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SUMMARY

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Congressional and Presidential Authority to Impose Import Tariffs

This report examines Congress's constitutional power over import tariffs, Congress's ability to delegate tariff authority to the President within constitutional 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 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. Courts have traditionally given deference to the President, allowing the President to impose and modify tariffs unless he "clearly misconstrues" the scope of his authority and holding that these statutes 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 limited the ability of the executive branch to interpret its own statutory authorities.

Several statutes currently authorize the President or an executive agency to impose tariffs under various circumstances. This report provides an introduction to five such statutes: Section 232 of the Trade Expansion Act of 1962; Sections 122, 201, and 301 of the Trade Act of 1974; and Section 338 of the Tariff Act of 1930. 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, and some set maximum limits on the duration or magnitude of tariffs they may be used to impose.

This report summarizes how the most recent presidential administrations have used various statutes to impose or raise tariffs, as well as how courts have resolved challenges to some of these actions. It provides an overview of the Supreme Court's February 2026 decision in *Learning Resources, Inc. v. Trump*, which invalidated the President's use of the International Emergency Economic Powers Act of 1977 (IEEPA) to impose tariffs, and discusses how that decision and the underlying litigation may impact the President's use of other statutory authorities.

Finally, this report considers selected proposals by Members of Congress 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 (2025).

[3] U.S. CONST. art. I, § 1; *see* Libr. of Cong., Overview of Legislative Vesting Clause, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S1-1/ALDE_00001311/ (last visited Mar. 6, 2026).

[4] U.S. CONST. art. I, § 8, cl. 3; *see also* Libr. of Cong., *Overview of Foreign Commerce Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C3-8-1/ALDE_00001057/ (last visited Mar. 6, 2026).

[5] U.S. CONST. art. I, § 8, cl. 1; *see also* Libr. of Cong., *Overview of Taxing Clause*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C1-1-1/ALDE_00013387/ (last visited Mar. 6, 2026).

[6] U.S. CONST. art. I, § 8, cl. 3; *see also* Libr. of Cong., *Uniformity Clause and Indirect Taxes*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C1-1-3/ALDE_00013389/ (last visited Mar. 6, 2026). 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* Libr. of Cong., *Export Clause and Taxes*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S9-C5-1/ALDE_00013596/ (last visited Mar. 6, 2026).

Courts have opined that the President does not possess inherent constitutional power to impose tariffs, notwithstanding constitutional powers the President may claim over aspects of foreign policy.[8] In 2026, the Supreme Court observed: "Regardless of what [certain precedents] might mean for the President's inherent wartime authority, all agree that the President enjoys no inherent authority to impose tariffs during peacetime."[9] In 1976, the U.S. Court of Customs and Patent Appeals observed that, while "the President has certain 'inherent' powers in the conduct of foreign relations and foreign affairs . . . [i]t is nonetheless clear that no undelegated power to regulate commerce, or to set tariffs, inheres in the Presidency."[10]

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.[11]

For example, in *Marshall Field & Co. v. Clark*,[12] 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."[13] 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.[14] The Supreme Court disagreed, holding that the challenged provision "does not, in any real sense, invest the president with the power of legislation."[15] 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."[16] Thus, the Court explained, the challenged provision called upon the President not to make law but simply to execute a law enacted by Congress.[17]

Reinforcing the latitude *Marshall Field* afforded to Congress, the Supreme Court in *J.W. Hampton, Jr., & Co. v. United States*[18] 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

[8] For information regarding the President's constitutional powers in relation to foreign policy, see CRS Report R48524, *Congress and the Scope of the President's Article II Foreign Policy Authorities*, by Karen Sokol (2025).

[9] Learning Res., Inc. v. Trump, No. 24-1287, 2026 WL 477534 at *12–13 (U.S. Feb. 20, 2026).

[10] United States v. Yoshida Int'l, Inc., 526 F.2d 560, 572 (C.C.P.A. 1975) (discussing, inter alia, United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936)).

[11] *See generally* Libr. of Cong., *Overview of Nondelegation Doctrine*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S1-5-1/ALDE_00000014/ (last visited Mar. 6, 2026) ("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.").

[12] 143 U.S. 649 (1892).

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

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

[15] *Id.*

[16] *Id.* at 692–93.

[17] *See id.*

[18] 276 U.S. 394 (1928).

production" between articles produced in the United States and "like or similar" articles produced in foreign countries.[19] 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.[20] 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"[21]—namely, to vary tariff rates so as to equalize production costs between the United States and foreign countries. *J.W. Hampton* set a key precedent that Congress may delegate authority to the executive branch—in tariff and other matters—provided that it sets forth an "intelligible principle" to govern the executive's actions.[22]

Federal courts have also rejected nondelegation challenges to some of the President's current tariff authorities. In *Federal Energy Administration v. Algonquin SNG, Inc.*,[23] the Supreme Court rejected a constitutional challenge to Section 232 of the Trade Expansion Act of 1962,[24] which the President had utilized to raise license fees on imported oil.[25] 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.'"[26] 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.[27] 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."[28]

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.[29] Nevertheless, some current Justices have indicated that they would be willing to reconsider the Court's approach to the nondelegation doctrine.[30] If the Court were to adopt a

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

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

[21] *Id.*

[22] *See generally* Libr. of Cong., *Origin of Intelligible Principle Standard*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S1-5-3/ALDE_00001317/ (last visited Mar. 6, 2026).

[23] 426 U.S. 548 (1976).

[24] 19 U.S.C. § 1862; *see infra* "Section 232 of the Trade Expansion Act of 1962: Tariffs to Protect National Security."

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

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

[27] *See* PrimeSource Bldg. 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) (mem.).

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

[29] *See generally* Libr. of Cong., *Origin of Intelligible Principle Standard*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S1-5-3/ALDE_00001317/ (last visited Mar. 6, 2026).

[30] *See* Allstates Refractory Contractors, LLC v. Su, 144 S. Ct. 2490, 2491 (2024) (mem.) (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.").

stricter view of permissible delegations, some of the President's current tariff authorities might be subjected to new constitutional challenges.[31]

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.[32] The Federal Circuit, in turn, has exclusive jurisdiction over appeals from the CIT[33] 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,[34] although some commentators have questioned whether recent U.S. Supreme Court decisions require the Federal Circuit to construe the President's authority more narrowly.[35] 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.[36]

Presidential Tariff Actions Reviewed for Clear Misconstruction of Law

In its 1985 decision *Maple Leaf Fish Co. v. United States*,[37] 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,[38] rejecting an argument that the U.S. International Trade Commission (ITC)[39] report underpinning the tariffs did not provide adequate justification for the inclusion of frozen mushrooms.[40] 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."[41] Thus, the court

[31] 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).

[32] *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).

[33] *See* 28 U.S.C. § 1295(a)(5).

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

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

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

[37] 762 F.2d 86 (Fed. Cir. 1985).

[38] 19 U.S.C. § 2251; *see infra* "Section 201 of the Trade Act of 1974: Tariffs to Safeguard Domestic Industries."

[39] 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).

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

[41] *Id.*

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."[42]

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*,[43] 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.[44] 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.[45]

Similarly, in *USP Holdings, Inc. v. United States*,[46] the Federal Circuit upheld the President's imposition of national security tariffs under Section 232 of the Trade Expansion Act of 1962.[47] 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."[48] It also held that Section 232's requirement that the President "determine the nature and duration of the action"[49] did not prevent the President from imposing tariffs indefinitely, with no specified end date.[50] 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 'clear[ly] misconstru[ed]' his statutory authority."[51]

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.[52] 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).[53] The APA applies across the executive branch, providing a general avenue for courts to review final agency actions.[54] 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

[42] *Id*. In Corus Grp. 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 Grp.*, 352 F.3d at 1364.

[43] 892 F.3d 1340 (Fed. Cir. 2018).

[44] *See id.* at 1346.

