

ARTICLE

REINING IN THE CHAOS:

THE CURTAILMENT OF EXECUTIVE POWER UNDER
LEARNING RESOURCES V. TRUMP AND THE SEARCH
FOR LEGAL FOOTING TO REBUILD AMERICA'S
TARIFF WALL

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ABSTRACT

In 2026, the Supreme Court delivered a landmark decision in Learning Resources v. Trump, striking down President Trump's IEEPA tariffs and curtailing executive power over trade policy more significantly than any ruling in nearly half a century. The ruling temporarily reined in the tariff chaos caused by the president's "Liberation Day" announcement of April 2, 2025, as well as the numerous executive proclamations and orders the White House issued to authorize sweeping tariffs on more than eighty countries. The ruling also reaffirmed the importance under the US Constitution of "the separation of powers" principle—the idea that the Constitution vests the core authority over tariff policy exclusively in Congress and that the president has no independent or inherent power to levy tariffs during peacetime or via emergency declarations without a clear, specific statute passed by Congress. Moreover, the Supreme Court further sculpted the Major Questions Doctrine by addressing presidential emergency powers, the limits of executive authority, and statutory interpretation. President Trump's unilateral, heavy-handed use of tariff policy pursuant to IEEPA, in the Supreme Court's view, was an example of executive overreach,

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undermining the Framers' intent under the Constitution, the authority of Congress, and the responsibility of the Executive Branch to stay within the bounds of the law.

However, the road to rebuilding America's tariff wall is only just beginning. The Trump administration is actively searching for new legal footing under alternative statutes to impose sweeping tariffs on imports as it seeks to replace the IEEPA tariffs with new levies (e.g., Sections 301, 122, 232, and 338). The use of some of these statutes is unprecedented and the maintenance of high tariff rates on approximately 99.4% of all imports into the country is reminiscent of the beggar-thy-neighbor trade policies of the 1930s when the global economy collapsed and widespread tariff retaliation from Europe and other countries sparked a global trade war. The legal implications of the Learning Resources decision and the imposition of new tariffs under the limited trade authority delegated by Congress under these various statutes are significant and will likely keep the courts occupied with legal challenges in the near future. How the courts will treat these challenges is uncertain, but an early indication from the Supreme Court in Learning Resources suggests that it views more favorably the use of some of these alternative statutes. In the meantime, the Learning Resources ruling stands as a bulwark against the excesses of executive power in favor of efforts to rein in the chaos of America's "ready, fire, aim" tariff policies.

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“We must not regard political consequences, howsoever formidable they might be . . . we are bound to say ‘*fiat justitia, ruat coelum*’” [let justice be done, though the heavens fall].¹

Judge William Murray (Lord Mansfield), 1772

I. INTRODUCTION

The Supreme Court’s 2026 landmark 6–3 decision in *Learning Resources, Inc. v. Trump* striking down most of President Donald Trump’s “Liberation Day” tariffs was a significant blow to the

1. Lord Mansfield, the founder of modern English commercial law, articulated this famous principle in the landmark case of *R v. Wilkes* (1770) 4 Burr. 2527, 2562, 98 Eng. Rep. 327, 347 (KB). The phrase stands for the principle under the common law that justice must be pursued regardless of the popularity of the decision, the status or power of the individuals involved, or the potential personal, social, or political fallout of the decision rendered. The phrase is also frequently attributed to the spirit of Lord Mansfield’s ruling in the *Somerset v. Stewart* slavery case in 1772. See *Somerset v. Stewart* (1772) Lofft 1, 98 Eng. Rep. 499 (KB).

president's efforts to sidestep the US Constitution and upend the legal framework governing international trade relations.² The ruling invalidated several executive actions in 2025 attempting to use the International Emergency Economic Powers Act ("IEEPA") to impose sweeping tariffs on more than eighty countries, forcing the president to pivot to other statutes to justify his heavy-handed, unilateralist approach to US tariff policy.³ In addition, the Supreme Court's decision reinforced the importance of the separation of powers principle under the Constitution and the need to maintain limits on an Executive Branch that seeks to rebuild America's tariff wall under the pretense of national security interests. While opponents of the Trump administration's approach praise the Supreme Court's decision as a victory for the rule of law, supporters of the administration's tariff policies argue that the decision is only a temporary legal setback and that the goal of using tariff policy to conduct foreign economic policy remains unchanged.⁴ Justice Neil Gorsuch captured the essence of the tension surrounding President Trump's tariff strategy when he wrote in his concurring opinion in the case:

