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

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Executive Summary: This memo provides a brief overview of international trade by outlining the governing bodies of law, relevant jurisdictional bodies, and recent United States actions. The memo then explores 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.[1] 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.[2] 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.[3]

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.[4] 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.[5]

In the United States, the Constitution grants Congress and the Executive Branch the authority to jointly regulate this complex environment.[6] The Executive Branch negotiates and signs treaties. In 2022, for instance, then-President Biden launched the Indo-Pacific Economic Framework for Prosperity with thirteen other countries to create a new framework

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[1] *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).

[2] *See* Kimberly Amadeo, *International Trade: Pros, Cons, and Effect on the Economy,* BALANCE, https://www.thebalance.com/international-trade-pros-cons-effect-on-economy-3305579 (last updated Feb. 16, 2021).

[3] *See* JACKSON et al., *supra* note 1, at 5–7 (providing a timeline of the growth of international trade from the mercantilist era to World War II).

[4] *Id.*

[5] *Id.*

[6] 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).

for economic engagement in the Indo-Pacific region.[7] 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,[8] which authorized the United States-Taiwan deal.[9] 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.[10]

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, and such agreements can take bilateral or multilateral form.[11] FTAs tend to promote the quasi-unrestricted movement of goods across borders, subject to certain limitations and guarantees.[12] FTAs almost universally include provisions guaranteeing, to some extent, that parties will enjoy access to the markets of the other participating parties.[13] Most FTAs include provisions mandating protections for intellectual property and fair labor practices.[14] Further, FTAs often have foreign direct investment limitations and guarantees, tariff regulations, methods for determining country of origin, and clauses detailing dispute settlement procedures.[15]

Currently, the United States is a party to fourteen FTAs, covering twenty different countries.[16] Most recently, the United States-Mexico-Canada Agreement (USMCA) entered into force in 2020, replacing the North American Free Trade Agreement (NAFTA).[17] Notably,

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[7] *Indo-Pacific Economic Framework for Prosperity*, U.S. DEP'T OF COM., https://www.commerce.gov/ipef (last visited Sep. 16, 2026).

[8] United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, Pub. L. No. 118-13, 137 Stat. 63 (2023).

[9] *See Bipartisan Taiwan Bill Reasserting Congress' Constitutional Authority Over Trade Heads to President's Desk*, U.S. HOUSE COMM. ON WAYS & MEANS (July 19, 2023), https://waysandmeans.house.gov/2023/07/19/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 (2023).

[10] *Types of Cases the Federal Circuit Handles*, FED. CIR., https://www.cafc.uscourts.gov/home/the-court/about-the-court/federal-circuit-case-types/ (last visited Oct. 15, 2026) (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).

[11] *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").

[12] *See* SCHWARZENBERG & NELSON, *supra* note 11, at 26.

[13] *Id.*

[14] *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).

[15] *See* SCHWARZENBERG & NELSON, *supra* note 11, at 26.

[16] *See Free Trade Agreements*, INT'L TRADE ADMIN., https://www.trade.gov/free-trade-agreements (last visited Oct. 5, 2026).

[17] United States-Mexico-Canada Agreement, Pub. L. 116-113, § 2, 134 Stat. 11 (2020); *see United States-Mexico-Canada Agreement*, U.S. TRADE REPRESENTATIVE, https://ustr.gov/trade-agreements/free-trade-

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.[18]

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, the U.S government can also use import policies to raise the barrier to entry and limit foreign traders' abilities to export goods to the United States.[19]

An import tariff is a tax levied against goods imported from another country.[20] 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.[21]

Quotas place a limit on the amount or volume of certain commodities that can be imported into the United States over a given period.[22] Quotas are imposed by legislation, presidential proclamation, or executive orders.[23] Import quotas in the United States are either absolute quotas or tariff rate quotas.[24] U.S. Customs and Border Protection administers the majority of import quotas, but it does not have the authority to change any quota.[25] However, the Office of the U.S. Trade Representative coordinates with other government agencies to set quota limits.[26]

Import licensing systems are procedures requiring an application to be submitted to a

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agreements/united-states-mexico-canada-agreement (last visited Sep. 16, 2026); North American Free Trade Agreement, 19 U.S.C. § 3311.

[18] 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. 4, 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).

[19] 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 visited Sep. 30, 2025).

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

[21] *Id.*

[22] *Quota Administration*, U.S. CUSTOMS & BORDER PROT., https://www.cbp.gov/trade/quota/guide-import-goods/administration (last updated Jan. 27, 2023).

