

AN INTRODUCTION TO INTERNATIONAL TRADE, PROTECTIONISM, AND THE USE OF  
INTERNATIONAL TRADE AS A FOREIGN POLICY TOOL

ANTHONY DiBELLO AND KAYLA SCHWEIN

*Executive Summary: This memo begins by providing a brief overview of international trade by outlining the governing bodies of law, covering relevant jurisdictional bodies, and discussing recent United States actions. This memo concludes by explaining the trend towards protectionism in international procurement, the use of international trade as a foreign policy tool in response to international conflicts, and current litigation regarding presidential use of tariffs as a national security tool.*

I. INTRODUCTION

International trade is the exchange of goods and services across international borders.<sup>1</sup> This exchange can bring profound benefits to all states involved, but it comes with a necessary tradeoff—while it makes foreign markets available to domestic traders, it also subjects domestic firms to competition from abroad.<sup>2</sup> States attempt to regulate international trade by adopting a variety of regulations to balance these tradeoffs with other national priorities. These regulations can be dynamic and complex, and they tend to either promote free trade policies or advocate for more restrictive measures.<sup>3</sup>

Proponents of free trade contend that such policies spur economic growth, promote global efficiency and innovation, raise product standards, reduce the costs of goods, and facilitate an international exchange of ideas.<sup>4</sup> Conversely, advocates of restrictive measures argue that such policies promote national security, encourage food security, limit consumer exposure to goods derived from unethical or anti-competitive practices, and insulate the country from external economic shocks, such as sanctions imposed by adversarial nations.<sup>5</sup>

In the United States, the Constitution grants Congress and the Executive Branch the authority to jointly regulate this complex environment.<sup>6</sup> The Executive Branch negotiates and signs treaties. As an example of the Executive Branch's trade authority, in 2022, former President Biden launched the Indo-Pacific Economic Framework for Prosperity (IPEF) with

---

<sup>1</sup> See JOHN H. JACKSON, WILLIAM J. DAVEY & ALAN O. SYKES, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS: CASES, MATERIALS AND TEXT 1 (6th ed. 2013) (introducing the role of international economic relations in trade).

<sup>2</sup> See Marketa Trimble, *Unjustly Vilified TRIPS-Plus?: Intellectual Property Law in Free Trade Agreements*, 71 AM. U. L. REV. 1449 (2022); Kimberly Amadeo, *International Trade: Pros, Cons, and Effect on the Economy*, THE BALANCE (Oct. 2, 2021, 7:21 PM), <https://www.thebalance.com/international-trade-pros-cons-effect-on-economy-3305579>.

<sup>3</sup> See JACKSON, *supra* note 1, at 5–7 (providing a timeline of the growth of international trade from the mercantilist era to World War II).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> U.S. CONST. art. I, § 8; U.S. CONST. art. II, § 2; see SHAYERAH I. AKHTAR, CONG. RSCH. SERV., IF11016, U.S. TRADE POLICY FUNCTIONS: WHO DOES WHAT? (2024) (outlining the functions of key U.S. trade agencies).

thirteen other countries to create a new framework for economic engagement in the Indo-Pacific region.<sup>7</sup> Congress, on the other hand, is responsible for ratifying those treaties and creating trade policies, such as the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, which authorized the commencement of the U.S.-Taiwan deal.<sup>8</sup> A combination of domestic and international law governs international trade disputes, and several U.S. courts, including the U.S. Court of Appeals for the Federal Circuit, adjudicate these cases.<sup>9</sup>

## II. GOVERNING LAWS AND TOOLS OF INTERNATIONAL TRADE

### A. *Free Trade Agreements*

Laws that govern international trade are derived from a variety of authorities, including bilateral, multilateral, and regional trade agreements, import policies, export controls, and sanctions. Free trade agreements (FTAs) are the primary means through which the U.S. facilitates trade.<sup>10</sup> FTAs tend to promote the quasi-unrestricted movement of goods across borders, subject to certain limitations and guarantees.<sup>11</sup> FTAs almost universally include provisions guaranteeing, to some extent, that parties will enjoy access to the markets of the other participating parties.<sup>12</sup> Most FTAs include provisions mandating protections for intellectual property and fairlabor practices.<sup>13</sup> Further, FTAs often have foreign direct investment limitations and guarantees, tariff regulations, methods for determining country of origin, and clauses detailing dispute settlement procedures.<sup>14</sup>

Currently, the United States is a party to fourteen FTAs, covering twenty different countries.<sup>15</sup> Most recently, the United States-Mexico-Canada Agreement (USMCA) entered into

---

<sup>7</sup> *Indo-Pacific Economic Framework for Prosperity*, U.S. DEP'T OF COM., <https://www.commerce.gov/ipef> (last visited Sep. 6, 2024).

<sup>8</sup> See Ways & Means Comm., *Bipartisan Taiwan Bill Reasserting Congress' Const. Auth. Over Trade Heads to President's Desk*, Ways & Means Comm. Blog (July 19, 2023), <https://waysandmeans.house.gov/bipartisan-taiwan-bill-reasserting-congress-constitutional-authority-over-trade-heads-to-presidents-desk/>; United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, Pub. L. No. 118-13, 137 Stat. 63.

<sup>9</sup> *Court Jurisdiction*, FED. CIR., <https://cafc.uscourts.gov/home/the-court/about-the-court/court-jurisdiction/> (last visited Sep. 6, 2024) (explaining the U.S. Court of Appeals for the Federal Circuit's jurisdiction over a unique variety of subject matters, including international trade, government contracts, patents, trademarks, federal personnel, and more).

<sup>10</sup> See ANDRES B. SCHWARZENBERG & REBECCA M. NELSON, CONG. RSCH. SERV., R45474, INTERNATIONAL TRADE AND FINANCE: OVERVIEW AND ISSUES FOR THE 116TH CONGRESS, 23 (2020); see also CHRISTOPHER A. CASEY, ANDRES B. SCHWARZENBERG & DANIELLE M. TRACHTENBERG, CONG. RSCH. SERV., R47484, INTERNATIONAL TRADE AND FINANCE: OVERVIEW AND ISSUES FOR THE 118TH CONGRESS, 23 (2023) (noting that FTAs have “historically been a core component of U.S. trade policy”).