For those who think it is important for the Nation to impose more tariffs, I understand that today's decision will be disappointing. . . . But if history is any guide, the tables will turn and the day will come when those disappointed by today's result will appreciate the legislative process for the bulwark of liberty it is.⁵

Following the Supreme Court's ruling, the Trump administration has pursued its aggressive tariff policy under several alternative statutes, some of which no other president has ever invoked for this purpose.⁶ The administration imposed a

2. *Learning Res., Inc. v. Trump*, 607 U.S. 229 (2026).

3. See International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1710.

4. See Scott R. Anderson et al., *Brookings Experts on the Supreme Court's Tariff Decision*, BROOKINGS (Feb. 24, 2026), <https://www.brookings.edu/articles/brookings-experts-on-the-supreme-courts-tariff-decision> [<https://perma.cc/9SJW-NPZ2>].

5. *Learning Resources*, 607 U.S. at 300 (Gorsuch, J., concurring).

6. See Danielle Kurtzleben, *Trump Administration Employs New Legal Paths for Tariffs After Supreme Court Defeat*, NPR (July 25, 2026), <https://www.npr.org/2026/07/25/nx-s1-5903183/trump-administration-employs-new-legal-paths-for-tariffs-after-supreme-court-defeat> [<https://perma.cc/ATD4-YC7L>]; see also Paul Wiseman, *Trump Can Still Impose Tariffs Under Other Laws: Here Are the Ones He Said He'll Use*, NBC Bos. (Feb. 20,

baseline 10% tariff on imports from most of the world, pursuant to Section 122 of the Trade Act of 1974, which expired in late July 2026, and has imposed or maintained high tariff rates on a number of countries under Section 301 of the 1974 Trade Act, Section 232 of the Trade Expansion Act of 1962, and Section 338 of the Tariff Act of 1930.⁷ Rather than working within the rules and processes of the World Trade Organization (“WTO”) system or utilizing proper domestic legal tools in the United States, President Trump has chosen to “shoot first and ask questions later” by maintaining broad-based tariffs on trading partners without regard for the legal implications of such decisions. The pretextual use of the national security rationale and other specious arguments to justify sweeping tariffs proved unpersuasive to the Supreme Court in its review of IEEPA’s application in *Learning Resources*, and the Supreme Court is likely to deem them inconsequential with respect to replacement tariffs invoked under some of the alternative statutory authorities as well. On May 7, 2026, the US Court of International Trade (“CIT”) ruled that the flat 10% tariffs imposed by the Trump administration under Section 122 were unlawful, and legal challenges are currently pending in regard to the administration’s new Section 301 replacement tariffs, which it announced on July 23, 2026, targeting more than eighty countries and encompassing 99.4% of US imports.⁸

The purpose of this Article is to examine the legal implications of the Supreme Court’s 2026 decision in *Learning Resources*

2026), <https://www.nbcboston.com/news/politics/trump-announces-tariffs-under-other-laws-after-supreme-court-ruling/3903129/> [https://perma.cc/P5VQ-F9T8].

7. See Ana Swanson, *New U.S. Tariffs Aimed at Over 80 Countries Go Into Effect*, N.Y. TIMES (July 23, 2026), <https://www.nytimes.com/2026/07/23/business/economy/trump-tariffs.html> [https://perma.cc/4RJU-B976] [hereinafter Swanson, *Tariffs Go Into Effect*]; see also *Trump Imposes New Double-Digit Tariffs on Dozens of Countries*, AL JAZEERA (July 24, 2026), <https://www.aljazeera.com/news/2026/7/24/trump-imposes-new-double-digit-tariffs-on-dozens-of-countries> [https://perma.cc/HWL2-AG38].

