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Legal Sidebar

Legal Authority for Export Controls and Tariffs on Semiconductor Chips Sold to China

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Semiconductor chips (also known as computer chips, microelectronic chips, or integrated circuits) have been a focus of U.S. export control policy for several years, partly due to concerns about the value that chips with artificial intelligence (AI) applications may have for malicious actors, other U.S. adversaries, and their advanced computing and military capabilities.

In December 2025, President Trump announced that the United States would grant Nvidia Corporation permission to sell its second-best AI chip, the H200, to the People's Republic of China (PRC) in exchange for paying the U.S. government 25% of an unspecified sum of money, and that "the same approach" would apply to chips made by Advanced Micro Devices (AMD), Intel, and other companies. The White House explained that these chips would be required to undergo a "security review" in the United States before being shipped to the PRC and that the 25% fee would be collected as a tariff when the chips were imported to the United States from fabrication sites in Taiwan. Members of Congress have expressed views in support of or opposed to this arrangement, referred to below as the Chips Arrangement.

The Trump Administration implemented the Chips Arrangement through a combination of imposing a 25% import tariff on certain chips under Section 232 of the Trade Expansion Act of 1962 (Section 232) and issuing a new export license rule under the Export Control Reform Act of 2018 (ECRA) that requires certain chips to undergo a security review in the United States. This Legal Sidebar analyzes whether Section 232 and ECRA permit the Administration's actions as well as whether these actions are consistent with the U.S. Constitution's prohibition on export tariffs.

Section 232 Authority to "Adjust the Imports" of Certain Articles

Overview of Section 232

Section 232 authorizes the President to "adjust the imports" of an article if the Secretary of Commerce finds, based on an investigation, that the article is being imported "in such quantities or under such circumstances as to threaten to impair the national security." In 1976, the U.S. Supreme Court held that this import-adjustment authority permits the President to impose "monetary exactments in the form of license fees," reasoning that the statutory text and its legislative history "suggest that the President's

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authority extends to the imposition of monetary exactions—i.e., license fees and duties." In its February 20, 2026, decision *Learning Resources, Inc. v. Trump*, which held that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs, the Court contrasted IEEPA with Section 232, observing that the latter "authorize[s] duties" (i.e., tariffs).

President Trump has previously used Section 232 to impose tariffs on articles including steel and aluminum, automobiles and auto parts, copper, timber and lumber, and trucks and buses. The Commerce Department is currently conducting several Section 232 investigations regarding other articles, including pharmaceuticals, and the results of these investigations could potentially allow the President to impose additional tariffs.

Section 232 Tariffs on Semiconductor Chips

On January 14, 2026, President Trump issued Proclamation 11,002, which invokes Section 232 to implement the 25% fee component of the Chips Arrangement. The proclamation "impos[es] a 25 percent *ad valorem* tariff on a very narrow category of semiconductors that are an important element of [the] Administration's AI and technology policies." Proclamation 11,002 provides that this tariff applies to "advanced computing chips" meeting various technical specifications. A White House Fact Sheet states that this tariff applies to "certain advanced computing chips, such as the NVIDIA H200 and AMD MI325X."

Proclamation 11,002 exempts chips that would otherwise be subject to the tariff if they are imported for any of a broad range of domestic uses, including data centers and consumer applications:

> The [tariff] shall not apply to imports of those [chips] for use in United States data centers, for repairs or replacements performed in the United States, for research and development in the United States, for use by startups, for non-data center consumer applications in the United States, for use in non-data center civil industrial applications in the United States, for use in United States public sector applications, or for other uses that the [Commerce] Secretary determines contribute to the strengthening of the United States technology supply chain or domestic manufacturing capacity for derivatives of semiconductors. In making his determination, the Secretary shall consider factors he deems relevant, including the need to address the national security threat found in this proclamation and the purpose of this proclamation.

The above language authorizes the Secretary to grant exemptions for domestic uses that are not already exempted by the proclamation (e.g., data centers and consumer applications). Based on this language, it is unclear if any chips imported for domestic use will be subject to the tariff or if, alternatively, the tariff will apply only to imported chips meant for re-export to the PRC or other countries.