<sup>11</sup> See SCHWARZENBERG & NELSON, *supra* note 10, at 26.

<sup>12</sup> *Id.*

<sup>13</sup> See *id.* (noting that NAFTA was the first trade agreement to include protections on intellectual property rights, labor, and the environment). See generally North American Free Trade Agreement, 19 U.S.C. § 3311 (repealed and replaced by the United States-Mexico-Canada Agreement on July 1, 2020).

<sup>14</sup> See SCHWARZENBERG & NELSON, *supra* note 10, at 26.

<sup>15</sup> See *Free Trade Agreements*, INT'L TRADE ADMIN., <https://www.trade.gov/free-trade-agreements> (last visited Sep. 30, 2025).

force in 2020, replacing the North American Free Trade Agreement (NAFTA).<sup>16</sup> Notably, the USMCA includes a rapid response labor mechanism between the United States and Mexico, which advances workers' rights by expediting review and enforcement of labor complaints.<sup>17</sup>

### *B. Import Policies: Tariffs, Quotas, and Import Licenses*

Import tariffs, quotas, and licenses are some of the primary ways the U.S. government regulates and limits imports from foreign entities. While many import policies are used to promote the exchange of goods by lowering the costs of trade, these policies can also be used to raise the barrier to entry and limit foreign traders' abilities to export goods to the United States.<sup>18</sup>

An import tariff is a tax levied against goods imported from another country.<sup>19</sup> The exact tariff rate is calculated using the Harmonized Tariff Schedule (HTS)—a database operated by the U.S. International Trade Commission (USITC)—which factors in the type of product being imported, the country of origin, and the existence of preferential trade agreements.<sup>20</sup>

Quotas place a limit on the amount or volume of certain commodities that can be imported into the United States over a given period.<sup>21</sup> Quotas are imposed by legislation, Presidential Proclamation, or Executive Orders.<sup>22</sup> Import quotas in the United States are either absolute quotas or tariff rate quotas.<sup>23</sup> U.S. Customs and Border Protection administers the majority of import quotas, but does not have the authority to change any quota.<sup>24</sup> However, the Office of the U.S. Trade Representative coordinates with other government agencies to set quota limits.<sup>25</sup>

The World Trade Agreement on Import Licensing Procedures requires member states to

---

<sup>16</sup> See United States-Mexico-Canada Agreement, Pub. L. 116-113, § 2, 134 Stat. 11 (2020); *United States-Mexico-Canada Agreement*, U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement> (last visited Sep. 6, 2024); North American Free Trade Agreement, 19 U.S.C. § 3311.

<sup>17</sup> Jayme White & Greta Peisch, *United States Utilizes Innovative Labor and Trade Tool to Bring Concrete Wins for Workers Across North America*, U.S. TRADE REPRESENTATIVE (Nov. 2022), <https://ustr.gov/about-us/policy-offices/press-office/blogs-and-op-eds/2022/november/united-states-utilizes-innovative-labor-and-trade-tool-bring-concrete-wins-workers-across-north>; see also Kathleen Claussen, *The Track Record of the USMCA Rapid Response Mechanism* (Brookings Inst., USMCA Forward 2024), <https://www.brookings.edu/articles/the-track-record-of-the-usmca-rapid-response-mechanism/> (chronicling the first four years of USMCA's rapid response mechanism).

<sup>18</sup> An important tool that the United States can utilize to provide countries with beneficial access to U.S. markets is through Congressional enactment of trade preference programs (TPPs), which provide unilateral and nonreciprocal advantages to designated beneficiary countries. See VIVIAN C. JONES, J. F. HORNBECK, M. ANGELES VILLARREAL, CONG. RSCH. SERV. R41429, TRADE PREFERENCES ECONOMIC ISSUES AND POLICY OPTIONS 1–2 (2013). For a comprehensive list of TPPs currently in effect, see *Trade Preference Programs*, INT'L TRADE ASS'N, <https://www.trade.gov/trade-preference-programs> (last updated Sep. 30, 2025).

<sup>19</sup> See *Import Tariffs Overview and Resources*, INT'L. TRADE ADMIN., <https://www.trade.gov/import-tariffs-fees-overview> (last visited Sep. 6, 2024).

<sup>20</sup> *Id.*

<sup>21</sup> *Quota Administration*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/trade/quota/guide-import-goods/administration> (last modified Jan. 27, 2023).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; see *Mission of the USTR*, U.S. TRADE REP., <https://ustr.gov/about-us/about-ustr> (last visited Sep. 6, 2024).

abide by certain rules in administering import licensing systems.<sup>26</sup> Import licensing systems are procedures requiring an application to be submitted to a specific administrative body prior to importation.<sup>27</sup> As a member of the Agreement, the Office of U.S. Trade Representative's Committee on Import Licensing administers the agreement and discusses with other member states about their licensing regimes.<sup>28</sup> The United States imposes import licenses on a variety of products, which in turn limits the number of entities permitted to import the licensed goods.<sup>29</sup>

### C. *National Security and Foreign Policy Implications*

International trade decisions are not purely an economic endeavor; rather, national security and foreign policy are also often factored into U.S. international trade policies. The United States often utilizes export controls and sanctions for foreign policy and national security purposes.<sup>30</sup> Export controls are used to protect national security interests by preventing the proliferation of sensitive and critical technologies, such as nuclear material, defense articles and services, and dual-use goods.<sup>31</sup> Sanctions are restrictive economic measures used against an individual, entity, or country.<sup>32</sup> These measures include trade embargoes, restrictions on the use of U.S. dollars, denial of foreign assistance and investments, freezing of foreign assets, and prohibiting transactions with U.S. entities.<sup>33</sup>

Often, export controls and sanctions are used in tandem when national security risks are identified. In 2022, the United States enacted unilateral controls against China focused on semiconductor and supercomputer-related technologies through the Export Administration Regulations (EAR).<sup>34</sup> These controls increased Entity List designations that require specific licenses for exports related to China and increased focus on military intelligence end-user controls for China with the purpose of “prevent[ing] sensitive technologies with military applications from being acquired by . . . China’s military.”<sup>35</sup> Further, the United States has

---

<sup>26</sup> See *Import Licensing*, U.S. TRADE REP., <https://ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/import-licensing> (last visited Sep. 6, 2024); see also *Technical Information on Import Licensing*, WTO, [https://www.wto.org/english/tratop\\_e/implic\\_e/implic\\_info\\_e.htm](https://www.wto.org/english/tratop_e/implic_e/implic_info_e.htm) (last visited Sep. 6, 2024).