8. See David Lawder, *Trump Imposes New Global Tariffs, Drawing Protests from Trading Partners*, REUTERS (July 24, 2026), <https://www.reuters.com/world/us/trump-imposes-forced-labor-duties-60-trading-partners-as-10-us-tariffs-expire-2026-07-24/> [https://perma.cc/26KP-RXXZ] (noting that the new tariffs “cover 99.4% of U.S. imports, but include numerous product exemptions, such as oil and gas, fertilizer and certain food items”); see also Tony Romm, Edison Wu & Lazaro Gamio, *New Tariffs as Old Ones Expire: The Latest on Trump’s Trade War*, N.Y. TIMES (Aug. 24, 2026), <https://www.nytimes.com/article/trump-tariffs-trade.html> [https://perma.cc/CHM9-AJ33].

invalidating President Trump's IEEPA tariffs and show that the administration's persistent "ready, fire, aim" approach to imposing tariffs and the spurious reasoning to justify such sweeping measures are legally problematic under alternative statutes as well, causing more harm than good to the United States within the multilateral rules-based system. Part II will describe the background to the current controversy surrounding the Trump administration's tariff policies and the origins of the *Learning Resources* case and other legal challenges to these policies under federal law. Part III will analyze the various federal statutes that authorize the Executive Branch to adjust tariffs on imports as well as other statutes where Congress has delegated limited authority to the president to take economic measures to promote the essential security interests of the United States. Part IV will discuss the *Learning Resources* case, the legal bases for the Supreme Court's ruling against the Trump administration's misuse of IEEPA, and the subsequent efforts by the president to sidestep the decision and continue with the administration's heavy-handed approach to tariff policy under other statutes. Part V will examine the legal implications of the *Learning Resources* ruling in terms of the separation of powers principle, the Major Questions Doctrine, the use of the national security rationale, the future of executive power over tariff policy, and the rule of law in international trade relations. This Article will conclude by arguing that President Trump's unilateral use of tariff policy pursuant to IEEPA was a bridge too far, undermining the authority of Congress under the Constitution, the integrity of the Executive Branch to stay within the bounds of the law, and the credibility of the United States to stand by its legal commitments in international commercial relations.

II. THE ROAD TO "LIBERATION DAY" AND THE LEGAL CONTROVERSY SURROUNDING TRUMP 2.0'S TARIFF POLICIES

A. *The First 100 Days of Tariff Chaos*

A few weeks before the 2024 US presidential election, Donald Trump gave a speech to the Economic Club of Chicago, where he told the audience, "[t]o me, the most beautiful word in the

dictionary is tariff. It's my favorite word."⁹ Trump's statement was a precursor of things to come upon his return to the White House on January 20, 2025. Within days of taking office, he issued a Presidential Proclamation and several executive orders declaring national emergencies, citing the influx of fentanyl into the country and persistent trade deficits as existential threats to US national security.¹⁰ He then imposed tariffs, citing "fentanyl trafficking," on imports from Canada (25%), Mexico (25%), and China (10%), and, on April 2, 2025, sweeping "reciprocal tariffs" of at least 10% on a number of other countries based on trade deficit concerns, which he deemed "unusual and extraordinary threats."¹¹ He alleged that the drug influx had caused "a public health crisis" in the United States and that persistent trade deficits have "led to the hollowing out" of US manufacturing capability that undermines national security.¹²

Following his January Proclamation, President Trump spent the first 100 days in office pursuing one of the most aggressive unilateral tariff campaigns in American history, authorizing or threatening varying tariff rate increases on imported goods from more than eighty countries.¹³ The tariffs ranged from 10% to 50%

9. See John McCormick, *Trump Calls Tariffs the 'Most Beautiful Word,'* WALL ST. J. (Oct. 15, 2024), <https://www.wsj.com/livecoverage/harris-trump-election-10-16-2024/card/trump-calls-tariffs-the-most-beautiful-word-YMVPaupw4EjBRp6yobOy> [https://perma.cc/FN3E-FGQG]; see also Rachel Treisman, *Word of the Week: Trump Calls Tariffs 'the Most Beautiful Word.' Here's Its History*, NPR (Apr. 9, 2025), <https://www.npr.org/2025/04/09/nx-s1-5355661/tariffs-history-meaning> [https://perma.cc/K6DY-SF8D].

10. Proclamation No. 10886, 90 Fed. Reg. 8327 (Jan. 29, 2025); Exec. Order No. 14193, 90 Fed. Reg. 9113 (Feb. 7, 2025); Exec. Order No. 14194, 90 Fed. Reg. 9117 (Feb. 7, 2025); Exec. Order No. 14195, 90 Fed. Reg. 9121 (Feb. 7, 2025); Exec. Order No. 14257, 90 Fed. Reg. 15041 (Apr. 7, 2025).