[23] *Id.*

[24] *Id.* Absolute quotas place a concrete limit on the amount of a given good that may be imported into U.S. commerce. *Id.* Tariff rate quotas do not place a limit on the amount of a given good that may enter U.S. commerce, but the rate of duty imposed on the good increases after a set amount of the good enters U.S. commerce at the reduced rate. *Id.*

[25] *Id.*

[26] *Id.*; *see Mission of the USTR*, U.S. TRADE REPRESENTATIVE, https://ustr.gov/about-us/about-ustr (last visited Sep. 6, 2024).

specific administrative body prior to importation.[27] The World Trade Agreement on Import Licensing Procedures requires member states to abide by certain rules in administering import licensing systems.[28] 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.[29] 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.[30]

C. National Security and Foreign Policy Implications

International trade decisions are not purely an economic endeavor; rather, national security and foreign policy also often factor into U.S. international trade policies. The United States often utilizes export controls and sanctions for foreign policy and national security purposes.[31] 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.[32] Sanctions are restrictive economic measures used against an individual, entity, or country.[33] 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.[34]

Often, export controls and sanctions are used together in response to identified national security risks. In 2022, for example, the United States enacted unilateral controls against China focused on semiconductor and supercomputer-related technologies through the Export Administration Regulations.[35] 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."[36] Further, the United States has expanded export restrictions on Nvidia artificial intelligence chips to the Middle East to prevent these chips from military end-use in China.[37]

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[27] *Technical Information on Import Licensing*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/implic_e/implic_info_e.htm (last visited Oct. 15, 2026).
[28] *See Import Licensing*, U.S. TRADE REPRESENTATIVE, https://ustr.gov/trade-agreements/wto-multilateral-affairs/wto-issues/import-licensing (last visited Sep. 6, 2024); *see* WORLD TRADE ORG., *supra* note 27.
[29] U.S. TRADE REPRESENTATIVE, *supra* note 28.
[30] *See How to Get an Import License or Permit*, USAGOV, https://www.usa.gov/import-license-permit (last visited Oct. 15, 2026).
[31] *See* SCHWARZENBERG & NELSON, *supra* note 11, at 49 (mentioning that dual-use technologies include commodity, software, or technology that has both commercial and military applications).
[32] *See generally* AKHTAR, *supra* note 6 (describing how certain federal agencies coordinate national security and foreign policy priorities through U.S. trade policy).
[33] Jonathan Masters, *What Are Economic Sanctions?*, COUNCIL ON FOREIGN RELS. (June 24, 2024, at 10:40 ET), https://www.cfr.org/backgrounder/what-are-economic-sanctions.
[34] *See* ANDRES B. SCHWARZENBERG & CHRISTOPHER A. CASEY, CONG. RSCH. SERV., R46669, INTERNATIONAL TRADE AND FINANCE: OVERVIEW AND ISSUES FOR THE 117TH CONGRESS (2021).
[35] *See* 15 C.F.R. § 730 *et seq.* (2022).
[36] *Commerce Implements New Export Controls on Advanced Computing and Semiconductor Manufacturing Items to the People's Republic of China*, U.S. DEP'T COM. (Oct. 7, 2022), https://www.bis.gov/press-release/commerce-implements-new-export-controls-advanced-computing-semiconductor-manufacturing-items-peoples; *see* 15 C.F.R. § 730 *et seq.* (2022); *see* Peter Hoskins, *US Orders Immediate Halt to Some AI Chip Exports to China, Nvidia Says*, BBC (Oct. 25, 2023), https://www.bbc.com/news/business-67213134.
[37] Joe Middleton, *US Restricts Exports of Nvidia AI Chips to Middle East*, GUARDIAN (Aug. 31, 2023, at 05:47 ET), https://www.theguardian.com/technology/2023/aug/31/us-restricts-exports-of-nvidia-ai-chips-to-middle-east.

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 government agencies, including the Department of Commerce (DOC), the Department of Homeland Security, and the USITC.[38] The CIT also has broad geographical jurisdiction, as it can hear and decide cases that arise anywhere in the United States.[39] 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.[40] Congress enhanced and refined the court's powers in the Customs Courts Act of 1970[41] and officially designated the court the United States Court of International Trade in the Customs Courts Act of 1980.[42] There are nine CIT judges, and the President appoints judges to the CIT with the advice and consent of the Senate.[43]

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 by foreign companies and anti-competitive subsidizing of foreign companies by foreign governments, Customs and Border Protection enforces antidumping and countervailing duty orders, and the USITC reviews whether a substantial injury to a domestic industry exists.[44] 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 Circuit.[45]

B. U.S. International Trade Commission

The USITC is an independent federal agency led by six Commissioners.[46] The President