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

[46] 36 F.4th 1359 (Fed. Cir. 2022), *cert. denied*, 143 S. Ct. 1056 (2023) (mem.).

[47] 19 U.S.C. § 1862; *see infra* "Section 232 of the Trade Expansion Act of 1962: Tariffs to Protect National Security."

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

[49] 19 U.S.C. § 1862(c)(1)(A)(ii).

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

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

[52] *See, e.g.*, Maple Leaf Fish Co. v. United States, 762 F.2d 86, 90 (Fed. Cir. 1985) ("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.").

[53] *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).

[54] *See* Gaffney, *supra* note 53; CRS In Focus IF12386, *Defining Final Agency Action for APA and CRA Review*, by Valerie C. Brannon (2023).

Section 232.[55] 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"[56]—i.e., clear misconstruction of the statute—and that the Secretary's determination was not reviewable under normal APA standards.[57]

In *Corus Group*, the Federal Circuit likewise applied the "clear misconstruction" standard—"not the traditional APA standard of review"—in reviewing the ITC's injury determination underlying Section 201 tariffs.[58] Applying this standard to the requirements Section 201 sets for the ITC's report, the court held that the ITC must provide "an internally consistent explanation for the conclusions reached."[59]

By contrast, when reviewing tariff actions under Section 301 of the Trade Act of 1974—which commits authority to the U.S. Trade Representative rather than to the President—the Federal Circuit applies the standard of review prescribed by the APA.[60] Under this standard, courts review whether agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "unsupported by substantial evidence."[61]

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*.[62] In *Loper Bright*, the Supreme Court overturned its 1984 precedent *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,[63] which had afforded some deference to executive agencies to interpret ambiguous terms in statutes they administer.[64] 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."[65] 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.[66]

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

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

[57] *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.").

[58] *See Corus Grp.*, 352 F.3d at 1361.

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

[60] *See* HMTX Indus. LLC v. United States, 156 F.4th 1236, 1249 (Fed. Cir. 2025); *see also infra* "Section 301 of the Trade Act of 1974: Tariffs Addressing Trade Agreement Violations and Certain Other Practices" (discussing *HMTX Industries*).

[61] 5 U.S.C. § 706.

[62] 603 U.S. 369 (2024); *see* Thomas M. Beline et al., *Is Trade Special? Trade Law and Deference After* Loper Bright, 77 RUTGERS U. L. REV. 399 (2024).

[63] 467 U.S. 837 (1984).

[64] *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).

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

[66] *See* Beline et al., *supra* note 62, at 400–01 ("[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.").

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*,[67] 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.[68] 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."[69]

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*."[70] 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 201 de novo (i.e., without deference) instead of applying *Maple Leaf*'s "clear misconstruction" standard.[71] The court reasoned that the President's interpretation of his Section 201 tariff authorities in this case was correct, not merely permissible under *Maple Leaf*.[72] Thus, the court noted, the case was not an "appropriate vehicle for deciding whether the *Maple Leaf* standard should be retained."[73]

While future litigation may shed light on whether *Maple Leaf* is still good law following *Loper Bright*, *Solar Energy* demonstrates that replacing *Maple Leaf* with a stricter standard of review would not necessarily change the outcome in a given lawsuit challenging presidential tariff actions.[74]

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 "[t]he President's findings of fact and the motivations for his action are not subject to review."[75]

Nine years after *Maple Leaf*, the U.S. Supreme Court held in *Dalton v. Specter* that judicial review is not available to challenge decisions that a statute commits to the President's

[67] 86 F.4th 885 (Fed. Cir. 2023) ("*Solar Energy I"*), *reh'g granted*, 111 F.4th 1349 (Fed. Cir. 2024) ("*Solar Energy II*").

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

[69] *Id.* at 894, 897–98.

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

[71] *See id.* at 1351.

[72] *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.").

[73] *Id.* at 1358.

[74] *Cf.* Beline et al., *supra* note 62, at 425 ("*Loper Bright* might not be a 'game changer' for trade litigation.").

[75] Maple Leaf Fish Co. v. United States, 762 F.2d 86, 89 (Fed. Cir. 1985) (quoting Florsheim Shoe Co. v. United States, 744 F.2d 787, 795 (Fed. Cir. 1984)).

discretion.[76] In *Dalton*, plaintiffs sued to prevent the closure of a naval shipyard pursuant to the Defense Base Closure and Realignment Act of 1990.[77] 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.[78] Observing that the statute "does not at all limit the President's discretion in approving or disapproving the Commission's recommendations,"[79] the Court rejected the plaintiffs' argument that "the President's authority to close bases depended on . . . the Commission's compliance with statutory procedures."[80] 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."[81]

In *Motions Systems Corp. v. Bush*,[82] 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.[83] The statute charged the ITC and United States Trade Representative (USTR)[84] 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."[85] The court held that this statute granted the President broad, unreviewable discretion not to follow USTR's recommendation.[86] 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."[87]

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."[88] In the former scenario, the CIT explained, "this court lacks the power to review the President's lawful exercise of discretion."[89] By contrast, "where statutory language limits the President, the court may review the executive's actions for 'clear misconstruction' of such limiting language."[90]

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[76] Dalton v. Specter, 511 U.S. 462 (1994).

[77] Pub. L. No. 101-510, div. B, title XXIX, part A, § 2901, 104 Stat. 1485, 1808 (codified as amended at 10 U.S.C. § 2687 note); *see Dalton*, 511 U.S. at 464.

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

[79] *Id.* at 476.

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

[81] *Id.* at 477.

[82] 437 F.3d 1356 (Fed. Cir. 2006).

[83] Pub. L. No. 106-286, § 103, 114 Stat. 880 (codified at 19 U.S.C. § 2451 (2006)). This provision lapsed 12 years after the People's Republic of China's (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 (2026).

[84] 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).

[85] 19 U.S.C. § 2451(k)(1) (2006).

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

[87] *Id*.

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

[89] *Id*. at *7 (citing *Dalton*, 511 U.S. at 474).

[90] *Severstal Export GMBH*, 2018 WL 1705298, at *7 (quoting Corus Grp. PLC v. U.S. Int'l Trade Comm'n, 352 F.3d 1351, 1359 (Fed. Cir. 2003)).

Selected Presidential Authorities to Impose Tariffs

The following section provides a legal overview of five statutory provisions that authorize the executive branch to impose tariffs under various circumstances, in addition to noting actions recent administrations have taken under each statute.[91] 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 two provisions—Section 122 of the Trade Act of 1974 and Section 338 of the Tariff Act of 1930—do not expressly contain such requirements.[92]

In 2026, the Supreme Court ruled that a different statute, the International Emergency Economic Powers Act of 1977 (IEEPA),[93] does not authorize the President to impose tariffs.[94] IEEPA gives the President extensive economic authorities to address certain emergencies declared under the National Emergencies Act (NEA).[95] IEEPA authorizes the President to "regulate" or "prohibit" imports,[96] but it does not specifically authorize tariffs. The Court held that IEEPA's phrase "regulate . . . importation" does not include tariffs, considering both the meaning of the word "regulate" as well as statutory context.[97] As discussed below, treatments of alternative tariff authorities by lower courts and the parties in the IEEPA tariff litigation may shed light on the President's use of those alternative authorities following the Court's decision.[98]

President Trump had invoked IEEPA to impose tariffs on imports from Canada, Mexico, and the PRC, based on declared emergencies concerning drug trafficking;[99] global tariffs on imports from almost all other U.S. trading partners based on a declared emergency concerning the U.S. trade deficit;[100] and various other tariffs.[101] Following the Supreme Court's decision, President Trump

[91] 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).

[92] 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 7– (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)).

[93] Pub. L. No. 95-223, 91 Stat. 1626 (codified as amended at 50 U.S.C. §§ 1701–1710).