11. *Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China*, WHITE HOUSE (Feb. 1, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-imposes-tariffs-on-imports-from-canada-mexico-and-china/> [https://perma.cc/CB3Q-6LV6]; see also Exec. Order No. 14257, 90 Fed. Reg. 15041 (Apr. 7, 2025).

12. Exec. Order No. 14193, 90 Fed. Reg. at 9113; Exec. Order No. 14257, 90 Fed. Reg. at 15041.

13. See Irineo Cabrereros & Aatish Bhatia, *Trump's Astonishing 100 Days, in 8 Charts*, N.Y. TIMES (Apr. 29, 2025), <https://www.nytimes.com/interactive/2025/04/29/upshot/trump-100-days-charts.html> [https://perma.cc/YM6P-A7JV]; see also Osmond Chia, *Trump's Sweeping New Tariffs Take Effect Against Dozens of Countries*, BBC (Aug. 7, 2025), <https://www.bbc.com/news/articles/cx23jmvn5yzo> [https://perma.cc/BYQ7-WC6S].

on most imports. The Trump administration targeted, without prior consultation, major trading partners such as China (10%),¹⁴ India (26%, later reduced to 10%),¹⁵ the European Union (20%),¹⁶ and Brazil (10%).¹⁷ Throughout 2025, he asserted that these tariff measures were necessary to halt illegal immigration, prevent the BRICS countries (Brazil, Russia, India, China, and South Africa) from creating an alternative currency to the dollar,¹⁸ coerce Colombia to accept deportation planes,¹⁹ free former Brazilian President Jair Bolsonaro from domestic criminal proceedings stemming from the January 8, 2023, failed coup attempt,²⁰ and pressure India to halt oil imports from Russia,²¹ among other

14. See Exec. Order No. 14228, 90 Fed. Reg. 11463 (Mar. 7, 2025) (increasing the drug-trafficking tariff on Chinese goods from 10% to 20% and removing the statutory exemption for Chinese goods valued under US\$800); see also Exec. Order No. 14256, 90 Fed. Reg. 14899 (Apr. 7, 2025); Aimee Picchi, *Trump Hits Canada, Mexico and China with Steep New Tariffs, Says Americans Could Feel "Some Pain,"* CBS NEWS (Feb. 7, 2025), <https://www.cbsnews.com/news/trump-tariff-enacted-february-1-canada-mexico-china/> [<https://perma.cc/4ZBZ-SJB3>].

15. Areena Arora & Gandla Sneha, *100% U.S. Tariff Threat: Can India's New Trade Deals Reduce Its Dependence on America?*, HINDU (Sep. 21, 2026), <https://www.thehindu.com/infographics/2026-09-21/india-us-tariffs-fta-export-dependence/index.html> [<https://perma.cc/233Y-Q9BF>].

16. See *Trump Pushes EU to Cut Tariffs or Face Extra Duties*, FT Reports, ECON. TIMES (last updated May 22, 2025), <https://economictimes.indiatimes.com/news/international/global-trends/trump-pushes-eu-to-cut-tariffs-or-face-extra-duties-ft-reports/articleshow/121353244.cms?from=mdr> [<https://perma.cc/965P-C7BP>].

17. Ignacio Albe & Valentina Sader, *US-Brazil Trade Dashboard*, ATL. COUNCIL (last updated Sep. 21, 2026), <https://www.atlanticcouncil.org/commentary/trackers-and-data-visualizations/us-brazil-trade-dashboard/> [<https://perma.cc/9RML-HXWH>].

18. The US dollar represents 58% of the world's foreign exchange reserves, and President Trump threatened 100% tariffs against the nine BRICS nations if they act to undermine the dollar by creating a new BRICS currency. See Fatima Hussein, *Trump Threatens 100% Tariff on BRIC Bloc of Nations If They Act to Undermine US Dollar*, AP NEWS (Nov. 30, 2024), <https://apnews.com/article/trump-dollar-dominance-brics-treasury-8572985f41754fe008b98f38180945c3> [<https://perma.cc/DGH8-Y2R9>].

19. See Aaron Pellish et al., *Colombia Backs Down on Accepting Deportees on Military Planes After Trump's Tariffs Threats*, CNN (last updated Jan. 27, 2025), <https://www.cnn.com/2025/01/26/politics/colombia-tariffs-trump-deportation-flights> [<https://perma.cc/S3B4-P42R>].