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[38] *See About the Court*, CT. INT'L TRADE, https://www.cit.uscourts.gov/about-court (last visited Oct. 18, 2026).
[39] *Id.*
[40] *Id.*; *see* 28 U.S.C. § 251(a).
[41] Customs Courts Act of 1970, Pub. L. No. 91-271, 84 Stat. 274.
[42] CT. INT'L TRADE, *supra* note 38; *see* Customs Courts Act of 1970, Pub. L. No. 91-271, 84 Stat. 274; Customs Courts Act of 1980, Pub. L. No. 96-417, 94 Stat. 1727.
[43] CT. INT'L TRADE, *supra* note 38.
[44] *See Understanding Anti-Dumping & Countervailing Duty Investigations*, U.S. INT'L TRADE COMM'N, https://www.usitc.gov/press_room/usad.htm (last visited Oct. 15, 2026). Under U.S. law, U.S. industries can request that the government provide "relief from imports that are sold in the United States at less than fair value ('dumped') or which benefit from subsidies provided through foreign government programs." *Id.* The Supreme Court recently overruled *Chevron U.S.A. v. National Resources Defense Council*, 467 U.S. 837 (1984), in deciding *Loper Bright Enterprises v. Raimondo* and *Relentless v. Department of Commerce*, 144 S. Ct. 2244 (2024). The *Loper Bright* decision ended the doctrine of "*Chevron* deference"; claimants now 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 & MORING LLP (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.
[45] *Id.*; *see, e.g.*, Pro-Team Coil Nail Enter. Inc. v. United States, No. 2022-2241, 2024 WL 3824005 (Fed. Cir. Aug. 15, 2024) (reviewing a case on appeal from the C.I.T. affirming the DOC's determination in an administration review of an antidumping order).
[46] *About the USITC*, U.S. INT'L TRADE COMM'N., https://www.usitc.gov/press_room/about_usitc.htm (last visited Oct. 2, 2025).

nominates Commissioners, and the U.S. Senate confirms the nominees.[47] The USITC's three primary responsibilities are adjudicating import proceedings, conducting tariff analysis and research, and maintaining the HTS.[48] Under its adjudicative authority, the USITC may determine whether particular imports "injure a domestic industry or violate U.S. intellectual property rights."[49]

USITC adjudication of import matters includes the Commission's review of disputes that arise under 19 U.S.C. § 1337[50] ("Section 337").[51] 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.[52] After Administrative Law Judges conduct trial proceedings, the Commission delivers a final decision on the given dispute.[53] Common remedies include both exclusion orders and cease and desist orders.[54] USITC reports that over seventy Section 337 complaints have been filed since the start of fiscal year 2025, [55] and products at issue in past complaints include vaporizers, earpieces, and human milk oligosaccharides.[56]

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,[57] and sections 122, 201, and 301 of the Trade Act of 1974.[58] Over time, U.S. presidents have tested the boundaries of these congressionally granted authorities. Notably, in his first term as president, Trump unilaterally imposed tariffs to address perceived national security concerns with China's anti-competitive trade practices, impacting approximately sixteen percent of U.S. imports.[59] Furthermore, asserting national security interests, President Biden issued Executive Order 14105 to restrict U.S. investments in Chinese technology industries.[60] These actions demonstrate a larger trend by the executive in imposing national security authority to regulate trade.

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[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] 19 U.S.C. § 1337.
[51] *About Section 337*, U.S. INT'L TRADE COMM'N., https://www.usitc.gov/intellectual_property/about_section_337.htm (last visited Oct. 2, 2025).
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Section 337 Statistics*, U.S. INT'L TRADE COMM'N, https://www.usitc.gov/intellectual_property/337_statistics.htm (last updated Feb. 3, 2026).
[56] *See Cases*, U.S. INT'L TRADE COMM'N, https://ids.usitc.gov/case?type=advanced_quick_link (last visited Oct. 6, 2025).
[57] 19 U.S.C. § 1862.
[58] 19 U.S.C. §§ 2132, 2251, 2411.
[59] *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 25–29 (2021) (detailing former President Trump's use of Section 232 tariffs); *see* CATHLEEN D. CIMINO-ISAACS & RACHEL F. FEFER, CONG. RSCH. SERV. R45417, WORLD TRADE ORGANIZATION: OVERVIEW AND FUTURE DIRECTION 20 (2021).
[60] Exec. Order No. 14105, 88 Fed. Reg. 54,867 (Aug. 9, 2023); PETER 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.