[94] Learning Res., Inc. v. Trump, No. 24-1287, 2026 WL 477534, at *6 (U.S. Feb. 20, 2026).

[95] Pub. L. No. 94-412, 90 Stat. 1255 (codified as amended at 50 U.S.C. §§ 1601–1651).

[96] *See* 50 U.S.C. § 1702(a)(1)(B).

[97] *Learning Res.*, 2026 WL 477534, at *10–11. For analysis of the Court's opinion and those of the individual Justices, see CRS Legal Sidebar LSB11398, *Supreme Court Rules Against Tariffs Imposed Under the International Emergency Economic Powers Act (IEEPA)*, by Christopher T. Zirpoli (2026).

[98] *See infra* "Section 122 of the Trade Act of 1974: Tariffs Addressing International Payments Problems."

[99] *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 Opioid Supply Chain in the People's Republic of China, 90 Fed. Reg. 9121 (Feb. 1, 2025).

[100] Exec. Order No. 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. 15041 (Apr. 2, 2025).

[101] *See* Exec. Order No. 14,245, Imposing Tariffs on Countries Importing Venezuelan Oil, 90 Fed. Reg. 13829 (Mar. 24, 2025); Exec. Order No. 14,323, Addressing Threats to the United States by the Government of Brazil, 90 Fed. Reg. 37739 (July 30, 2025); Exec. Order No. 14,329, Addressing Threats to the United States by the Government of the Russian Federation, 90 Fed. Reg. 38701 (Aug. 6, 2025); Exec. Order 14,380, Addressing Threats to the United States by the Government of Cuba, 91 Fed. Reg. 5085 (Jan. 29, 2026); Exec. Order No. 14,382, Addressing Threats to the United States by the Government of Iran, 91 Fed. Reg. 6493 (Feb. 6, 2026).

terminated these tariff actions[102] while continuing the use of IEEPA to suspend the de minimis exemption,[103] a statutory authorization for the Secretary of the Treasury to allow the duty-free importation of up to $800 of certain merchandise per person, per day.[104]

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

Section 232 of the Trade Expansion Act of 1962[105] authorizes the President to "adjust the imports" of articles that the Secretary of Commerce finds are "being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security."[106] In 1976, the Supreme Court held that this import-adjustment authority permits the President to impose "monetary exactions in the form of license fees."[107] The Court reasoned that the statutory text and its legislative history "suggest that the President's authority extends to the imposition of monetary exactions—i.e., license fees and duties."[108] In *Learning Resources*, the Court contrasted Section 232 with IEEPA, observing that textual considerations "render[] it natural for Section 232[] to authorize duties."[109]

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.[110] Subsequently, the United States reached agreements with many countries placing quotas or tariff-rate quotas[111] on steel and aluminum imports from those countries in lieu of tariffs.[112] 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.[113] Subsequently, President Trump further increased the Section 232 tariff rate on these products to 50%.[114]

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[102] *See* Exec. Order No. 14,389, Ending Certain Tariff Actions, 91 Fed. Reg. 9437 (Feb. 20, 2026); Proclamation No. 11,012, Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems, 91 Fed. Reg. 9339 (Feb. 20, 2026).

[103] *See* Exec. Order No. 14,388, Continuing the Suspension of Duty-Free De Minimis Treatment for All Countries, 91 Fed. Reg. 9433 (Feb. 20, 2026).

[104] *See* 19 U.S.C. § 1321. For information regarding the de minimis exemption, see CRS Report R48380, *Imports and the Section 321 (De Minimis) Exemption: Origins, Evolution, and Use*, by Christopher A. Casey (2025).

[105] Pub. L. No. 87-794, § 232(b)–(c), 76 Stat. 872, 877 (codified as amended at 19 U.S.C. § 1862(b)–(c)).

[106] 19 U.S.C. § 1862(c)(1)(A).

[107] Fed. Energy Admin. v. Algonquin SNG, Inc., 426 U.S. 548, 552 (1976).

[108] *Id.* at 562.

[109] Learning Res., Inc. v. Trump, No. 24-1287, 2026 WL 477534 at *13 (U.S. Feb. 20, 2026).

[110] *See* Proclamation No. 9705, Adjusting Imports of Steel into the United States, 83 Fed. Reg. 11625 (Mar. 8, 2018); Proclamation No. 9704, Adjusting Imports of Aluminum into the United States, 83 Fed. Reg. 11619 (Mar. 8, 2018).

[111] 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 (2026).

[112] *See* Proclamation No. 10,896, Adjusting Imports of Steel into the United States, 90 Fed. Reg. 9817 (Feb. 10, 2025); Proclamation No. 10,895, Adjusting Imports of Aluminum into the United States, 90 Fed. Reg. 9807 (Feb. 10, 2025).

[113] *See* Proclamation No. 10,896, 90 Fed. Reg. 9817; Proclamation No. 10,895, 90 Fed. Reg. 9807; CRS Insight IN12519, *Expanded Section 232 Tariffs on Steel and Aluminum*, by Kyla H. Kitamura and Keigh E. Hammond (2025).

[114] *See* Proclamation No. 10,947, Adjusting Imports of Aluminum and Steel into the United States, 90 Fed. Reg. 24199 (June 3, 2025).

The second Trump Administration has actively used Section 232 to investigate and impose tariffs on many additional product categories. In March 2025, President Trump announced 25% tariffs on imports of automobiles and auto parts, with limited exceptions for Canada and Mexico,[115] based on a Section 232 investigation the Secretary of Commerce concluded in 2019.[116] President Trump has also imposed Section 232 tariffs on certain imports of trucks and buses, copper, wood products, and semiconductor chips.[117] The second Trump Administration has initiated or concluded additional Section 232 investigations regarding several other kinds of products.[118]

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.[119] The Secretary may also self-initiate Section 232 investigations.[120] In conducting this investigation, the Secretary must consult on "methodological and policy questions" with the Secretary of Defense,[121] who may be required to provide an assessment of defense requirements for the subject article.[122] 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.[123]

Within 270 days of initiating the investigation, the Secretary of Commerce must submit a report to the President containing findings and recommendations.[124] Section 232 provides that "any portion of the report . . . which does not contain classified information or proprietary information

[115] *See* Proclamation No. 10,908, Adjusting Imports of Automobiles and Automobile Parts into the United States, 90 Fed. Reg. 14705 (Mar. 26, 2025). The President subsequently reduced these tariffs for certain auto imports based on framework agreements with specific trading partners. *See* CRS Insight IN12545, *Section 232 Automotive Tariffs: Issues for Congress*, by Kyla H. Kitamura (2025).

[116] *See* Publication of a Report on the Effect of Imports of Automobiles and Automobile Parts on the National Security, 86 Fed. Reg. 62028 (Nov. 8, 2021).

[117] *See* Proclamation No. 10,984, Adjusting Imports of Medium- and Heavy-Duty Vehicles, Medium- and Heavy-Duty Vehicle Parts, and Buses into the United States, 90 Fed. Reg. 48451 (Oct. 17, 2025); Proclamation No. 10,962, Adjusting Imports of Copper into the United States, 90 Fed. Reg. 37727 (July 30, 2025); Proclamation No. 10,976, Adjusting Imports of Timber, Lumber, and Their Derivative Products into the United States, 90 Fed. Reg. 48127 (Sept. 29, 2025); Proclamation No. 11,002, Adjusting Imports of Semiconductors, Semiconductor Manufacturing Equipment, and Their Derivative Products into the United States, 91 Fed. Reg. 2443 (Jan. 14, 2026).