20. See Exec. Order No. 14323, 90 Fed. Reg. 37739 (Aug. 5, 2025) (imposing a 40% tariff on Brazilian imports for allegedly persecuting former President Jair Bolsonaro and suppressing political dissent).

21. Exec. Order No. 14329, 90 Fed. Reg. 38701 (Aug. 11, 2025) (imposing an additional 25% tariff, announced on August 6, 2025, on most imports from India to pressure India to halt its imports of Russian oil).

reasons. The administration imposed the bulk of these tariffs under IEEPA, a rarely used statute enacted by Congress in 1977 that provides limited authority to the president to take certain economic measures in the event of a national emergency.²² President Trump claimed that “jobs and factories will come roaring back,” and the tariffs would “make Americans wealthy” and “bring in trillions and trillions of dollars to pay down America’s debt.”²³

The speed with which President Trump acted to impose these substantial tariff hikes in 2025 was different from his first presidential term, in which he pursued a more measured tariff approach by targeting specific imported products—steel, aluminum, washing machines, and solar panels—from China and a select few other countries over the four years. The Trump administration imposed most of the 2025 tariff increases within three months of its return to the White House, and these tariffs affected nearly all goods imported into the country on a near-worldwide scale. During this period, the overall average US tariff rate rose from 2.5% to an estimated 27%—the highest level in over a century.²⁴ The most noteworthy moment occurred on what Trump described as “Liberation Day,” April 2, 2025, when he announced an immediate universal tariff increase of 10% on all imported goods, followed by country-specific reciprocal tariffs on dozens of countries.²⁵ The April 2 announcement was tantamount to a declaration of war—a trade war—against most of the United

22. See 50 U.S.C. §§ 1701–1710.

23. Talmon Joseph Smith, *Trump Is Promising a Manufacturing Renaissance. Is That Even Possible?*, N.Y. TIMES (Apr. 3, 2025), <https://www.nytimes.com/2025/04/03/business/economy/trump-tariffs-us-manufacturing-economy.html> [<https://perma.cc/W2BX-CQQR>]; see also Erica York & Emily Kraschel, *Liberation Day Was One Year Ago: Did the President’s Tariff Promises Happen?*, TAX FOUND. (Mar. 30, 2026), <https://taxfoundation.org/blog/liberation-day-trump-tariffs/> [<https://perma.cc/XF6R-E9K3>].

24. Exec. Order No. 14257, 90 Fed. Reg. at 15041; see also Sudeep Reddy, *Reality Check: What Trump’s Supposed Retreat Really Means in a Historic Trade War*, POLITICO (Apr. 10, 2025), <https://www.politico.com/news/magazine/2025/04/10/tariff-reality-check-trump-retreat-00285270> [<https://perma.cc/4YAZ-JYKH>].

25. See Barath Harithas et al., “Liberation Day” Tariffs Explained, CTR. FOR STRATEGIC & INT’L STUD. (Apr. 3, 2025), <https://www.csis.org/analysis/liberation-day-tariffs-explained> [<https://perma.cc/B3FK-ZTZV>]; see also *Trump Takes America’s Trade Policies Back to the 19th Century*, ECONOMIST (Apr. 3, 2025), <https://www.economist.com/finance-and-economics/2025/04/03/trump-takes-americas-trade-policies-back-to-the-19th-century> [<https://perma.cc/A6QG-TGUL>].

States' trading partners that threatened to upend the existing global rules-based trade order.

The "Liberation Day" announcement sent shock waves around the world, triggering a plunge in the stock market and a sell-off of US bonds that sparked fears that the global economy was headed for a recession.²⁶ Major trade powers, such as China, the European Union, and Canada, responded to the announcement by threatening retaliatory tariff hikes on a significant number of imported goods from the United States.²⁷ These goods included products produced in politically powerful swing states in the Midwest and the Rust Belt, including soybeans, ice cream, beef, automobiles and trucks, auto parts, motorcycles, cigarettes, alcoholic beverages, and steel, to name just a few.²⁸ Other countries, such as India, South Korea, Japan, and Vietnam, elected not to retaliate and, instead, agreed to engage in negotiations with the Trump administration.²⁹