A. Section 232 of the Trade Expansion Act of 1962

Section 232 of the Trade Expansion Act of 1962[61] allows any department, agency head, or interested party to request that the DOC investigate the effect of certain imports on U.S. national security.[62] 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.[63] 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.[64] The President may then decide on necessary remedies.[65]

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, China, Mexico, and Canada—imposing retaliatory tariffs on the same products.[66] 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.[67] In February 2025, President Trump reinstated the full twenty-five percent tariff on steel imports and increased tariffs on aluminum imports to twenty-five percent.[68] In June 2025, the Trump administration increased tariffs from twenty-five percent to fifty percent for all partners except the United Kingdom, which remains at twenty-five percent.[69] 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.[70] The President has continued to use national security law to expand tariffs, including on imports of pharmaceuticals, semi-trucks, kitchen cabinets, and furniture.[71] The Commerce Department currently has a variety of Section 232

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[61] 19 U.S.C. § 1862.
[62] *Id.* § 1862(b)(1)(a).
[63] *Id.* § 1862(b)(1)(b)–(2)(a)(ii).
[64] *Id.* § 1862(b)(3)(a).
[65] *Id.* § 1862(c)(1)(a)(i)-(ii).
[66] *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.
[67] *See, e.g.*, Am. Inst. for Int'l Steel, Inc. v. United States, 806 F. App'x 982, 983 (Fed. Cir. 2020) (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, 2018 WL 1705298, at *11 (Ct. Int'l Trade April 5, 2018) (denying Severstal's motion for a preliminary injunction that would have stopped the imposition of the President's Section 232 tariffs); Transpacific Steel LLC v. United States, 415 F. Supp. 3d 1267, 1276 (Ct. Int'l Trade 2019) (allowing a statutory challenge to section 232 tariffs on Turkish steel to proceed).
[68] Proclamation No. 10896, 90 Fed. Reg. 9817 (Feb. 10, 2025).
[69] Proclamation No. 10947, 90 Fed. Reg. 24199 (June 3, 2025). In April 2026, President Trump issued a proclamation setting the tariff rate at "25 percent on articles and 15 percent on derivative articles" for steel articles from the United Kingdom "in which . . . at least 95 percent of the steel was melted and poured . . . in the United Kingdom." *Section 232 Tariffs on Steel & Aluminum*, SANDLER, TRAVIS & ROSENBERG, P.A., https://www.strtrade.com/trade-news-resources/tariff-actions-resources/section-232-tariffs-on-steel-aluminum (last visited Oct. 6, 2026). Similarly, products manufactured abroad with at least eighty-five percent steel smelted and poured in the United States receive a tariff of ten percent. *Id.*
[70] *See generally* KEIGH E. HAMMOND & WILLIAM F. BURKHART, CONG. RSCH. SERV., R48549, PRESIDENTIAL 2025 TARIFF ACTIONS: TIMELINE AND STATUS (2026) (describing the multiple legal authorities Trump has invoked to increase tariffs since the beginning of his second term).
[71] 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.

investigations pending, which could result in more tariffs.[72]

B. Sections 201 and 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.[73] The Act states that when a surge in imports seriously threatens domestic industries, the affected industries may petition the USITC for a temporary safeguard.[74] The USITC then judges if an injury exists and recommends a remedy to the President, who then decides whether to provide relief.[75] Such relief may include tariff increases, quotas, or negotiated agreements to shield domestic entities.[76] 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.[77]

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.[78] President Trump issued a proclamation in January 2018 providing relief to the domestic industries by increasing tariffs on imported products.[79] Soon after, Canadian solar product exporters sought an injunction against the former President's decision.[80] 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.[81] 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.[82]

Section 301 of the Trade Act of 1974[83] 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.[84] In 2021, the USTR determined that Vietnam's practices related to currency valuation and excessive foreign exchange market

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[72] *See id.* These investigations could result in tariffs on products including wind turbines, industrial machinery, robotics, and personal protective equipment. *Trump Administration Tariff Tracker*, WILEY REIN LLP, https://www.wiley.law/trump-administration-tariff-tracker (last updated Sep. 14, 2026).
[73] *See Understanding Section 201 Safeguard Investigations*, U.S. INT'L TRADE COMM'N, https://www.usitc.gov/press_room/us_safeguard.htm (last visited Oct. 16, 2026).
[74] *Id.*
[75] *Id.*; 19 U.S.C. § 2252(b).
[76] U.S. INT'L TRADE COMM'N, *supra* note 73.
[77] *Id.*
[78] *See Section 201—Imported Solar Cells and Modules*, U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/enforcement/section-201-investigations/investigation-no-ta-201-75-cspv-cells (last visited Oct. 16, 2026); *Section 201—Imported Large Residential Washing Machines (Washers)*, U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/enforcement/section-201-investigations/section-201-imported-large-residential-washing-machines-washers (last visited Oct. 16, 2026).
[79] *See Section 201 Cases: Imported Large Residential Washing Machines and Imported Solar Cells and Modules*, U.S. TRADE REPRESENTATIVE, https://ustr.gov/sites/default/files/files/Press/fs/201%20Cases%20Fact%20Sheet.pdf (last visited Oct. 16, 2026).
[80] Silfab Solar, Inc. v. United States, 296 F. Supp. 3d 1295, 1297 (Ct. Int'l Trade), *aff'd*, 892 F.3d 1340 (Fed. Cir. 2018).
[81] Silfab Solar, Inc. v. United States, 892 F.3d 1340, 1349 (Fed. Cir. 2018).
[82] Proclamation No. 10339, 87 Fed. Reg. 7357 (Feb. 4, 2022).
[83] 19 U.S.C. § 2411.
[84] *Id.* § 2411(a)(1).