[118] *See* Proclamation 11,001, 91 Fed. Reg. 2439 (Jan. 14, 2026); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Robotics and Industrial Machinery, 90 Fed. Reg. 46382 (Sept. 26, 2025); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Personal Protective Equipment, Medical Consumables, and Medical Equipment, Including Devices, 90 Fed. Reg. 46383 (Sept. 26, 2025); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Wind Turbines and Their Parts and Components, 90 Fed. Reg. 41380 (Aug. 25, 2025); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Unmanned Aircraft Systems (UAS) and Their Parts and Components, 90 Fed. Reg. 31958 (July 16, 2025); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Polysilicon and its Derivatives, 90 Fed. Reg. 31955 (July 16, 2025); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Commercial Aircraft and Jet Engines and Parts for Commercial Aircraft and Jet Engines, 90 Fed. Reg. 20273 (May 13, 2025); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Pharmaceuticals and Pharmaceutical Ingredients, 90 Fed. Reg. 15951 (Apr. 16, 2025).

[119] 19 U.S.C. § 1862(b)(1)(A).

[120] *See id*.

[121] The Secretary of Defense is using "Secretary of War" as a "secondary title." *See* Exec. Order 14,347, Restoring the United States Department of War, 90 Fed. Reg. 43893 (Sept. 5, 2025).

[122] 19 U.S.C. § 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).

[123] *See id.* § 1862(b)(2)(A).

[124] *See id.* § 1862(b)(3)(A).

shall be published in the Federal Register."[125] Section 232 does not specify a deadline for publication in the Federal Register. On at least one occasion, Congress has enacted legislation compelling publication of a specific Section 232 report by a date certain.[126]

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."[127] 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."[128] 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."[129] 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."[130]

Section 232 does not require the President to follow the Secretary's recommendations but permits him to take alternative actions or no action.[131] It also does not limit the amount or duration of tariffs that the President might impose.[132] 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.[133]

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.[134] 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."[135] This provision may provide some legal support for the President's February 2025 proclamations that increased tariffs on steel

[125] *See id.* § 1862(b)(3)(B). Implementing regulations, which arguably fall short of this statutory requirement, state that an "executive summary" must be published in the Federal Register and that "[c]opies of the full report, excluding any classified or proprietary information, will be available for public inspection and copying" at the Commerce Department. 15 C.F.R. § 705.10(c) (2026).

[126] *See* Pub. L. No. 116-93, § 112, 113 Stat. 2317, 2395–96 (codified as amended at 19 U.S.C. § 2251) ("Not later than thirty days after the date of the enactment of this Act . . . the Secretary of Commerce shall[] (1) publish in the Federal Register the report on the findings of the investigation into the effect on national security of imports of automobiles and automotive parts . . . under section 232(b) of the Trade Expansion Act of 1962 . . . .").

[127] 19 U.S.C. § 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).

[128] *Id.* § 1862(c)(1)(A).

[129] *Id*. § 1862(c)(2).

[130] *Id.* § 1862(c)(1)(B).

[131] *See id.* § 1862(c).

[132] *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).

[133] 19 U.S.C. § 1862(f).

[134] *See id.* § 1862(c)(3).

[135] *Id*.

and aluminum to the extent they criticize the effectiveness of "alternative" agreements previously reached with certain countries.[136]

President Trump's March 2025 proclamation imposing tariffs on automobile goods relies on Section 232's agreement provisions, asserting that "[USTR]'s negotiations did not lead to any agreements of the type contemplated by section 232."[137] Section 232 does not prescribe a deadline by which "other action" must be taken if agreements either are not entered into or prove to be ineffective, potentially allowing the President to hold Section 232 actions in a state of suspension and then impose tariffs several years after the conclusion of an investigation. President Trump's imposition of tariffs on automobile goods, for example, relies on a Section 232 investigation that concluded approximately six years earlier.[138]

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,[139] the court held that Section 232 does not require a national security threat to be "imminent" for the President to act.[140] In another decision, *Transpacific Steel LLC v. United States*,[141] 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.[142] 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.[143] In *PrimeSource Building Products*, the court likewise upheld the President's modification of steel tariffs to include certain derivative products like nails and staples,[144] 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."[145]

Transpacific Steel and *PrimeSource* may provide additional legal support for the President's later modifications to steel and aluminum tariffs, such as raising the duty rate on these goods seven years after the Secretary's investigation. While the Federal Circuit noted that its decisions did not "prejudg[e] the scope of judicial reviewability of presidential determinations" that might be based

[136] *See* Proclamation No. 10,896, 90 Fed. Reg. 9817 (Feb. 10, 2025); Proclamation No. 10,895, 90 Fed. Reg. 9807 (Feb. 10, 2025).

[137] Proclamation No. 10,908, 90 Fed. Reg. 14705 (Mar. 26, 2025); *see* Proclamation No. 9888, Adjusting Imports of Automobiles and Automobile Parts into the United States, 84 Fed. Reg. 23433 (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").

[138] *See* Proclamation No. 10,908, 90 Fed. Reg. 14705 (Mar. 26, 2025) (imposing tariffs on auto imports six years after the 2019 conclusion of the Section 232 investigation).

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

[140] 36 F.4th 1359, 1368–69 (Fed. Cir. 2022).

[141] 4 F.4th 1306 (Fed. Cir. 2021), *cert. denied*, 142 S. Ct. 1414 (2022) (mem.).

[142] This initial proclamation applied to steel imports from all countries, including Turkey, except for Canada and Mexico. *See* Proclamation No. 9705, 83 Fed. Reg. 11625, 11626 (Mar. 8, 2018).

[143] *Transpac. 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).

[144] *See* PrimeSource Bldg. Prods., Inc. v. United States, 59 F.4th 1255, 1257 (Fed. Cir. 2023).

[145] *Id.* at 1262.

on "stale information,"[146] it nonetheless held that Section 232 provides "no textual basis for a specific time limit on adjustments under a timely adopted plan."[147] 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.[148]

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

Section 201 of the Trade Act of 1974[149] 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.[150] Presidential action under Section 201 is meant to facilitate the domestic industry's "positive adjustment to import competition," meaning that dislocated workers can make "an orderly transition to productive pursuits" and the domestic industry itself either becomes able to compete successfully with the imports or transfers its resources to other productive pursuits.[151] Tariffs imposed under Section 201 are sometimes referred to as "safeguard" or "escape clause" tariffs.[152] Recent administrations have used Section 201 to impose tariffs on solar cells and modules as well as residential washing machines.[153]

The ITC is required to conduct Section 201 investigations following a petition by a party representing a domestic industry, a request by the President or USTR, or a resolution of the House Ways and Means Committee or Senate Finance Committee.[154] The ITC may also self-initiate Section 201 investigations.[155] As part of its investigation, the ITC must consider what positive adjustment measures the domestic industry has taken or planned,[156] and petitioners and others may submit plans or commitments for the ITC's consideration.[157] The ITC generally must submit a report including its findings and recommendations to the President within 180 days of the start of the investigation.[158]

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

[146] *Transpac. Steel*, 4 F.4th at 1332; *accord PrimeSource Bldg. Prods., Inc*., 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 . . . .").

[147] *PrimeSource Bldg. Prods., Inc*., 59 F.4th at 1262.

[148] *Id*.

[149] Pub. L. No. 93-618, § 201, 88 Stat. 1978, 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. §§ 2251–2255.

[150] *See* 19 U.S.C. § 2251(a).

[151] *Id.* § 2252(a), (b)(1).

[152] *See* Silfab Solar, Inc. v. United States, 892 F.3d 1340, 1342 (Fed. Cir. 2018).

[153] *See Section 201 Investigations*, OFF. OF THE U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/enforcement/section-201-investigations [https://perma.cc/6HMJ-NTM9] (last visited Mar. 10, 2026).

[154] 19 U.S.C. § 2252(a)(1), (b)(1)(A).

[155] *See id.* § 2252(b)(1)(A).

[156] *See id.* § 2252(a)(6)(A).