For the legal basis of this tariff, Proclamation 11,002 relies on a Section 232 investigation concerning semiconductors that the Secretary of Commerce initiated in April 2025. According to the proclamation, this investigation revealed that "the present quantities and circumstances of imports of semiconductors, semiconductor manufacturing equipment, and their derivative products pose a threat to the national security and economy." For instance, the proclamation states, the Secretary found that U.S. production capacity for these products was insufficient to meet U.S. demand and defense needs, making the United States "dependent on foreign sources." (While Section 232 requires publication of the Secretary's report in the Federal Register, it does not set a deadline for this publication, and the semiconductors report does not appear to be publicly available as of this writing.)

Viewed in the context of the Chips Arrangement, it is debatable whether Section 232 gives the President legal authority for the 25% tariff imposed by Proclamation 11,002. As noted, Section 232 authorizes the President "to adjust the imports" of articles that threaten U.S. national security. If, as some commentators take it, the 25% tariff is intended not to reduce chip imports but rather to exact a fee in exchange for allowing sales of the chips to the PRC, the tariff may fall outside the President's authority to adjust

imports under Section 232. The fact that Proclamation 11,002 exempts from the tariff many if not all chips imported for domestic use may corroborate that the tariff is meant to exact a fee for export licenses rather than to adjust imports.

Relatedly, it is unclear whether the Commerce Secretary's findings from the Section 232 investigation support placing tariffs on these chips. Imposing a tariff on PRC-bound chips that are imported solely to undergo a government-required security review is arguably unrelated to addressing the threats described by the Secretary. The fact that the Chips Arrangement was initially announced four months prior to the Secretary's report might also raise questions as to whether the arrangement is meant to address the findings in that report. Some media reporting suggests it is "widely accepted" that the purpose of the U.S.-based security review is to "allow[] the U.S. government to collect [the] 25 percent fee." If that understanding is correct, the Administration's actions might be construed not as imposing tariffs to adjust imports, as Section 232 authorizes, but rather as adjusting imports to impose tariffs.

In response to such arguments, proponents of the tariff might point out that Proclamation 11,002 does not necessarily impose tariffs only on chips that will be exported abroad but, as noted, could potentially apply to some chips imported for U.S. use. Conversely, proponents might note, manufacturers could potentially avoid paying the tariff on PRC-bound chips by manufacturing them in the United States. Thus, proponents might argue that the tariff represents appropriate action to reduce imports of any chips not subject to an exemption while encouraging the domestic production of chips intended for export markets. Proponents might also observe that courts have traditionally given the President some deference in exercising his authority under Section 232 and other tariff statutes, although the Supreme Court's 2024 decision *Loper Bright Enterprises v. Raimondo* may call that approach into question.

ECRA's Bar on Fees "Charged in Connection with" Export Licenses

Overview of ECRA

To protect U.S. national security by restricting exports that could "make a significant contribution to the military potential of any other country," ECRA gives the President authority to regulate the export of "dual-use" goods and services. *Dual-use* refers to items having both commercial "civilian applications" as well as "military, terrorism, weapons of mass destruction, or law-enforcement-related applications." ECRA requires the President to control "the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons." Foreign-made items are subject to U.S. export controls if they contain more than a *de minimis* amount of U.S.-sourced content.

The Commerce Department's Bureau of Industry and Security (BIS) administers ECRA through the Export Administration Regulations (EAR), which categorize goods and technology BIS controls on the Commerce Control List (CCL) and set forth licensing requirements for controlled items depending on the reason for control and the planned destination. ECRA states that "no fee may be charged in connection with the submission, processing, or consideration of any application for a license or other authorization or other request made in connection with any regulation in effect under the authority of [ECRA]."