interventions were unreasonable and burdened U.S. commerce.[85] 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.[86] 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.[87]

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.[88] The United States has used international trade measures as a foreign policy tool against Russia to precipitate an end to the conflict.[89] Third, the second Trump administration has invoked the International Emergency Economic Powers Act[90] (IEEPA) to impose tariffs pursuant to declared national emergencies.[91] However, in February 2026 the Supreme Court held that IEEPA does not authorize the President to impose tariffs.[92] The Supreme Court's opinion offers a pivotal decision on the separation of powers in the field of international trade. Fourth, following the Court's decision regarding IEEPA, the Trump administration has turned to alternative pathways to impose its desired tariffs.[93]

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.[94] Government procurement

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[85] Notice of Determination Pursuant to Section 301: Vietnam's Acts, Policies, and Practices Related to Currency Valuation, 86 Fed. Reg. 6732-01 (Jan. 22, 2021).

[86] *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.

[87] DANIELLE M. TRACHTENBERG, CONG. RSCH. SERV., IF11346, SECTION 301 OF THE TRADE ACT OF 1974 2 (2026).

[88] Philip Blenkinsop, *Global Trade Rift Widening as Ukraine War Passes Two-Year Mark,* REUTERS (Feb. 22, 2024, at 12:44 ET), https://www.reuters.com/markets/global-trade-rift-widening-ukraine-war-passes-two-year-mark-2024-02-22.

[89] Alan Wm. Wolff, *Paradigm Lost? U.S. Trade Policy as an Instrument of Foreign Policy*, WORLD TRADE ORG. (Feb. 5, 2018), https://www.wto.org/english/news_e/news18_e/ddgra_09feb18_e.htm .

[90] International Emergency Economic Powers Act, Pub. L. No. 95-223, 91 Stat. 1626 (1977) (*codified as amended* at 50 U.S.C. §§ 1701–1706).

[91] Exec. Order No. 14157, 90 Fed. Reg. 8439 (Jan. 20, 2025).

[92] Learning Resources, Inc. v. Trump, 146 S. Ct. 628, 642 (2026).

[93] *See* Michael Rosensaft & Caitlin Rubin, *The Evolving Landscape of Presidential Tariffs After the Supreme Court's Decision in* Learning Resources v. Trump, KATTEN LLP (Mar. 19, 2026), https://quickreads.ext.katten.com/post/102mng1/the-evolving-landscape-of-presidential-tariffs-after-the-supreme-courts-decision.

[94] *Government Procurement*, U.S. TRADE REPRESENTATIVE, https://ustr.gov/issue-areas/government-procurement (last visited Oct. 16, 2026).

typically comprises ten to fifteen percent of most countries' gross domestic product (GDP).[95] Thus, the creation of the 1979 World Trade Organization 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.[96] The GPA covers forty-nine parties that have chosen to open their procurement markets.[97] The procurement market covered by the GPA is estimated to be worth several trillion dollars.[98] Additionally, GPA market access is negotiated in a reciprocal manner; thus, the procurement coverage in different markets and sectors varies.[99]

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 found that in 2017, the United States had opened nearly eighty percent of its federal contracts to suppliers around the world.[100] 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.[101] The two main laws that regulate domestic sourcing are the Buy American Act of 1933[102] (BAA) and the Trade Agreements Act of 1979 (TAA).[103] The BAA is a domestic price preference statute for U.S. products that controls federal government procurement.[104] The statute 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.[105] 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.[106]

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.[107] Both Congress and the Executive Branch responded by prioritizing U.S.-made goods in federal procurement, with the Biden administration building on the first Trump administration's increase to domestic content thresholds under the Buy American Act.[108] 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

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[95] *Id.*
[96] ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., R47243, U.S. GOVERNMENT PROCUREMENT AND INTERNATIONAL TRADE (2023).
[97] *Id.* at 1.
[98] *Id.*
[99] *Id.* at 3.
[100] *Id.*
[101] SCHWARZENBERG, *supra* note 96, at 3.
[102] 41 U.S.C. § 8301 *et seq.*
[103] 19 U.S.C. § 2501 *et seq.*
[104] 41 U.S.C. § 8302.
[105] *Id.*
[106] 19 U.S.C. § 2502.
[107] SCHWARZENBERG & CASEY, *supra* note 34, at 3–4.
[108] *See id.*; Jeffrey Anderson, *The Silver Lining of Biden's 'New Protectionism,'* FOREIGN POL'Y (Mar. 2, 2023), https://foreignpolicy.com/2023/03/02/biden-protectionism-us-eu-economy-investment-green-industry; *see* SIMON SCHROPP, INTERNATIONAL TRADE POLICY UNDER BIDEN: THE "NEW" WASHINGTON CONSENSUS AND ITS DISCONTENTS, MERCATUS CTR., GEO. MASON UNIV. (June 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4898046 (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).