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

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

producing an article like or directly competitive with the imported article."[159] In making its finding, the ITC is required to "take into account all economic factors which it considers relevant" as well as certain nonexclusive factors provided by statute.[160] As noted above,[161] the Federal Circuit has rejected challenges to Section 201 tariffs in cases where plaintiffs alleged that the ITC did not provide an adequate explanation for its injury determination[162] or the inclusion of certain goods on the lists of products subject to tariffs.[163]

If the ITC makes an affirmative determination, it must recommend what action would be most effective to facilitate the domestic industry's positive adjustment to import competition.[164] 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.[165] In forming its recommendations, the ITC is required to hold a public hearing for all interested parties to present testimony and other evidence.[166]

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 domestic industry.[167] 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.[168] 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.[169] If the President takes action under Section 201, he must submit a report

[159] *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).

[160] *Id.* § 2252(c). To find that a domestic industry has been seriously injured, the ITC must consider factors concerning the idling of domestic industry facilities, the inability of domestic industry firms to earn reasonable profits, and unemployment within the domestic industry. *Id.* § 2252(c)(1)(A). To find, alternatively, that a domestic industry 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 domestic industry; inability of domestic industry 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 domestic industry, 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).

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

[162] *See* Corus Grp. PLC v. U.S. Int'l Trade Comm'n, 352 F.3d 1351, 1364 (Fed. Cir. 2003) (upholding Section 201 tariffs on tin mill products).

[163] *See* Maple Leaf Fish Co. v. United States, 762 F.2d 86, 88–90 (Fed. Cir. 1985) (upholding Section 201 tariffs on frozen mushroom products).

[164] *See* 19 U.S.C. § 2252(e)(1).

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

[166] *Id.* § 2252(e).

[167] *Id.* § 2253(a)(1)(A), (a)(4).

[168] *Id.* § 2253(a)(3).

[169] *See* Silfab Solar, Inc. v. United States, 892 F.3d 1340, 1346 (Fed. Cir. 2018). 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)).

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.[170]

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 taken."[171] Actions in effect for more than one year must be "phased down at regular intervals."[172] 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.[173]

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.[174] 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 domestic industry's progress toward positive adjustment.[175] Only after receiving this report, the President may reduce or terminate the action if he determines that the domestic industry has not made adequate efforts toward positive adjustment or that changed circumstances make the action ineffective.[176] Alternatively, if the majority of domestic industry representatives petition the President to modify, reduce, or terminate the action, he may do so if he determines that the domestic industry has made a positive adjustment.[177] As noted above, the Federal Circuit has held that this limited authority to "modify" a previous safeguard if the domestic industry has made a positive adjustment allows the President to increase tariffs and withdraw previously granted exclusions for certain products.[178]

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

Section 301 of the Trade Act of 1974[179] 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.[180]

Recent administrations have conducted several investigations under Section 301. In 2018, USTR used Section 301 to impose tariffs on many imports from the PRC, finding that the PRC government engaged in actionable conduct relating to forced technology transfers, intellectual

[170] *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," 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.

[171] 19 U.S.C. § 2253(e)(3); *see also id.* § 2253(e)(4) (setting limits on "quantitative restrictions," or import quotas).

[172] *Id.* § 2253(e)(5).

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

[174] *See id.* § 2254(a), (b).

[175] *See id.* § 2254(a)(2).

[176] *See id.* § 2254(b)(1)(A).

[177] *See id.* § 2254(b)(1)(B).

[178] *See Solar Energy I*, 86 F.4th 885, 889–90, 894 (Fed. Cir. 2023), *reh'g granted in part*, *Solar Energy II*, 111 F.4th 1349 (Fed. Cir. 2024) (providing additional reasoning for decision).

[179] Pub. L. No. 93-618, § 301, 88 Stat. 1978, 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. §§ 2411–2420.

[180] *See* 19 U.S.C. § 2411(a), (b).

property, and innovation.[181] In 2025, USTR concluded three Section 301 investigations initiated by the Biden Administration, finding that other foreign practices by the PRC and Nicaragua were actionable.[182] USTR also initiated two Section 301 investigations in 2025.[183] In March 2026, following the Supreme Court's invalidation of tariffs imposed under IEEPA, USTR initiated multicountry Section 301 investigations purportedly related to "structural excess capacity and production in certain manufacturing sectors" of 16 trading partners[184] and "the failure to impose and effectively enforce a prohibition on the importation of goods produced with forced labor" on the part of 60 countries.[185]

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.[186] Generally, USTR must request consultations with the foreign country upon initiating an investigation.[187] USTR's deadline to complete the investigation varies according to the basis and nature of the investigation.[188] 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.[189]

Section 301 divides USTR's authority into "mandatory action" and "discretionary action."[190] Mandatory action is generally required when USTR determines that "(A) the rights of the United States under any trade agreement are being denied; or (B) an act, policy, or practice of a foreign country[] (i) violates, or is inconsistent with, the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (ii) is unjustifiable and burdens or restricts United States commerce."[191] Discretionary action is authorized when USTR determines that "(1) an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and (2) action by the United States is appropriate."[192]

[181] *See* 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. 28710 (June 20, 2018).

[182] *See, e.g.*, Notice of Implementation of Action: Nicaragua's Acts, Policies, and Practices Related to Labor Rights, Human Rights and Fundamental Freedoms, and the Rule of Law, 90 Fed. Reg. 60850 (Dec. 29, 2025) (imposing tariffs on certain imports beginning in January 2027); Notice of Action: China's Acts, Policies, and Practices Related to Targeting of the Semiconductor Industry for Dominance, 90 Fed. Reg. 60848 (Dec. 29, 2025) (imposing tariffs of a rate to be announced on certain imports beginning in June 2027); Notice of Modification of Section 301 Action: China's Targeting of the Maritime, Logistics, and Shipbuilding Sectors for Dominance, 90 Fed. Reg. 50947 (Nov. 13, 2025) (suspending action for one year).

[183] Initiation of Section 301 Brazil Investigation, 90 Fed. Reg. 34069 (July 18, 2025); Initiation of Section 301 Investigation: China's Implementation of Commitments Under the Phase One Agreement; Notice of Hearing; and Request for Public Comments, 90 Fed. Reg. 48733 (Oct. 28, 2025).

[184] Initiation of Section 301 Investigations: Acts, Policies, and Practices of Certain Economies Relating to Structural Excess Capacity and Production in Manufacturing Sectors, 91 Fed. Reg. 12886 (Mar. 11, 2026).

[185] Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor, 91 Fed. Reg. 12884 (Mar. 12, 2026).

[186] *See* 19 U.S.C. § 2412.

[187] *See id.* § 2413.

[188] *See id.* § 2414(a).

[189] *See id.* § 2414(b).

[190] *See id.* § 2411(a), (b).

[191] *See id.* § 2411(a)(1).

[192] *See id.* § 2411(b).

Upon making 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.[193] Section 301 does not set a maximum rate for tariffs that USTR may impose.[194] Actions taken under Section 301—including any tariffs—terminate automatically after four years unless any petitioner or representative of a domestic industry benefiting from the action requests continuation, in which case USTR may extend the action.[195] For example, in 2022, USTR determined that the tariffs first imposed in 2018 on imports from the PRC would remain in effect.[196]

USTR may sometimes modify or terminate an action under Section 301, provided it solicits views from any petitioners, domestic industry representatives, and other interested persons and reports its reasons to Congress.[197] Section 301 allows USTR to "modify or terminate any action, subject to the specific direction, if any, of the President," under any of three conditions. First, USTR may modify or terminate an action if the Dispute Settlement Body of the World Trade Organization, or dispute settlement proceedings under other trade agreements,[198] finds that the foreign practice at issue does not deny or violate U.S. rights.[199] Second, USTR may modify or terminate an action if "the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased."[200] Third, USTR may modify or terminate a discretionary action that "is no longer appropriate."[201]

In 2025, the Federal Circuit analyzed the scope of USTR's authority to modify Section 301 tariffs in *HMTX Industries LLC v. United States*.[202] Following USTR's initial action imposing tariffs on certain PRC imports in 2018, the PRC imposed retaliatory tariffs on certain articles from the United States.[203] USTR responded, in turn, by imposing tariffs on additional lists of PRC imports.[204] In *HMTX Industries*, the Federal Circuit upheld these additional tariffs as a

[193] *See id.* § 2411(c).