26. See David Baratz, *See Reactions as Trump Tariffs Sink Stock Markets Worldwide*, USA TODAY (last updated Apr. 7, 2025), <https://www.usatoday.com/picture-gallery/money/economy/2025/04/07/trump-tariffs-stock-markets-worldwide-photos/82973001007/> [https://perma.cc/D4AW-J6HP]; see also Phillip Inman & Jasper Jolly, *Dramatic Sell-Off of US Government Bonds as Tariff War Panic Deepens*, GUARDIAN (Apr. 9, 2025), <https://www.theguardian.com/business/2025/apr/09/dramatic-sell-off-of-us-government-bonds-as-tariff-war-panic-deepens> [https://perma.cc/ZUV6-UG9E].

27. See John Ruwitch, *China Vows Retaliation and a 'Fight to the End' After Trump's Latest Tariff Threat*, NPR (last updated Apr. 8, 2025), <https://www.npr.org/2025/04/07/nx-s1-5355148/china-trump-tariffs-trade-war-retaliation> [https://perma.cc/7CW3-WN2B]; see also Jennifer Rankin & Sam Jones, *EU Suspends Retaliatory 25% Tariffs on US Goods After Trump U-Turn*, GUARDIAN (Apr. 10, 2025), <https://www.theguardian.com/world/2025/apr/10/eu-suspends-retaliatory-tariffs-us-goods-trump-von-der-leyen> [https://perma.cc/M9PP-2Q5X]; Press Release, Prime Minister of Can., Canada Announces New Countermeasures in Response to Tariffs from the United States of America (Apr. 3, 2025), <https://www.pm.gc.ca/en/news/news-releases/2025/04/03/canada-announces-new-countermeasures-response-tariffs-from-united-states> [https://perma.cc/5H89-HKGZ].

28. See Ellen Francis et al., *EU, Canada Retaliate Against Trump's Tariffs as Trade War Escalates*, WASH. POST (Mar. 12, 2025), <https://www.washingtonpost.com/world/2025/03/12/europe-tariff-retaliation-trump/> [https://perma.cc/X64D-YZPU]; see also Joseph W. Glauber, *Evaluating the Impact of Tariffs on US Agriculture a Year After Liberation Day*, AM. ENTER. INST. (Apr. 15, 2026), <https://www.aei.org/research-products/report/evaluating-the-impact-of-tariffs-on-us-agriculture-a-year-after-liberation-day/> [https://perma.cc/9WGW-UHZG]; Harithas et al., *supra* note 25.

29. See Ruwitch, *supra* note 27; see also Ian Aikman, *Trump's Top Tariffs for 'Worst Offenders' Take Effect*, BBC (Apr. 9, 2025), <https://www.bbc.com/news/articles/cgkkg1kr63o> [https://perma.cc/4JK3-53VK]; Inu Manak et al., *What Trump Trade Policy*

The chaos that ensued, following President Trump's "Liberation Day" announcement, prompted him on April 9, 2025, to declare a ninety-day "pause" in the implementation of the new tariffs against all targeted countries except China, to allow time for bilateral negotiations to take place.³⁰ The president ordered a temporary "universal" levy, reducing the country-specific rates on all imported goods to 10%, which had the effect of prompting a sharp rally in the global stock markets.³¹ China, which had already retaliated against the "Liberation Day" tariffs with a 34% duty on all US goods, was denied the reprieve; instead, the president raised the reciprocal rate on Chinese imports by 50 percentage points, to 84%.³² According to the White House, "[i]t was a mistake for China to retaliate."³³ Beijing immediately matched the increase, raising its own tariff on imported US goods by 50 percentage points, to 84%.³⁴ China declared that it would "fight to the end" and continued to impose corresponding measures in response to new US tariffs and pursue legal action against the United States at the WTO.³⁵ The United States then raised the tariff rate on Chinese

Has Achieved Since 'Liberation Day,' COUNCIL ON FOREIGN RELS. (July 7, 2025), <https://www.cfr.org/articles/what-trump-trade-policy-has-achieved-liberation-day> [https://perma.cc/HLU6-C5JU].