domestic content threshold to sixty percent.[109] Major legislation—including the CHIPS Act,[110] the Inflation Reduction Act,[111] and the Infrastructure Investment and Jobs Act[112]—reinforces this focus, particularly in strategic sectors like clean energy and semiconductors.[113] 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.[114] 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.[115] By imposing sweeping sanctions, export controls, and revoking Russia's permanent normal trade relations, the United States has sought to degrade Russia's military and economic capabilities.[116] These measures—authorized under the IEEPA and enforced through agencies like the Bureau of Industry and Security (BIS)—target critical sectors such as oil refining, advanced technology, and defense.[117] Russia now faces significant supply shortages, turning to countries like Iran and North Korea for support.[118]

The United States has also implemented tariffs, blocked access to key technologies, and enforced foreign direct product rules to restrict indirect access to American innovation.[119] Sanctions have expanded beyond Russian borders, targeting entities and individuals that support Russia's war efforts.[120] In September 2026, Congress passed the Lindsey O. Graham Sanctioning Russia and Iran Act,[121] which allows the President to impose up to 100 percent

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[109] Exec. Order No. 14005, 86 Fed. Reg. 7475 (Jan. 25, 2021).
[110] Pub. L. No. 117-167, 136 Stat. 1366 (2022).
[111] Pub. L. No. 117-169, 136 Stat. 1818 (2022).
[112] Pub. L. No. 117-58, 135 Stat. 429 (2021).
[113] *See* Anderson, *supra* note 108.
[114] *See id.*; SCHROPP, *supra* note 108.
[115] CORY WELT, CONG. RSCH. SERV., IN11869, RUSSIA'S WAR AGAINST UKRAINE: OVERVIEW OF U.S. ASSISTANCE AND SANCTIONS 2–3 (2023).
[116] *See* REBECCA M. NELSON, CHRISTOPHER A. CASEY & ANDRES B. SCHWARZENBERG, CONG. RSCH. SERV., IF12062, NEW FINANCIAL AND TRADE SANCTIONS AGAINST RUSSIA (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 (2022).
[117] *See Russia Country Commercial Guide*, INT'L TRADE ADMIN., https://www.trade.gov/country-commercial-guides/russia-sanctions-framework (last visited Oct. 17, 2026) (explaining that under the IEEPA, the President issues executive orders declaring national emergency under the NEA).
[118] OFF. FOREIGN ASSETS CONTROL, TREASURY-COMMERCE-STATE ALERT: IMPACT OF SANCTIONS AND EXPORT CONTROLS ON RUSSIA'S MILITARY-INDUSTRIAL COMPLEX 3 (Oct. 14, 2022), https://ofac.treasury.gov/media/928856/download?inline.
[119] *See id.*; FINCEN & BUREAU INDUS. & SEC., SUPPLEMENTAL ALERT: FINCEN AND THE U.S. DEPARTMENT OF COMMERCE'S BUREAU OF INDUSTRY AND SECURITY URGE CONTINUED VIGILANCE FOR POTENTIAL RUSSIAN EXPORT CONTROL EVASION ATTEMPTS 2–5 (May 19, 2023), https://www.fincen.gov/system/files/shared/FinCEN%20and%20BIS%20Joint%20Alert%20_FINAL_508C.pdf.
[120] *See* Peter Flanagan, Kimberly Strosnider, Peter Lichtenbaum, Stephen Rademaker, Corrine Goldstein, Stephen Bartenstein, et al., *The United States Imposes Additional Sanctions and Export Controls Against Russia and Belarus*, COVINGTON: GLOB. POL'Y WATCH (Oct. 13, 2022), https://www.globalpolicywatch.com/2022/10/the-united-states-imposes-additional-sanctions-and-export-controls-against-russia-and-belarus.
[121] Lindsey O. Graham Sanctioning Russia and Iran Act of 2026, Pub. L. No. 119–111, 140 Stat. 1026. Two days before the law was set to take effect, however, President Trump issued a broad waiver of the Graham Act's

tariffs on goods from purchasers of Russian oil and gas, as well as countries deemed to be involved in aiding sanctions evasion.[122] China and India will be primarily targeted by the Act, as large exporters that have continued to import Russian energy.[123] Further, the Act extends the Iran Sanctions Act[124] for another five years.[125] 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