[194] Section 301 provides nonexclusive examples of foreign government practices that may 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. *See id.* § 2411(d)(2), (3)(B).

[195] *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.

[196] *See* Continuation of Actions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 87 Fed. Reg. 55073 (Sept. 8, 2022).

[197] *See* 19 U.S.C. § 2417(a), (b). As one 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. *See* Notice of Modification: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76581 (Sept. 18, 2024).

[198] For background, see CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Christopher A. Casey and Cathleen D. Cimino-Isaacs (2024).

[199] *See* 19 U.S.C. §§ 2411(a)(2), 2417(a)(1)(A).

[200] *Id*. § 2417(a)(1)(B).

[201] *Id*. §§ 2411(b), 2417(a)(1)(C).

[202] 156 F.4th 1236 (Fed. Cir. 2025).

[203] *See id.* at 1245.

[204] *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. 47974 (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. 43304 (Aug. 20, 2019).

permissible modification of the Section 301 action.[205] On February 20, 2026, HMTX Industries petitioned the Supreme Court to hear an appeal of the Federal Circuit's decision; at the time of this writing, the Supreme Court has not announced whether it will hear this appeal.[206]

In *HMTX Industries*, the Federal Circuit was faced with determining which of Section 301's modification provisions, if any, supported the additional tariffs. The court rested its decision on 19 U.S.C. § 2417(a)(1)(C), which allows modification or termination of an action that "is no longer appropriate."[207] In prior Section 301 actions, USTR had invoked Section 2417(a)(1)(C) only to reduce or terminate the action, not to impose additional tariffs. The plaintiffs in *HMTX Industries* argued that Section 2417(a)(1)(C) permits only tariff-reducing modifications.[208] The court instead agreed with the government's contention that Section 2417(a)(1)(C) "extends to situations in which prior, predictive action proved insufficient to its stated purpose, necessitating increased action that is more appropriate."[209] Having held that Section 2417(a)(1)(C) authorized the challenged modification, the court declined to address the government's alternative argument, that Section 2417(a)(1)(B) also authorized the modification.[210]

In addition to disputing USTR's substantive authority to modify Section 301 actions, the parties to *HMTX Industries* disputed the applicable standard for judicial review, in light of the fact that Section 301 grants authority to USTR "subject to the specific direction, if any, of the President."[211] The Federal Circuit held that USTR's action was an agency action reviewable under the APA, rejecting the government's argument that it was a nonreviewable presidential action.[212] The court applied the standard of review set forth in the APA, requiring the court to interpret statutory provisions and set aside agency actions that are, *inter alia*, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "unsupported by substantial evidence."[213]

In the trial court proceedings in *HMTX Industries*, the CIT had held that USTR's modification was procedurally defective,[214] as it did not conform with the APA's requirements for notice-and-comment rulemaking.[215] Specifically, the CIT found that USTR had not adequately responded to critical comments submitted during the rulemaking.[216] While the APA exempts agencies from these procedural requirements "to the extent that there is involved . . . a military or foreign affairs

[205] *See* HMTX Indus. LLC v. United States, 156 F.4th 1236, 1242 (Fed. Cir. 2025).

[206] Petition for a Writ of Certiorari, HMTX Indus., LLC v. United States, No. 25-1012 (U.S. filed Feb. 20, 2026).

[207] 19 U.S.C. § 2417(a)(1)(C).

[208] *See HMTX Indus.*, 156 F.4th at 1252.

[209] *See id*.

[210] *See id.* at 1242. Conversely, the trial court (the CIT) had upheld the additional tariffs as permitted by Section 2417(a)(1)(B) and declined to analyze Section 2417(a)(1)(C). *See In re* Section 301 Cases, 570 F. Supp. 3d 1306, 1334–35 (Ct. Int'l Trade 2022) (*Section 301 Cases I*). As noted above, Section 2417(a)(1)(B) permits modification if "the burden or restriction on United States commerce of the denial rights, or of the acts, policies, and practices, that are the subject of such action has increased or decreased." 19 U.S.C. § 2417(a)(1)(B). The CIT rejected plaintiff's argument that this provision would permit modification only in response to changes in the PRC intellectual property practices that were the subject of the Section 301 investigation, and thus would not permit modification in response to the PRC's retaliatory tariffs. *See Section 301 Cases I*, 570 F. Supp. 3d at 1333–34.

[211] 19 U.S.C. § 2411(a)(1)(B), (b)(2).

[212] *See HMTX Indus.*, 156 F.4th at 1249–50. The court observed that, "[i]n 1988, Congress transferred authority to enforce Section 301 from the President to USTR." *Id.* at 1250.

[213] *See id*. at 1249 (quoting 5 U.S.C. § 706).

[214] *See Section 301 Cases I*, 570 F. Supp. 3d at 1343.

[215] *See id.* at 1338.

[216] *See id.* at 1340–41.

function of the United States,"[217] both the CIT and, subsequently, the Federal Circuit held that USTR's action did not fall under this foreign affairs exception.[218] After giving USTR an opportunity to provide additional explanation for the modified tariffs, the CIT upheld the modification.[219] The Federal Circuit, in turn, affirmed that the CIT was not required to vacate the modified tariffs due to this procedural violation and that "the additional detail USTR provided on remand cured the original deficiencies."[220]

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

Section 122 of the Trade Act of 1974[221] 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."[222] Section 122 was enacted in the wake of a temporary 10% tariff President Richard Nixon proclaimed in 1971 to address balance-of-payments problems, particularly a decline in U.S. gold reserves supporting the value of the dollar.[223] In 1975, the U.S. Court of Customs and Patent Appeals held that Section 5(b) of the Trading with the Enemy Act,[224] which contained the same "regulate . . . importation" phrase now found in IEEPA, provided legal authority for this tariff, reversing a trial court decision to the contrary.[225] The appellate court observed that future such tariffs "must, of course, comply" with Section 122, which had been enacted while the legal challenge to the 1971 proclamation was being litigated.[226]

Section 122 was first used to impose tariffs in 2026, more than 50 years after its enactment. On February 20, 2026, the Supreme Court issued its decision holding that the President could not use IEEPA to impose tariffs.[227] Later that day, President Trump issued a proclamation imposing a 10% tariff on most U.S. imports under Section 122.[228] This proclamation provided justifications overlapping with those in President Trump's April 2025 executive order imposing worldwide tariffs of 10% or greater under IEEPA, including shared references to "large and persistent" U.S.

[217] 5 U.S.C. § 553(a).

[218] *See HMTX Indus.*, 156 F.4th at 1257 ("USTR's decision to repeatedly publish its proposed modifications undermines the notion that 'definitely undesirable international consequences' were at risk in public rulemaking.") (quoting Am. Ass'n of Exporters & Imps-Textile & Apparel Grp. v. United States, 751 F.2d 1239, 1249 (Fed. Cir. 1985)); *Section 301 Cases I*, 570 F. Supp. 3d at 1335–37.

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

[220] *HMTX Indus.*, 156 F.4th at 1258.

[221] Pub. L. 93-618, § 122, 88 Stat. 1978, 1987 (codified at 19 U.S.C. § 2132).

[222] 19 U.S.C. § 2132(a).

[223] *See* United States v. Yoshida Int'l, Inc., 526 F.2d 560, 567 (C.C.P.A. 1975).

[224] Now codified at 50 U.S.C. § 4305(b).

[225] See *Yoshida*, 526 F.2d at 583–84. For more information on *Yoshida* and its relationship to recent debates over IEEPA, 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).