<sup>27</sup> *Technical Information on Import Licensing*, WTO, [https://www.wto.org/english/tratop\\_e/implic\\_e/implic\\_info\\_e.htm](https://www.wto.org/english/tratop_e/implic_e/implic_info_e.htm) (last visited Sep. 6, 2024).

<sup>28</sup> *Import Licensing*, U.S. TRADE REP., <https://ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/import-licensing> (last visited Sep. 6, 2024).

<sup>29</sup> See *How to Get an Import License or Permit*, U.S. GOV'T, <https://www.usa.gov/import-license-permit#:~:text=In%20most%20cases%2C%20you%20will,and%20Exporters%20provides%20an%20overview> (last visited Sep. 6, 2024).

<sup>30</sup> See SCHWARZENBERG & NELSON, *supra* note 10, at 49 (mentioning that dual-use technologies include commodity, software, or technology that has both commercial and military applications).

<sup>31</sup> See generally AKHTAR, *supra* note 6 (describing how certain federal agencies coordinate national security and foreign policy priorities through U.S. trade policy).

<sup>32</sup> Johnathan Masters, *What Are Economic Sanctions?*, COUNCIL ON FOREIGN RELS. (June 24, 2024), <https://www.cfr.org/backgrounder/what-are-economic-sanctions>.

<sup>33</sup> See ANDRES B. SCHWARZENBERG & CHRISTOPHER A. CASEY, CONG. RSCH. SERV., R46669, INTERNATIONAL TRADE AND FINANCE: OVERVIEW AND ISSUES FOR THE 117TH CONGRESS (2021).

<sup>34</sup> See 15 C.F.R. § 730-80 (2022).

<sup>35</sup> *Commerce Implements New Export Controls on Advanced Computing and Semiconductor Manufacturing Items to the People's Republic of China*, U.S. DEP'T OF COM. (Oct. 7, 2022); see 15 C.F.R. § 730-80 (2022); see also Peter

expanded export restrictions on Nvidia artificial intelligence chips to the Middle East to prevent these chips from military end-use in China.<sup>36</sup>

### III. JURISDICTIONAL BODIES AND TRADE ADJUDICATION

#### A. U.S. Court of International Trade

The U.S. Court of International Trade (CIT) has broad subject matter jurisdiction over customs and international trade cases and hears claims from both private parties and other government agencies, such as the Department of Commerce (DOC), the Department of Homeland Security (DHS), and the USITC.<sup>37</sup> The CIT also has broad geographical jurisdiction, as it can hear and decide cases that arise anywhere in the United States.<sup>38</sup> A number of quasi-judicial bodies existed prior to the CIT, but in 1956, Congress established a court to address international trade under Article III of the Constitution.<sup>39</sup> Congress enhanced and refined the court's powers in the Customs Courts Act of 1970 and officially designated the court the United States Court of International Trade in the Customs Courts Act of 1980.<sup>40</sup> The President appoints the nine judges, with the advice and consent of the Senate, to the CIT.<sup>41</sup>

Prior to filing a claim with the CIT, government agencies typically attempt to settle matters involving private entities and the U.S. government. In such instances, several agencies participate and have specialized roles. The DOC investigates issues involving dumping or anti-competitive subsidizing, Customs and Border Protection (CBP) enforces antidumping and countervailing duty orders, and the USITC reviews whether a substantial injury to a domestic industry exists.<sup>42</sup> However, the decisions and findings of these agencies are appealable to the CIT, and decisions from the CIT are appealable to the U.S. Court of Appeals for the Federal

---

Hoskins, *US Orders Immediate Halt to Some AI Chip Exports to China, Nvidia Says*, BBC (Oct. 24, 2023), <https://www.bbc.com/news/business-67213134>.

<sup>36</sup> Joe Middleton, *US Restricts Exports of Nvidia AI Chips to Middle East*, THE GUARDIAN (Aug. 31, 2023), <https://www.theguardian.com/technology/2023/aug/31/us-restricts-exports-of-nvidia-ai-chips-to-middle-east>.

<sup>37</sup> See *About the Court*, CT. INT'L TRADE, <https://www.cit.uscourts.gov/about-court> (last visited Sep. 6, 2024).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*; see Act of July 14, 1956, 28 U.S.C. § 251(a).

<sup>40</sup> *About the Court*, CT. INT'L TRADE, <https://www.cit.uscourts.gov/about-court> (last visited Sep. 6, 2024); see Customs Courts Act of 1970, Pub. L. No. 91-271, § 110, 84 Stat. 274; Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727.

<sup>41</sup> *About the Court*, CT. INT'L TRADE, <https://www.cit.uscourts.gov/about-court> (last visited Sep. 6, 2024).

<sup>42</sup> See *Understanding Anti-Dumping & Countervailing Duty Investigations*, USITC, [https://www.usitc.gov/press\\_room/usad.htm](https://www.usitc.gov/press_room/usad.htm) (last visited Sep. 6, 2024). The Supreme Court recently overruled *Chevron U.S.A. v. National Resources Defense Council* in deciding *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce*. See *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). The *Loper Bright* decision ended the “*Chevron* deference” doctrine, and now claimants have new opportunities to challenge administrative agency positions previously upheld on deference grounds. See *The Supreme Court’s Double Hammer to Agencies: Loper Bright and Corner Post Set New Precedents for Challenging Federal Agency Action*, CROWELL (July 11, 2024), [https://www.crowell.com/en/insights/client-alerts/the-supreme-courts-double-hammer-to-agencies-loper-bright-and-corner-post-set-new-precedents-for-challenging-federal-agency-action#\\_ftn2](https://www.crowell.com/en/insights/client-alerts/the-supreme-courts-double-hammer-to-agencies-loper-bright-and-corner-post-set-new-precedents-for-challenging-federal-agency-action#_ftn2).