IEEPA was enacted in 1977 and gives the President broad authority to regulate a range of economic transactions after a declaration of a national emergency.[126] 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.[127] The statute does not permit invoking IEEPA powers based on preexisting emergencies unrelated to such a declaration.[128] Historically, presidents have issued new or amended executive orders to address evolving threats, rather than using IEEPA to expand unrelated national emergencies.[129] 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 (twenty-five percent ad valorem), Mexico (twenty-five percent ad valorem), and China (ten percent ad valorem) to "deal with the threats posed by international cartels" and to address "'[failures] to do more to arrest, seize, detain, or otherwise intercept [drug trafficking organizations].'"[130] Again invoking IEEPA, President Trump imposed ten percent 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.'"[131]

In *V.O.S. Selections, Inc. v. Trump*,[132] the U.S. Court of International Trade found both

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"sanctions, restrictions, and duties." *Implementing the Lindsey O. Graham Sanctioning Russia and Iran Act of 2026*, WHITE HOUSE (Oct. 16, 2026), https://www.whitehouse.gov/presidential-actions/2026/10/implementing-the-lindsey-o-graham-sanctioning-russia-and-iran-act-of-2026/.

[122] Graham Act.

[123] Kevin Freking, *House Approves Sweeping Russia Sanctions Bill, Sending It to Trump*, ASSOCIATED PRESS (Sep. 16, 2026), https://apnews.com/article/sanctions-russia-ukraine-house-tariffs-china-f377fc956c442195dfcf50571b01a1c4 .

[124] Pub. L. No. 104-172, 110 Stat. 1541 (1996), *amended by*, Iran Sanctions Extension Act, Pub. L. No. 114-277, 130 Stat. 1409 (2016).

[125] Graham Act § 203.

[126] 50 U.S.C. § 1702.

[127] CHRISTOPHER A. CASEY, JENNIFER K. ELSEA & LIANA W. ROSEN, CONG. RSCH. SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE 11 (2025) (citing 50 U.S.C. § 1701(b)).

[128] *Id.* at 11–12.

[129] *Id.* at 12.

[130] V.O.S. Selections, Inc. v. Trump, 772 F. Supp. 3d 1350, 1362 (Ct. Int'l Trade) (quoting Exec. Order 14193, 90 Fed. Reg. 9113, 9114 (2025)), *aff'd in part, vacated in part*, 149 F.4th 1312 (Fed. Cir. 2025), *aff'd sub nom.* Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026).

[131] *Id.* at 1363–64 (quoting Exec. Order 14257, 90 Fed. Reg. 15,041, 15,041 (2025)).

[132] 772 F. Supp. 3d 1350, 1362 (Ct. Int'l Trade), *aff'd in part, vacated in part*, 149 F.4th 1312 (Fed. Cir. 2025), *aff'd sub nom*. Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026).

the January 2025 tariffs and the April 2025 tariffs an unconstitutional exercise of Executive authority.[133] 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.'"[134] 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."[135] 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."[136] 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.'"[137]

In November 2025, the Supreme Court consolidated *V.O.S. Selections* with *Learning Resources, Inc. v. Trump*,[138] another case challenging President Trump's implementation of IEEPA originally brought in the District Court of the District of Columbia.[139] The Court upheld the Federal Circuit's decision in *V.O.S. Selections*, holding that IEEPA does not grant the President the power to impose the trafficking tariffs or the global trade deficit tariffs.[140] It noted that "in IEEPA's 'half century of existence,' no President has invoked the statute to impose any tariffs—let alone tariffs of this magnitude and scope."[141] The Court reasoned that IEEPA contains a list of "significant but specific powers" that Congress did authorize to the President, and that this list does *not* include the power to impose tariffs.[142] The Court did not decide the full boundaries of the President's power to "regulate . . . importation" under IEEPA, only that this power does not extend to the power to generate revenue through the imposition of tariffs.[143]

D. Section 122 of the Trade Act of 1974 and Section 338 of the Tariff Act of 1930

Following the Court's rejection of the President's tariff powers under IEEPA, the Administration shifted its focus to the Trade Act of 1974. The President attempted to invoke Section 122 of the Act, which grants him temporary authority to address serious balance-of-payments deficits by imposing limited import surcharges not exceeding fifteen percent on articles imported into the United States or quotas up to a maximum of 150 days.[144] On February 20, 2026, the President announced a plan to impose a ten percent ad valorem duty