[226] *Id.* at 582 n.33.

[227] *See* Learning Res., Inc. v. Trump, No. 24-1287, 2026 WL 477534 at *6 (U.S. Feb. 20, 2026).

[228] Proclamation No. 11,012, Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems, 91 Fed. Reg. 9339 (Feb. 20, 2026).

trade deficits.[229] In March 2026, two dozen states and certain private parties filed lawsuits challenging the President's authority to impose this tariff.[230]

Section 122 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."[231] In his February 20, 2026, proclamation, President Trump cited all three of the above justifications (i.e., balance-of-payments deficits, dollar depreciation, and an international balance-of-payments disequilibrium).[232]

Some have suggested that Section 122 might authorize the President to impose tariffs in response to U.S. trade deficits,[233] which occur when the value of imports in goods and services exceeds that of exports.[234] As used in Section 122, the term "balance-of-payments deficits" may be susceptible to at least two interpretations: a broader interpretation that includes trade deficits, and a narrower interpretation that does not. A glossary by the U.S. Bureau of Economic Analysis defines *balance of payments* as a "[r]ecord of transactions between U.S. residents and foreign residents during a given time period [that i]ncludes transactions in goods, services, income, assets, and liabilities."[235] On the broader interpretation of Section 122, a *balance-of-payments deficit* could potentially refer to a deficit in any combination of these transactions, including a trade deficit. In *V.O.S. Selections, Inc. v. United States*,[236] the CIT espoused this view of Section 122, opining that "[t]rade deficits are one of the key balance-of-payment deficits."[237] Based on its

[229] *Compare* Exec. Order No. 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. 15041 (Apr. 2, 2025) (imposing tariffs under IEEPA), *with* Proclamation No. 11,012, 91 Fed. Reg. 9339, 9340 (Feb. 20, 2026) (noting problems concerning "large and persistent trade deficits").

[230] *See* Complaint, State of Oregon v. Trump, No. 26-1472 (Ct. Int'l Trade, filed Mar. 5, 2026); Complaint, Burlap & Barrel, Inc. v. Trump, No. 26-1606 (Ct. Int'l Trade, filed Mar. 9, 2026).

[231] 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).

[232] *See* Proclamation No. 11,012, 91 Fed. Reg. at 9339.

[233] Gavin Bade, *Trump Trade Advisers Plot Dollar Devaluation*, POLITICO (Apr. 15, 2024), https://www.politico.com/news/2024/04/15/devaluing-dollar-trump-trade-war-00152009 ("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.").

[234] *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).

[235] *Balance of Payments: Glossary*, BUREAU OF ECON. ANALYSIS (Apr. 11, 2018), https://www.bea.gov/help/glossary/balance-payments [https://perma.cc/6W88-X5D5]; *see also* V.O.S. Selections, Inc. v. United States, 772 F. Supp. 3d 1350, 1375 (Ct. Int'l Trade 2025) (discussing BEA definition). Similarly, one general dictionary defines *balance of payments* as "a summary of the international transactions of a country or region over a period of time including commodity and service transactions, capital transactions, and gold movements." *Balance of Payments*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/balance%20of%20payments [https://perma.cc/B5VY-6UWF] (last visited Mar. 10, 2026).

[236] 772 F. Supp. 3d 1350.

[237] *Id.* at 1375.

understanding that "tariffs responding to a trade deficit fit under Section 122" as well as additional reasoning, the CIT held that such tariffs were not authorized by IEEPA.[238]

On the appeals of *V.O.S. Selections* to the Federal Circuit and, later, the Supreme Court (where it was consolidated with *Learning Resources*), neither court adopted the CIT's reasoning that Section 122 displaced IEEPA. At the Federal Circuit, a dissenting opinion and the government argued for a narrower interpretation of *balance-of-payments deficit* that excludes trade deficits. The dissent—which argued that IEEPA authorized the challenged tariffs—disagreed with the CIT's reasoning that Section 122 displaces the President's authority to impose tariffs in response to trade deficits under IEEPA.[239] The dissent contended that "a goods trade deficit alone is not enough for application of . . . section 122" and that the trade deficit-related emergency underlying the worldwide IEEPA tariffs was not a "fundamental international payments problem" within the meaning of Section 122.[240] In a brief to the Federal Circuit, the government likewise argued that Section 122 "does [not] have any obvious application here, where the concerns the President identified in declaring an emergency arise from trade deficits, which are conceptually distinct from balance-of-payments deficits."[241]

Sources regarding the meaning of *balance-of-payments deficit* from the time surrounding the enactment of Section 122 may indicate that the term refers not to trade deficits but to more inclusive measures of international payments including capital flows as well as goods and services trade.[242] 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.[243] At the time, some commentators noted 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.[244] Historical sources such as these

[238] *See id.* ("Section 122 removes the President's power to impose remedies in response to balance-of-payments deficits, and specifically trade deficits, from the broader powers granted to a president during a national emergency under IEEPA by establishing an explicit non-emergency statute with greater limitations.").

[239] V.O.S. Selections, Inc. v. Trump, 149 F.4th 1312, 1371–72 (Fed. Cir. 2025) (Taranto, J., dissenting).

[240] *Id.* at 1371–75.

[241] Reply Brief for Appellants at 13, V.O.S. Selections, Inc. v. Trump, No. 25-1812 (Fed. Cir. July 18, 2025). The government might not be prevented from advancing inconsistent arguments regarding the interpretation of Section 122 in future litigation, given that the government was not the prevailing party in *V.O.S. Selections*. *Cf.* New Hampshire v. Maine, 532 U.S. 742, 750–51 (2001) (indicating that the doctrine of judicial estoppel does not preclude a party from adopting an inconsistent position in a later proceeding if the party did not "succeed[] in persuading a court to accept that party's earlier position," while noting that there is no "exhaustive formula for determining the applicability of judicial estoppel").

[242] *See* BEA, U.S. DEP'T OF COM., THE BALANCE OF PAYMENTS OF THE UNITED STATES: CONCEPTS, DATA SOURCES, AND ESTIMATING PROCEDURES 17 (1990), https://apps.bea.gov/scb/pdf/internat/bpa/meth/bopmp.pdf [https://perma.cc/SG6F-PE4B] (contrasting "overall balances, measuring balance of payments surpluses or deficits," with "partial balances," including "merchandise trade" and "goods and services").

[243] *See, e.g.*, *Report of the Advisory Committee on the Presentation of Balance of Payments Statistics*, *in* BEA, U.S. DEP'T OF COM., SURVEY OF CURRENT BUSINESS 20–21 (1976), https://apps.bea.gov/scb/issues/1976/scb-1976-june.pdf [https://perma.cc/9G24-DHHS] (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).

[244] *See* Janice M. Westerfield, *A Lower Profile for the U.S. Balance of Payments*, FED. RESERVE BANK OF PHILA. BUS. REV., Nov.–Dec. 1976, at 11, 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 . (continued...)

may be relevant to a court's determination of what Section 122 meant at the time of its enactment and, consequently, the scope of authority it provides the President today.[245]

To the extent that legislative history may also be relevant to determining the legal meaning of Section 122, it may support the conclusion that *balance-of-payments deficit* does not refer to trade deficits.[246] 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."[247] A later report stated the House Ways and Means Committee had considered and rejected such precise formulas.[248] 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,"[249] possibly referring to the then-recent collapse of the Bretton Woods system. One Member argued that the end of Bretton Woods made Section 122 "superfluous and unwise."[250]

Section 122 also provides 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."[251] A court might presume that this distinction was intentional and infer that Congress meant these terms to have different meanings.[252] Legislative history may corroborate this inference. In a previously introduced version of Section 122, both subsections referred to the "balance-of-payments,"[253] but a Senate Finance Committee report explained that this term was deliberately amended to "balance-of-trade" in what became Section 122(c).[254]

Unlike the tariff statutes surveyed above (but like IEEPA), Section 122 does not condition the President's authority on any investigation or factual finding by an executive agency,[255] such as the

. . . [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.").