Circuit.<sup>43</sup>

### *B. U.S. International Trade Commission*

The U.S. International Trade Commission (USITC) is an independent federal agency led by six Commissioners.<sup>44</sup> The President nominates Commissioners, and the U.S. Senate confirms the nominees.<sup>45</sup> The USITC's three primary responsibilities are adjudicating import proceedings, conducting tariff analysis and research, and maintaining the Harmonized Tariff Schedule.<sup>46</sup> Under its adjudicative authority, the USITC may determine whether particular imports “injure a domestic industry or violate U.S. intellectual property rights.”<sup>47</sup>

USITC adjudication of import matters includes the Commission's review of disputes that arise under 19 U.S.C. § 1337 (Section 337).<sup>48</sup> Section 337 investigations, also known as “unfair import” investigations, often involve claims that imported goods have violated either utility patents, design patents, registered trademarks, or common law trademarks.<sup>49</sup> After Administrative Law Judges conduct trial proceedings, the Commission delivers a final decision on the given dispute.<sup>50</sup> Common remedies include both exclusion orders and cease and desist orders.<sup>51</sup> USITC reports that over seventy-five Section 337 complaints have been filed since the start of fiscal year 2024,<sup>52</sup> and products at issue in recently filed unfair complaints include vaporizers, earpieces, and human milk oligosaccharides.<sup>53</sup>

## IV. PRESIDENTIAL POWER TO REGULATE TRADE

Congress has enacted several laws that delegate its foreign commerce power to the President, including Section 232 of the Trade Expansion Act of 1962, and Sections 201 and 301 of the Trade Act of 1974.<sup>54</sup> However, U.S. presidents have tested the boundaries of their congressionally granted authority. Notably, in his first administration as president, Trump

---

<sup>43</sup> *Id.*; *see, e.g.*, *Pro-Team Coil Nail Enter. Inc. v. United States*, No. 2022-2241, 2024 WL 3824005, at \*1 (Fed. Cir. Aug. 15, 2024) (reviewing a case on appeal from the CIT affirming the DOC's determination in an administration review of an antidumping order).

<sup>44</sup> *About the USITC*, U.S INT'L TRADE COMM'N., [https://www.usitc.gov/press\\_room/about\\_usitc.htm](https://www.usitc.gov/press_room/about_usitc.htm) (last visited Oct. 2, 2025).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *About Section 337*, U.S INT'L TRADE COMM'N., [https://www.usitc.gov/intellectual\\_property/about\\_section\\_337.htm](https://www.usitc.gov/intellectual_property/about_section_337.htm) (last visited Oct. 2, 2025).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Section 337 Statistics*, U.S INT'L TRADE COMM'N (Apr. 11, 2025), [https://www.usitc.gov/intellectual\\_property/337\\_statistics.htm](https://www.usitc.gov/intellectual_property/337_statistics.htm).

<sup>53</sup> *See Cases*, U.S INT'L TRADE COMM'N, [https://ids.usitc.gov/case?type=advanced\\_quick\\_link](https://ids.usitc.gov/case?type=advanced_quick_link) (last visited Oct. 26, 2025).

<sup>54</sup> *See* 19 U.S.C. § 1862(f); 19 U.S.C. §§ 2251–2254; 15 U.S.C. §§ 2411–2416.

unilaterally imposed tariffs to address perceived national security concerns with China's anti-competitive trade practices, impacting approximately sixteen percent of U.S. imports.<sup>55</sup> Furthermore, asserting national security interests, President Biden issued Executive Order (EO) 14105 to block and regulate U.S. investments funneling toward Chinese technology industries.<sup>56</sup> These actions demonstrate a larger trend by the executive in imposing national security authority to regulate trade.

#### A. Section 232 and the Trade Expansion Act of 1962

Section 232 of the Trade Expansion Act of 1962 allows any department, agency head, or interested party to request that the DOC investigate the effect of certain imports on U.S. national security.<sup>57</sup> After initiating an investigation, the DOC consults with the Department of Defense and "other appropriate officers of the United States" to discuss specific policy and security questions relevant to the investigations.<sup>58</sup> The DOC has 270 days from the initiation date to produce a report advising the President on the threat to national security posed by the imported product and provide recommendations based on the findings.<sup>59</sup> The President may then decide on necessary remedies.<sup>60</sup>

During his first term as president in March 2018, President Trump imposed a twenty-five percent tariff on steel imports and a ten percent tariff on aluminum imports, resulting in several international bodies, including the European Union (EU), China, Mexico, and Canada, imposing retaliatory tariffs on the same products.<sup>61</sup> The tariffs were also met with domestic resistance, including several lawsuits heard by the CIT and the Federal Circuit, challenging the legality of the tariffs.<sup>62</sup> In February 2025, President Trump reinstated the full 25% tariff on steel imports

---

<sup>55</sup> See generally RACHEL F. FEFER, KEIGH E. HAMMOND, VIVIAN C. JONES, BRANDON J. MURRILL, MICHAELA D. PLATZER & BROCK R. WILLIAMS, CONG. RSCH. SERV., R45249, SECTION 232 INVESTIGATIONS: OVERVIEW AND ISSUES FOR CONGRESS 25–28 (2020) (detailing former President Trump's use of Section 232 tariffs); CATHLEEN D. CIMINO-ISAACS & RACHEL F. FEFER, CONG. RSCH. SERV. R45417, WORLD TRADE ORGANIZATION: OVERVIEW AND FUTURE DIRECTION 20 (2020).