Export Controls for Semiconductor Chips

As discussed in another CRS report, the U.S. government has sought in recent years to impose more stringent controls on exports of advanced semiconductors chips, such as those produced by Nvidia and AMD, to the PRC. Prior to the Chips Arrangement, BIS regulations applied a "presumption-of-denial" license review to exports of Nvidia's H200 chips and similar chips to Macau and a group of "arms embargoed" countries that includes the PRC. Some lawyers describe presumption-of-denial review as "effectively barring" exportation.

On January 15, 2026, BIS implemented the export-control component of the Chips Arrangement by promulgating a new rule making an exception to this presumption-of-denial review for certain chips. The rule amends the EAR by adding a new case-by-case license review policy for chips that fall within certain technical limits, including "the Nvidia H200, AMD MI325X, and similar chips," destined for end users in the PRC and Macau. The BIS rule requires these chips to undergo testing in the United States by a qualified third-party lab to ensure that the chips do not exceed permissible technical specifications. Some lawyers view the change to a case-by-case review process as a relaxation of prior policy that opens a path to exportation of the chips, but only if stringent criteria are met.

The BIS rule does not address the 25% fee, which (as explained above) was implemented in the form of an import tariff under Section 232. Apart from the uncertainty as to whether Section 232 authorizes this tariff, it is debatable whether the tariff is consistent with ECRA's prohibition on charging fees "in connection with" export control licenses. The term "in connection with" arguably prohibits not only using ECRA itself as legal authority to impose fees, but also using another statute (in this case, Section 232) to impose fees related to an export license granted under ECRA. There appear to be no judicial decisions interpreting ECRA's fee prohibition, making it difficult to predict how courts might apply the prohibition in the context of the Chips Arrangement.

Opponents of the Chips Arrangement may argue that the 25% tariff represents an impermissible export license fee, since the tariff proclamation was issued contemporaneously with the BIS rule and appears designed to implement the Chips Arrangement by imposing a 25% exaction on chips subject to the newly relaxed export license policy. Thus, opponents may argue, the 25% tariff constitutes a prohibited fee "in connection with" a license to export the chips at issue to the PRC. Proponents may argue that this import tariff should not be viewed as a fee "in connection with" export licenses, in part because (as explained above) the tariff might conceivably apply to some chips imported for domestic use and, conversely, would not apply to any chips manufactured in the United States and exported to the PRC.

The U.S. Constitution's Prohibition on Export Tariffs

Overview of the Export Clause

The Constitution's Export Clause (Article I, Section 9, clause 5) states: "No Tax or Duty shall be laid on Articles exported from any State." The Supreme Court has characterized this clause as an "exception" to Congress's constitutional power to "lay and collect Taxes, Duties, Imposts and Excises." When a deal broadly similar to the Chips Arrangement was originally reported in August 2025, some commentators questioned whether the arrangement violated the Export Clause to the extent it might impose monetary exactions on chips exported from the United States to the PRC.

The Supreme Court has explained that the Export Clause "broadly exempt[s]" from taxation both exported goods as well as "services and activities closely related to the export process." Thus, it has held, the clause requires "not simply an omission of a tax upon the articles exported, but also a freedom from any tax which directly burdens the exportation." For example, the Court has held that a tax imposed on bills of lading for exported articles was unconstitutional, reasoning that a bill of lading is "necessarily always associated with every shipment of articles of commerce." The Court has also twice held that taxes upon marine insurance policies were not constitutional as applied to policies for export shipments.

By contrast, the Supreme Court has held that "a general tax, laid on all property alike, and not levied on goods in course of exportation, nor because of their intended exportation, is not within the [Export Clause's] prohibition." For instance, the Court held that a tax requiring corporations to pay a percentage of their entire net income did not violate the Export Clause as applied to a plaintiff corporation that was "chiefly engaged" in the export business.

Application of the Export Clause to the Chips Arrangement

It is uncertain whether a court would determine that the Chips Arrangement is permissible under the Supreme Court's Export Clause decisions. As noted, the 25% exaction is being imposed when the subject chips are imported into the United States, rather than when they are exported to the PRC. In addition, as explained above, the overlap between chips subject to the tariff and chips exported to the PRC may be imperfect, as some chips imported for domestic use could potentially be subject to the tariff, while domestically manufactured chips exported to the PRC would avoid the tariff. These considerations may suggest that the Chips Arrangement involves neither a "tax upon the articles exported" nor a "tax which directly burdens the[ir] exportation," and is therefore permissible under the Export Clause.