[245] *See, e.g.*, Learning Res., Inc. v. Trump, No. 24-1287, 2026 WL 477534 at *13–14 (U.S. Feb. 20, 2026) (consulting law dictionary definition of "regulate" from the 1970s, when IEEPA was enacted).

[246] *See* CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon, at 39–44 (2023) (regarding the use of legislative history in statutory interpretation).

[247] *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 . . . .").

[248] H. REP. NO. 93-571, at 28–29 (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.").

[249] S. REP. NO. 93-1298, at 88 (1974).

[250] 119 CONG. REC. 40568 (1973) (statement of Rep. Henry S. Reuss). Rep. Reuss explained that, "[i]f the United States continues to let the dollar float in exchange markets, as we are wisely doing now, the exercise of this authority would prevent the deterioration or appreciation of the external value of the dollar which would be necessary to eliminate a balance-of-payments deficit or surplus, as the case may be." *Id*. Rep. Reuss further observed that, if the United States returned to a system of fixed exchange rates, Section 122 authorities would not be practically useful to address balance-of-payments problems. *See id*.

[251] 19 U.S.C. § 2132(c).

[252] *See* Brannon, *supra* note 246, at 55 (2023) (regarding the presumption of consistent usage).

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

[254] *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).

[255] *See* 19 U.S.C. § 2132(a).

ITC[256] or Department of Commerce,[257] nor does it directly commit the tariff authority to an agency, such as USTR.[258] Section 122 provides that, subject to the 150-day limit on presidential action, "[t]he President may at any time, consistent with the provisions of this section, suspend, modify, or terminate, in whole or in part, any proclamation."[259]

Section 122 limits the President's authority to impose different tariff rates either on different goods or on imports from different countries. It generally requires that import restrictions "shall be of broad and uniform application with respect to product coverage," subject to specified exceptions concerning "the needs of the United States economy" and "import restricting actions [that would] be unnecessary or ineffective . . . such as with respect to articles already subject to import restrictions, goods in transit, or goods under binding contract."[260] It also generally requires that surcharges "be applied consistently with the principle of nondiscriminatory treatment," barring the imposition of different rates on imports from different countries.[261] As an exception to this nondiscrimination requirement, Section 122 states, "if the President determines that the purposes of [Section 122] will best be served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action."[262]

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

Section 338 of the Trade Act of 1930[263] 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.[264] 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.[265] 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.[266]

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

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

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

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

[259] 19 U.S.C. § 2132(g).

[260] 19 U.S.C. § 2132(e). In addition, the statute prohibits either imposing or making exceptions to import restrictions "for the purpose of protecting individual domestic industries from import competition." *Id*.

[261] *Id*. § 2132(d)(1); *see* 19 U.S.C. § 2481(9) (defining "nondiscriminatory treatment" as "trade treatment based on normal trade relations (known under international law as most-favored-nation treatment)"). For an overview of how the most-favored-nation obligation relates to U.S. tariffs, see CRS In Focus IF12995, *International Trade Agreements and U.S. Tariff Laws*, by Christopher T. Zirpoli, Christopher A. Casey, and Cathleen D. Cimino-Isaacs (2025).

[262] 19 U.S.C. § 2132(d)(2).

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

[264] *See* 19 U.S.C. § 1338(a).

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

[266] *See* David Lawder, *Trump May Dust Off 1930 Trade Discrimination Law to Back Reciprocal US Tariffs*, REUTERS (Feb. 12, 2025), https://www.reuters.com/world/us/trump-may-dust-off-1930-trade-discrimination-law-back-reciprocal-us-tariffs-2025-02-12/.

(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.[267] Section 338 also permits the President to "suspend, revoke, supplement, or amend any such proclamation" if he deems it is in the public interest.[268]

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.[269] Unlike Section 301, Section 338 does not appear to require any agency investigation or determination as a prerequisite to imposing tariffs.[270] 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.[271]

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.[272] By authorizing the President to impose tariffs "whenever *he* shall find as a fact" that discrimination has occurred,[273] however, Section 388 does not appear to condition the President's authority on such a finding by the ITC.

Tariffs under Section 338 may not exceed 50% of the value of the goods.[274] Certain language in Section 338 also appears to limit the President to imposing such additional duty rates as will "offset" either the burden or disadvantage to U.S. commerce or the benefit to a third-party country resulting from the foreign measures at issue. Specifically, Section 338 directs the President to impose "such new or additional rate or rates of duty as he shall determine will offset" the burden or disadvantage to U.S. commerce.[275] Further, if the President "shall determine" that such additional duties "do not effectively remove such imposition or discrimination" and that an industry in a third country benefits from the foreign measures at issue, the President is authorized to impose "such new or additional rate or rates of duty . . . as he shall determine will offset such benefits."[276] Because Section 338 expressly commits to the President both the initial "find[ing] as a fact" that a foreign country has taken actionable measures as well as the "determin[ation]" of

[267] 19 U.S.C. § 1338(a).

[268] *Id.* § 1338(c).

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

[270] *See* Veroneau & Gibson, *supra* note 265, 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).

[271] 19 U.S.C. § 1338(g).

[272] *See generally* Veroneau & Gibson, *supra* note 265, at 3 ("The extent to which the Commission may constrain the president's authority under Section 338 . . . is unclear.").

[273] 19 U.S.C. § 1338(a) (emphasis added).

[274] *See id.* § 1338(d), (e).

[275] *Id.* § 1338(d).

[276] *Id.* § 1338(e).

what additional rates will offset those measures, courts might be unwilling to review these decisions in light of Supreme Court precedent.[277]

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.

Table 1. Selected Statutory Authorities

Summary of Key Provisions and Examples

	Section 232	Section 201	Section 301	Section 122	Section 338
***U.S. Code* Reference**	19 U.S.C. § 1862	19 U.S.C. §§ 2251–2255	19 U.S.C. §§ 2411–2420	19 U.S.C. § 2132	19 U.S.C. § 1338
Subject Matter	Articles imported in quantities or circumstances that threaten national security	Injury to domestic industry from import surges	Trade agreement violations; certain other practices	International payments problems incl. balance-of-payments deficits	Burdens or discrimination against U.S. commerce
Agency Required to Make Findings	Secretary of Commerce	ITC	USTR	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
Limit on Tariff Rate	None	50%; note phasedown requirement	None	15%; note uniformity requirements	Offsetting rates up to 50%
Selected Tariff Examples	Steel and aluminum, 2018–; automobiles, 2025–	Solar cell products, 2018–2026	Certain imports from PRC, 2018–	Worldwide surcharge, 2026–	Never used to impose tariffs

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.

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

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

particular goods and, if so, to impose U.S. tariffs on those goods up to the rate applied by the foreign country.[278] 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. In addition, the Supreme Court's holding that IEEPA does not authorize tariffs would not necessarily prevent Congress from amending the statute to include that authority, although such amendments could potentially confront constitutional challenges concerning the nondelegation doctrine.[279]

Alternatively, Congress may repeal, amend, or place restrictions on existing statutory authorities. One bill introduced in the 119th Congress, for example, would repeal Section 338.[280] 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.[281] For instance, companion bills 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.[282] 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.[283] 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.[284]

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.

[278] 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.*

[279] For discussion of potential nondelegation challenges to the use of IEEPA as a tariff authority, 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).

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

[281] *Cf.* CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, coordinated by Christopher A. Casey (2025), 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 action taken under IEEPA).

[282] 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).

[283] Stopping Tariffs on Allies and Bolstering Legislative Exercise of (STABLE) Trade Policy Act, S. 348, 119th Cong. (2025).

[284] Congressional Trade Authority Act of 2025, H.R. 1903, 119th Cong. (2025).

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