<sup>56</sup> Exec. Order No. 14105, 88 Fed. Reg. 54,867 (Aug. 11, 2023); PETER S. BAKER & DAVID E. SANGER, *Biden Orders Ban on New Investments in China's Sensitive High-Tech Industries*, N.Y. TIMES (Aug. 9, 2023), <https://www.nytimes.com/2023/08/09/us/politics/biden-ban-china-investment.html>.

<sup>57</sup> 19 U.S.C. § 1862(b)(1)(a).

<sup>58</sup> *Id.* § 1862(b)(1)(b)–(2)(a)(ii).

<sup>59</sup> *Id.* § 1862(b)(3)(a).

<sup>60</sup> *Id.* § 1862(c)(1)(a)(i)–(ii).

<sup>61</sup> See Proclamation No. 9980, 85 Fed. Reg. 5281 (Jan. 24, 2020) (imposing tariffs on imports of steel and aluminum articles); JOSEPH PARILLA & MAX BOUCHET, *Which US Communities Are Most Affected by Chinese, EU, and NAFTA Retaliatory Tariffs?*, BROOKINGS INST. (Oct. 2018), <https://www.brookings.edu/research/which-us-communities-are-most-affected-by-chinese-eu-and-nafta-retaliatory-tariffs>.

<sup>62</sup> See, e.g., *Am. Inst. for Int'l Steel, Inc. v. United States*, 415 F. Supp. 3d 1267, 1269 (Ct. Int'l Trade 2019) (holding that Congress acted constitutionally when it delegated tariff authority to the Executive Branch in Section 232 of the Trade Expansion Act of 1962); *Severstal Exp. GmbH v. United States*, 374 F. Supp. 3d 1368, 1370 (Ct. Int'l Trade 2019) (denying Severstal's challenge for a preliminary injunction that would have stopped the imposition of the President's Section 232 tariff); *Transpacific Steel LLC v. United States*, 415 F. Supp. 3d 1267, 1276 (Ct. Int'l Trade 2019) (holding the additional section 232 tariffs on Turkish steel violated statutorily mandated procedures).

and increased tariffs on aluminum imports to 25%.<sup>63</sup> In June 2025, the Trump administration increased tariffs from 25% to 50% for all partners except the United Kingdom, which remains at 25%.<sup>64</sup> The President also instructed executive agencies to examine key elements of U.S. trade and economic security policy, and to take action against any “unfair” trade practices by foreign partners.<sup>65</sup> The President continues to use national security law to expand tariffs, including on imports of pharmaceuticals, semi-trucks, kitchen cabinets, and furniture.<sup>66</sup> The Commerce Department currently has a variety of Section 232 investigations pending, which could result in more tariffs.<sup>67</sup>

### B. *Section 201 & 301 of the Trade Act of 1974*

Section 201 of the Trade Act of 1974 addresses global safeguard investigations and import relief for domestic industries.<sup>68</sup> The Act states that when a surge in imports seriously threatens domestic industries, the affected industries may petition the USITC for a temporary safeguard.<sup>69</sup> The USITC then judges if an injury exists and recommends a remedy to the President, who then decides whether to provide relief.<sup>70</sup> Such relief may include tariff increases, quotas, or negotiated agreements to shield domestic entities.<sup>71</sup> Section 201 does not require a finding of unfair trade practices on the part of the importers, but only that the injury be “serious” and that increased imports be the “substantial cause” of the injury.<sup>72</sup>

In 2017, the USITC undertook two investigations addressing injuries sustained by domestic industries due to increased imports of photovoltaic cells and large residential washing machines.<sup>73</sup> President Trump issued a proclamation in January 2018 providing relief to the domestic industries by increasing tariffs on imported products.<sup>74</sup> Soon after, Canadian solar

---

<sup>63</sup> Proclamation No. 10896, 90 Fed. Reg. 9817 (Feb. 10, 2025).

<sup>64</sup> Proclamation No. 10947, 90 Fed. Reg. 24199 (June 3, 2025).

<sup>65</sup> See KEIGH E. HAMMOND & WILLIAM F. BURKHART, CONG. RSCH. SERV., R48549, PRESIDENTIAL 2025 TARIFF ACTIONS: TIMELINE AND STATUS (Sep. 16, 2025) (describing the multiple legal authorities Trump has invoked to increase tariffs since the beginning of his second term).

<sup>66</sup> ANA SWANSON, *Trump Expands Tariffs Beyond Supreme Court’s Reach*, N.Y. TIMES (Sep. 25, 2025), <https://www.nytimes.com/2025/09/26/us/politics/trump-tariffs-supreme-court.html>.

<sup>67</sup> See *id.* These investigations could result in tariffs on timber, critical minerals, aircraft, wind turbines, industrial machinery, robotics, medical devices, and personal protective gear.

<sup>68</sup> See *Understanding Safeguard Investigations*, USITC, [https://www.usitc.gov/press\\_room/us\\_safeguard.htm](https://www.usitc.gov/press_room/us_safeguard.htm) (last visited Sep. 6, 2024).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*; 19 U.S.C. § 2252(b).

<sup>71</sup> *Understanding Safeguard Investigations*, *supra* note 48.

<sup>72</sup> *Id.*

<sup>73</sup> See *Section 201—Imported Solar Cells and Modules*, U.S. TRADE REP., <https://ustr.gov/issue-areas/enforcement/section-201-investigations/investigation-no-ta-201-75-cspv-cells> (last visited Sep. 6, 2024); *Section 201—Imported Large Residential Washing Machines (Washers)*, U.S. TRADE REP., <https://ustr.gov/issue-areas/enforcement/section-201-investigations/section-201-imported-large-residential-washing-machines-washers> (last visited Sep. 6, 2024).

