branch from imposing tariffs under any of several statutes unless Congress enacted a joint resolution of approval.²⁴⁸ Consistent with some of the above proposals, some scholars have proposed reforms under which tariffs imposed under certain statutes would expire 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.²⁴⁹

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.

²⁴² Prevent Tariff Abuse Act, H.R. 407, 119th Cong. (2025).

²⁴³ Repealing Outdated and Unilateral Tariff Authorities Act, H.R. 2464, 119th Cong. (2025).

²⁴⁴ *Cf.* Casey, *supra* note 221, 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).

²⁴⁵ Trade Review Act of 2025, S. 1272/H.R. 2665, 119th Cong. (2025); *see also* Reclaiming Congressional Trade Authority Act of 2025, H.R. 2712, 119th Cong. (2025) (requiring a joint resolution of approval and specified reports from the ITC and Secretary of Defense to impose tariffs under Section 232 or IEEPA, among other reforms).

²⁴⁶ 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.

²⁴⁷ Congressional Trade Authority Act of 2025, H.R. 1093, 119th Cong. (2025).

²⁴⁸ *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).

²⁴⁹ *See* Claussen & Meyer, *supra* note 235, at 27–29.

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