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[133] *Id.* at 1383.
[134] *Id.* at 1382.
[135] *Id.* at 1376.
[136] V.O.S. Selections, Inc. v. Trump, 149 F.4th 1312, 1335 (Fed. Cir. 2025), *aff'd sub nom.* Learning Res., Inc. v. Trump, 146 S. Ct. 628 (2026).
[137] *Id.* at 1337.
[138] 784 F. Supp. 3d 209 (D.D.C. 2025).
[139] Learning Resources, Inc. v. Trump, 146 S. Ct. 628, 636–37 (2026).
[140] *Id.* at 646.
[141] *Id.* at 640 (citing Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety & Health Admin., 142 S. Ct. 661, 666 (2022)).
[142] *Id.* at 642.
[143] *Id.* at 643–44.
[144] 19 U.S.C. § 2132(a)(3)(A)–(B).

rate on all articles imported into the United States.[145] Later that year, in May 2026, twenty-four states and two private import firms filed suit challenging these import duties.[146] The Court of International Trade held that the tariffs imposed on the plaintiffs were unauthorized by law and Proclamation No. 11012 was invalid.[147] The Court granted summary judgment for the private importer parties and the State of Washington and imposed a permanent injunction against the tariffs.[148] It also found that the states whose imports were not subject to duties pursuant to the president's proclamation lacked standing to challenge those duties in court.[149] The Trump administration's appeal of the decision is currently pending.[150] In June 2026, the Federal Circuit granted the government a stay pending appeal, halting enforcement of the CIT's injunction.[151]

As President Trump's Section 122 tariffs expired in late July 2026, the USTR finalized its section 301 investigation into over sixty countries' "efforts to prohibit the import of products made with forced labor."[152] The investigations resulted in tariffs of either 10% or 12.5% on a variety of products.[153] Section 301 requires administrative procedures that make tariff imposition a slower process than that for IEEPA or Section 122. But critically, Section 301 includes the Congressional authorization for the Executive to impose tariffs (authorization which the Supreme Court determined does not exist under IEEPA).[154]

In August 2026, President Trump turned to another provision, Section 338 of the Tariff Act of 1930,[155] to implement up to fifty percent import taxes on Canadian vehicles, automotive parts, and steel.[156] Section 338 was created to allow the President to implement import taxes up to fifty percent in response to trade discrimination.[157] The utilization of Section 338 tariffs came in response to Canadian measures put in place following the 2025 implementation of tariffs under Section 232 of the Trade Expansion Act of 1962.[158] Section 338 had never before been utilized, so the legal ramifications are unclear.[159] There have been no challenges to the President's implementation of Section 338 so far, but courts facing prospective cases will address previously unanswered questions.[160]

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[145] Proclamation No. 11012, 91 Fed. Reg. 9339 (Feb. 20, 2026).
[146] *See* Oregon v. United States, 835 F. Supp. 3d 1307 (Ct. Int'l Trade 2026), *appeal filed*, No. 26-1928 (Fed. Cir. May 8, 2026).
[147] *Id.* at 1338.
[148] *Id.* at 1339–41.
[149] *Id.* at 1327.
[150] Oregon v. Trump, No. 26-1804 (Fed. Cir. 2026).
[151] Order, Oregon v. Trump, No. 26-1804 (Fed. Cir. May 12, 2026), Dkt. 8.
[152] Peter Tabor, Ashley Akers, Andrew K McAllister, Patrick T. Childress, Sophie Jin, & Sarah Nersesov, *And the (Tariff) Beat Goes On: New Section 301 Forced-Labor Tariffs Imposed on 60 Countries*, HOLLAND & KNIGHT (July 30, 2026), https://www.hklaw.com/en/insights/publications/2026/07/and-the-tariff-beat-goes-on.
[153] *Id.*
[154] Brandon French & Anthony DiBello, *USTR Report Proposes Section 301 Tariffs of 10%, 12.5% on Major Trading Partners*, BRAUMILLER L. GRP., PLLC, https://www.braumillerlaw.com/ustr-report-proposes-section-301-tariffs/ (last visited Oct. 17, 2026).
[155] 19 U.S.C. § 1338.
[156] Brad W. Setser, *The Real Cost of the U.S.–Canada Trade Breakdown*, COUNCIL ON FOREIGN RELS. (Aug. 27, 2026, at 12:13 ET), https://www.cfr.org/articles/the-real-cost-of-the-u-s-canada-trade-breakdown; Tony Romm, *Trump's New Tariffs on Canada Raise Familiar Legal Risks*, N.Y. TIMES (Aug. 25, 2026), https://www.nytimes.com/2026/08/25/business/trump-canada-tariffs.html.
[157] 19 U.S.C. § 1338(d).
[158] *See* Sester, *supra* note 156.
[159] Romm, *supra* note 156.
[160] *See id.*; Ilya Somin, *Major Questions, Nondelegation, and the Section 338 Tariffs Against Canada*, REASON (Sep. 13, 2026, at 20:40 ET), https://reason.com/volokh/2026/09/13/major-questions-nondelegation-and-the-section-338-tariffs-against-canada/.