<sup>74</sup> See *Section 201 Cases: Imported Large Residential Washing Machines and Imported Solar Cells and Modules*, U.S. TRADE REP., <https://ustr.gov/sites/default/files/files/Press/fs/201%20Cases%20Fact%20Sheet.pdf> (last visited Sep. 6, 2024).



product exporters sought an injunction against the former President’s decision.<sup>75</sup> The Federal Circuit denied the exporters’ request, noting that the President enjoyed substantial discretion under section 201 to determine which measures were necessary to protect domestic entities.<sup>76</sup> In 2022, the Biden administration announced it would extend the section 201 tariffs on imported solar cells for another four years, but with changes to several provisions that include doubling the tariff rate quota from two and a half to five gigawatts and excluding bifacial panels from the tariffs.<sup>77</sup>

Section 301 of the Trade Act of 1974 allows the U.S. Trade Representative (USTR) to impose sanctions on foreign countries that violate U.S. trade agreements or engage in practices that unjustifiably burden U.S. commerce.<sup>78</sup> In 2021, the USTR determined that Vietnam’s practices related to currency valuation and excessive foreign exchange market interventions were unreasonable and burdened U.S. commerce.<sup>79</sup> Another USTR investigation in 2021 ended in an agreement between the United States and Vietnam, where Vietnam committed to keeping illegally harvested or traded timber out of the supply chain.<sup>80</sup> While traditionally the United States has used Section 301 to pressure other countries to remove trade barriers, the United States has recently relied on Section 301 to impose trade restrictions on imports from China.<sup>81</sup>

## V. CURRENT CONTROVERSIES AND CONSIDERATIONS: INTERNATIONAL PROCUREMENT AND INTERNATIONAL TRADE AS A FOREIGN POLICY TOOL

War, pandemics, and rising protectionism have profoundly impacted the international trade scene over the last decade. First, protectionism in international procurement and promotion of U.S. domestic production has been a priority in the last three presidential administrations following the COVID-19 pandemic. Second, the Russian invasion of Ukraine has disrupted international trade, caused inflationary pressures, and developed security concerns—putting pressure on a complex global supply chain.<sup>82</sup> The United States has used international trade measures as a foreign policy tool against Russia to precipitate an end to the conflict.<sup>83</sup> Third, the

---

<sup>75</sup> *Silfab Solar, Inc. v. United States*, 296 F. Supp. 3d 1295, 1297 (Ct. Int’l Trade 2018), *aff’d*, 892 F.3d 1340 (Fed. Cir. 2018).

<sup>76</sup> *Silfab Solar, Inc. v. United States*, 892 F.3d 1340, 1349 (Fed. Cir. 2018).

<sup>77</sup> *A Proclamation to Continue Facilitating Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products)*, THE WHITE HOUSE (Feb. 4, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/04/a-proclamation-to-continue-facilitating-positive-adjustment-to-competition-from-imports-of-certain-crystalline-silicon-photovoltaic-cells-whether-or-not-partially-or-fully-assembled-into-other-produce>.

<sup>78</sup> 19 U.S.C. § 2411(a)(1).

<sup>79</sup> Notice of Determination Pursuant to Section 301: Vietnam’s Acts, Policies, and Practices Related to Currency Valuation, 86 Fed. Reg. 6732 (Jan. 22, 2021).

<sup>80</sup> *USTR Announces Agreement Between the United States and Vietnam to Resolve Timber Section 301 Investigation*, U.S. TRADE REPRESENTATIVE (Oct. 1, 2021), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/ustr-announces-agreement-between-united-states-and-vietnam-resolve-timber-section-301-investigation>.

<sup>81</sup> ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., IF11346, SECTION 301 OF THE TRADE ACT OF 1974 1–2 (May 13, 2024).

<sup>82</sup> PHILIP BLENKINSOP, *Global Trade Rift Widening as Ukraine War Passes Two-Year Mark*, REUTERS (Feb. 22, 2024), <https://www.reuters.com/markets/global-trade-rift-widening-ukraine-war-passes-two-year-mark-2024-02-22>.

<sup>83</sup> ALAN WM. WOLFF, *Paradigm Lost? U.S. Trade Policy as an Instrument of Foreign Policy*, LAW WIRE (Feb. 2,

current Trump administration has invoked the International Emergency Economic Powers Act (IEEPA)<sup>84</sup> to impose tariffs pursuant to declared national emergencies.<sup>85</sup> With the Supreme Court scheduled to hear oral arguments on the President's IEEPA tariffs in November,<sup>86</sup> its opinion will offer a pivotal decision on the separation of powers in the field of international trade.

#### *A. Protectionism in International Procurement*

Government procurement has been an objective of U.S. trade policy, as the United States has attempted to offer opportunities for U.S. goods, services, and suppliers to transcend borders and compete for foreign government procurement.<sup>87</sup> Government procurement typically comprises ten to fifteen percent of most countries' GDP.<sup>88</sup> Thus, the creation of the 1979 World Trade Organization (WTO) Agreement on Government Procurement (GPA) is critical to the global economy, as it created transparent and nondiscriminatory rules, which serve to protect and promote procurement amongst the parties to the GPA.<sup>89</sup> The GPA covers forty-nine parties that have chosen to open their procurement markets.<sup>90</sup> The procurement market covered by the GPA is estimated to be worth around several trillion dollars.<sup>91</sup> Additionally, GPA market access is negotiated in a reciprocal manner; thus, the procurement coverage in different markets and sectors varies.<sup>92</sup>

The GPA and other international agreements that the United States is engaged in create opportunities for foreign suppliers to compete in the U.S. market, just as they do for domestic goods, services, and suppliers. A study by the Government Accountability Office (GAO) found that in 2017, the United States had opened nearly eighty percent of its federal contracts to suppliers around the world.<sup>93</sup> Despite being one of the most open markets across the globe, the United States has historically attempted to ensure that some of its laws restrict foreign sourcing.<sup>94</sup> The two main laws that regulate domestic sourcing are the Buy American Act of 1933 (BAA) and the Trade Agreements Act of 1979 (TAA).<sup>95</sup> The BAA is a domestic price preference statute for U.S. products that controls federal government procurement.<sup>96</sup> The statute

---

2018), <https://www.wcl.american.edu/impact/lawwire/paradigm-lost-us-trade-policy-as-an-instrument-of-foreign-policy>.