On the other hand, it may be argued that the Chips Arrangement unconstitutionally taxes or burdens exports to the extent it is primarily designed to impose a 25% exaction as a condition on exportation to the PRC. For example, based on the broad, open-ended exemptions for domestic-use chips in Proclamation 11,002, it is unclear whether the tariff will apply to any chips other than those exported to the PRC. It is also unclear whether any of the subject chips exported to the PRC might be manufactured domestically, thus avoiding the tariff. Notwithstanding that the 25% exaction is collected as an "import tariff," it might constitute an unconstitutional export tax inasmuch as it falls upon the subject chips "because of their intended exportation" or "directly burdens the[ir] exportation."

Arguably supporting characterization of the 25% tariff as an unconstitutional export tax is the likelihood that the relevant chips would not need to be imported into the United States but for the new BIS rule, which requires the chips to undergo a security review in the United States before they may be exported to the PRC. If these chips are imported solely to facilitate their exportation to the PRC, a 25% tariff on that importation might be viewed as an unconstitutional tax "on goods in course of exportation."

The Supreme Court has held that an exaction may survive scrutiny under the Export Clause if it constitutes a "user fee," meaning a "charge designed as compensation for Government-supplied services, facilities, or benefits." Courts are less likely to consider an exaction to be a user fee if it is based on the quantity or value of the exported articles or if the charge does not "'fairly match' or 'correlate reliably with' [an] exporter['s]" use of government services. Regarding the Chips Arrangement, the Administration does not appear to have claimed that the 25% tariff is intended as a user fee. Proclamation 11,002 characterizes the tariff as "*ad valorem*" (i.e., based on a percentage of value of the chips), a factor that tends to negate characterization as a user fee.

Considerations for Congress

The Constitution gives Congress the power "[t]o "regulate Commerce with foreign nations" as well as the power "[t]o lay and collect Taxes, Duties, Imposts and Excises," while the Export Clause constrains Congress's taxing by prohibiting taxes or tariffs "on Articles exported from any State." By enacting Section 232, ECRA, and other laws, Congress has delegated certain authorities over tariffs and the regulation of foreign commerce to the executive branch. Congress may consider amending Section 232 or ECRA, or enacting other legislation, to clarify whether the statutes give the executive branch authority for the Chips Arrangement and similar programs, provided that Congress may not authorize such programs to the extent that they would contravene the Export Clause.

One bill introduced in the 119th Congress, H.R. 6875, would generally prohibit granting export licenses for certain chips to the PRC and other named "countries of concern" unless Congress approves the license by enacting a joint resolution into law. In addition to such measures, Congress could consider legislation addressing to what extent decisions regarding export controls should take into consideration opportunities for the government to obtain revenue or ownership interests in private companies, in the event ECRA's fee prohibition does not already codify congressional policy on this issue.

Courts could potentially determine whether actions the Trump Administration has taken to implement the Chips Arrangement under Section 232 and ECRA are permitted by those statutes, as well as whether these actions comport with the Export Clause, but it is uncertain who might have standing (the legal right) to file a lawsuit to invalidate those actions. In January 2026, two Nvidia shareholders sued the company in Delaware state court in connection with the Chips Arrangement, claiming that ECRA prohibits the government from requiring payments in connection with an export license. The plaintiffs petitioned the court to order access to company records rather than to nullify the arrangement itself.

Companies that sell chips subject to the Chips Arrangement might lack an interest in filing lawsuits to challenge the arrangement, since the government could potentially deny export licenses for those sales if a court held that the government was not permitted to impose the 25% exaction. In the event that the Chips Arrangement is not challenged in court by a party with legal standing, Congress's response to the arrangement may determine, at least as a practical matter, whether the executive branch has the power to implement the arrangement or others like it.

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