<sup>84</sup> Exec. Order No. 14157, 90 Fed. Reg. 8439 (Jan. 20, 2025).

<sup>85</sup> *V.O.S. Selections, Inc. v. Trump*, 25-1812 (Fed. Cir. Aug. 29, 2025).

<sup>86</sup> See AMY HOWE, *Supreme Court announces it will hear challenges to Trump's tariffs on Nov. 5*, SCOTUSBLOG (Sep. 18, 2025), <https://www.scotusblog.com/2025/09/supreme-court-announces-it-will-hear-challenges-to-trumps-tariffs-on-nov-5>.

<sup>87</sup> *Government Procurement*, U.S. TRADE REPRESENTATIVE, <https://ustr.gov/issue-areas/government-procurement> (last visited Sep. 6, 2023).

<sup>88</sup> *Id.*

<sup>89</sup> ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., R47243, U.S. GOVERNMENT PROCUREMENT AND INTERNATIONAL TRADE (Aug. 9, 2024).

<sup>90</sup> *Id.* at 1.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 3.

<sup>93</sup> *Id.*

<sup>94</sup> SCHWARZENBERG, *supra* note 38, at 3.

<sup>95</sup> 41 U.S.C. §§ 8301–8305; 19 U.S.C. §§ 2501–2581.

<sup>96</sup> 41 U.S.C. §§ 8301–8305.

requires that agencies favor domestic end products, yet it does not completely prohibit agencies from choosing a foreign product if the agency determines that the foreign product is equivalent and less costly after a comparative price evaluation test.<sup>97</sup> The TAA, on the other hand, serves to enforce different trade agreements to ensure that products and services of designated countries do not receive discriminatory treatment for procurements covered by the TAA.<sup>98</sup>

The COVID-19 pandemic exposed critical vulnerabilities in U.S. supply chains, prompting a wave of protectionist trade and procurement policies aimed at strengthening domestic manufacturing.<sup>99</sup> Both Congress and the Executive Branch responded by prioritizing U.S.-made goods in federal procurement, with the Biden administration building on the Trump I-era increase to domestic content thresholds under the Buy American Act.<sup>100</sup> Executive Order 14005, signed in January 2021, further advanced this shift by seeking to redirect nearly \$600 billion in federal procurement toward domestic producers, raising the domestic content threshold to 60%.<sup>101</sup> Major legislation—including the CHIPS Act, the Inflation Reduction Act, and the Infrastructure Investment and Jobs Act—reinforces this focus, particularly in strategic sectors like clean energy and semiconductors.<sup>102</sup> The Biden administration also centralized and tightened waiver processes and enforcement under "Made in America" laws, reflecting a broader, bipartisan pivot toward economic nationalism and supply chain resilience in U.S. trade policy.<sup>103</sup> As supply chain issues continue to dampen national economies, U.S. trade policy has turned inward to protect domestic manufacturers.

### *B. Russia/Ukraine Conflict: International Trade as a Foreign Policy Tool*

Since Russia's invasion of Ukraine in 2022, the United States and its allies have used trade policy as a central tool to counter Russian aggression.<sup>104</sup> By imposing sweeping sanctions, export controls, and revoking Russia's permanent normal trade relations (PNTR), the United States has sought to degrade Russia's military and economic capabilities.<sup>105</sup> These measures—authorized under the International Emergency Economic Powers Act (IEEPA) and enforced through agencies like the Bureau of Industry and Security (BIS)—target critical sectors such as

---

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> ANDRES B. SCHWARZENBERG & CHRISTOPHER A. CASEY, CONG. RSCH. SERV., R46669, INTERNATIONAL TRADE AND FINANCE: OVERVIEW AND ISSUES FOR THE 117TH CONGRESS (2021).

<sup>100</sup> *See id.*; JEFFREY ANDERSON, *The Silver Lining of Biden's 'New Protectionism,'* FOREIGN POLICY (Mar. 2, 2023), <https://foreignpolicy.com/2023/03/02/biden-protectionism-us-eu-economy-investment-green-industry>; *see also* SIMON SCHROPP, *International Trade Policy Under Biden: The "New" Washington Consensus and Its Discontents*, WASHINGTON INTERNATIONAL TRADE ASSOCIATION (June 19, 2024), <https://www.wita.org/atp-research/trade-biden> (noting that the President's industrial policy maintains many of his predecessor's protectionist trade policies, though it is less aggressive, being termed as "polite protectionism" by commentators).

<sup>101</sup> Exec. Order No. 14005, 86 F.R. 7475 (2021).

<sup>102</sup> *See* ANDERSON, *supra* note 100.

<sup>103</sup> *See id.*; SCHROPP, *supra* note 100.

<sup>104</sup> CORY WELT, CONG. RSCH. SERV., IN11869, RUSSIA'S 2022 INVASION OF UKRAINE: OVERVIEW OF U.S. SANCTIONS AND OTHER 1 (July 6, 2022).

<sup>105</sup> *See* REBECCA M. NELSON, CHRISTOPHER A. CASEY & ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., IF12062, NEW FINANCIAL AND TRADE SANCTIONS AGAINST RUSSIA (Mar. 17, 2022); CATHLEEN D. CIMINO-ISAACS, BRANDON J. MURRILL, LIANA WONG & NINA M. HART, CONG. RSCH. SERV., IF12071, RUSSIA'S TRADE STATUS, TARIFFS, AND WTO ISSUES (Apr. 11, 2022).

oil refining, advanced technology, and defense.<sup>106</sup> Russia now faces significant supply shortages, turning to countries like Iran and North Korea for support.<sup>107</sup>

The United States has also implemented tariffs, blocked access to key technologies, and enforced foreign direct product rules (FDPRs) to restrict indirect access to American innovation.<sup>108</sup> Sanctions have expanded beyond Russian borders, targeting entities and individuals that support Russia's war efforts.<sup>109</sup> This aggressive trade posture marks a significant shift in how the United States leverages international economic tools to uphold national security and foreign policy in today's increasingly multipolar world.

### *C. IEEPA and the Imposition of Tariffs Pursuant to Declared National Emergencies*

The International Emergency Economic Powers Act (IEEPA) was implemented in 1977 by Congress and gives the President broad authority to regulate a range of economic transactions after a declaration of a national emergency.<sup>110</sup> Under the Act, the President may only exercise their authorities in response to an "unusual and extraordinary" foreign threat that has been specifically declared a national emergency for IEEPA purposes.<sup>111</sup> The statute does not permit invoking IEEPA powers based on preexisting emergencies unrelated to such a declaration.<sup>112</sup> Historically, presidents have issued new or amended executive orders to address evolving threats, rather than using IEEPA to expand unrelated national emergencies.<sup>113</sup> This practice reflects statutory limits requiring that IEEPA powers be tied to emergencies declared explicitly for addressing foreign threats.

Invoking IEEPA, President Trump declared a national emergency in January 2025 and imposed tariffs on Canada (25% ad valorem), Mexico (25% ad valorem), and China (10% ad valorem) to "deal with the threats posed by international cartels" and to address "[failures] to do

---

<sup>106</sup> See Russia – Country Com. Guide, INT'L TRADE ADMIN., <https://www.trade.gov/country-commercial-guides/russia-sanctions-framework> (last visited Sep. 10, 2024) (explaining that under the IEEPA, the President issues executive orders declaring national emergency under the NEA).

<sup>107</sup> *Commerce-Treasury-State Alert: Impact of Sanctions and Export Controls on Russia's Military-Industrial Complex*, BUREAU OF INDUS. AND SEC., <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3172-2022-10-14-impacts-of-sanctions-and-export-controls-on-russian-military-industrial-complex/file> (last visited Sep. 11, 2024).

<sup>108</sup> See *id.*; Press Release, U.S. DEP'T OF COM. BUREAU OF INDUS. AND SEC. (May 19, 2023), <https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3273-2023-05-19-bis-press-release-russia-rules-and-joint-bis-fincen-alert/file>.

<sup>109</sup> See PETER FLANAGAN, KIMBERLY STROSNIDER, PETER LICHTENBAUM, STEPHEN RADEMAKER, CORRINE GOLDSTEIN, STEPHEN BARTENSTEIN, ET AL., *The U.S. Imposes Additional Sanctions and Export Controls Against Russia and Belarus*, COVINGTON (Oct. 13, 2022), <https://www.globalpolicywatch.com/2022/10/the-united-states-imposes-additional-sanctions-and-export-controls-against-russia-and-belarus>.

<sup>110</sup> International Emergency Economic Powers Act, 50 U.S.C. § 1702 (1977).

<sup>111</sup> CHRISTOPHER A. CASEY, JENNIFER ELSEA & LIANA ROSEN, CONG. RSCH. SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE, 11 (SEPT. 1, 2025), (citing 50 U.S.C. § 1701(b)) [hereinafter CASEY IEEPA].

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

more to arrest, seize, detain, or otherwise intercept [drug trafficking organizations].”<sup>114</sup> Again invoking IEEPA, President Trump imposed 10% ad valorem tariffs on over fifty countries in April 2025 in response to a “national emergency with respect to ‘underlying conditions, including a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners’ economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits.”<sup>115</sup>

In *V.O.S. Selections, Inc. v. Trump*,<sup>116</sup> the U.S. Court of International Trade found both the January 2025 tariffs and the April 2025 tariffs an unconstitutional exercise of Executive authority.<sup>117</sup> The CIT found that the trafficking tariffs did not properly “deal with” trafficking under IEEPA, stating that the President “[may not] use IEEPA to take whatever actions he chooses simply by declaring them ‘pressure’ or ‘leverage’ tactics that will elicit a third party’s response to an unconnected ‘threat.’”<sup>118</sup> In finding the trade deficit tariffs unconstitutional, the CIT held that the unbounded nature of the tariffs (in either duration or scope) “exceeds any tariff authority delegated to the President under IEEPA.”<sup>119</sup> The Federal Circuit upheld the CIT’s opinion on appeal, stating that IEEPA is typically restricted to “financial transactions with specific countries or entities that the President has determined pose an acute threat to the country’s interests.”<sup>120</sup> The Federal Circuit ultimately held that “Congress, in enacting IEEPA, did not give the President wide-ranging authority to impose tariffs of the nature of the Trafficking and Reciprocal Tariffs simply by the use of the term ‘regulate . . . importation.’”<sup>121</sup> The Supreme Court has granted certiorari and plans to hear oral arguments on November 5.<sup>122</sup>

---

<sup>114</sup> *V.O.S. Selections, Inc. v. Trump*, 772 F. Supp. 3d 1350, 1362 (Ct. Int’l Trade), *aff’d in part, vacated in part, remanded sub nom. V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312 (Fed. Cir. 2025), *cert granted*, No. 25-550 (U.S. 2025).

<sup>115</sup> *V.O.S. Selections*, 772 F. Supp. 3d at 1363–64 (Ct. Int’l Trade).

<sup>116</sup> 772 F. Supp. 3d 1350 (Ct. Int’l Trade), *aff’d in part, vacated in part, remanded sub nom. V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312 (Fed. Cir. 2025), *cert granted*, No. 25-550 (U.S. 2025).

<sup>117</sup> 772 F. Supp. 3d at 1383.

<sup>118</sup> *Id.* at 1382.

<sup>119</sup> *Id.* at 1376.

<sup>120</sup> *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1335 (Fed. Cir. 2025), *cert granted*, No. 25-550 (U.S. 2025).

<sup>121</sup> *V.O.S. Selections*, 149 F.4th at 1337.

<sup>122</sup> See AMY HOWE, *Supreme Court announces it will hear challenges to Trump’s tariffs on Nov. 5*, SCOTUSBLOG (Sep. 18, 2025), <https://www.scotusblog.com/2025/09/supreme-court-announces-it-will-hear-challenges-to-trumps-tariffs-on-nov-5>.