30. Exec. Order No. 14266, 90 Fed. Reg. 15625 (Apr. 15, 2025); *see also* Josh Boak, *Trump Limits Tariffs on Most Nations for 90 Days, Raises Taxes on Chinese Imports*, AP NEWS (Apr. 9, 2025), <https://apnews.com/article/trump-tariffs-stock-market-china-recession-deals-e8e54a68397e6829e1d27552a1d7bf9> [https://perma.cc/G6XH-K4RK].

31. Exec. Order No. 14266, 90 Fed. Reg. at 15626; *see also* Eli Stokols et al., *Trump Hits Pause on Trade War*, POLITICO (Apr. 9, 2025), <https://www.politico.com/news/2025/04/09/trump-pauses-tariffs-00281494> [https://perma.cc/Q7HW-ML9X]; *Investors React as Stocks Jump on Trump's Tariff Pause*, REUTERS (Apr. 9, 2025), <https://www.reuters.com/markets/us/stocks-rally-trump-tariff-pause-after-market-rout-2025-04-09/> [https://perma.cc/MNJ5-4S97].

32. *See* Exec. Order No. 14266, 90 Fed. Reg. at 15626; *see also* Janice Dickson, *Trump to Impose Additional 50% Tariff on China*, GLOBE & MAIL (last updated Apr. 9, 2025), <https://www.theglobeandmail.com/world/article-trump-to-impose-additional-50-tariff-on-china/> [https://perma.cc/77MC-VFBR].

33. Ashleigh Fields, *Bessent: China Tariff Retaliation 'A Loser for Them,'* HILL (Apr. 9, 2025), <https://thehill.com/homenews/administration/5240057-bessent-china-tariff-retaliation/> [https://perma.cc/9JW3-RBNU].

34. *See* Nectar Gan & Juliana Liu, *China Announces 84% Tariffs in Showdown with Trump. Europe Also Hits Back*, CNN (Apr. 9, 2025), <https://www.cnn.com/2025/04/09/business/china-us-tariffs-retaliation-hnk-intl/index.html> [https://perma.cc/3CYD-DWDQ].

35. Amy Hawkins, *China Says It Will 'Fight to End' After US Said It Was Trying to Hurt World Economy*, GUARDIAN (Oct. 14, 2025), <https://www.theguardian.com/us-news/>

goods to 145% (combining a 125% reciprocal rate and a 20% fentanyl-related duty).³⁶ China followed by raising its retaliatory tariffs to 125% on US imports.³⁷ President Trump then stated “145 percent is very high . . . it will come down substantially, but it won’t be zero.”³⁸ The tit-for-tat escalation came to a halt in May 2025, when the two sides agreed in Geneva to a ninety-day truce that lowered the US rate on Chinese goods to 30% and China’s rate on US goods to 10%.³⁹

During the summer of 2025, US tariff policy fluctuated wildly as President Trump issued several increases, reductions, and modifications of tariff rates on a number of imported products and an Executive Order shifting sets of goods into and out of the reciprocal tariff framework.⁴⁰ At the height of the trade war initiated by the United States—which included the “Liberation Day” and other tariffs imposed under IEEPA, plus sector-specific tariffs imposed under Section 232—US tariff rates were the highest in over 100 years and the equivalent of a US\$3.2 trillion tax hike on

2025/oct/14/china-us-world-economy-trump-tariffs [https://perma.cc/5T75-48CZ]; see also Associated Press, *China Vows to Stand Firm Against Trump’s 100% Tariff Threat*, NPR (Oct. 12, 2025), <https://www.npr.org/2025/10/12/nx-s1-5572400/china-vows-stand-firm-against-trumps-100-tariff-threat> [https://perma.cc/YDR3-YD9U]; Olivia Le Poidevin, *China Files New Complaint to WTO over Trump Tariffs*, REUTERS (Apr. 9, 2025), <https://www.reuters.com/markets/asia/china-expresses-grave-concern-wto-about-reckless-trump-tariffs-2025-04-09/> [https://perma.cc/K9SE-JD9Y].

36. Exec. Order No. 14266, 90 Fed. Reg. at 15626; see also Jing Li et al., *China Escalates Trade War as Trump Isolates Xi in Tariff U-Turn*, BLOOMBERG (Apr. 10, 2025), <https://www.bloomberg.com/news/articles/2025-04-10/trump-isolates-china-with-tariff-pivot-setting-up-xi-showdown> [https://perma.cc/8JGK-4L5H]; Alexandra Hutzler, *Trump and Team Downplay Continued Market Turmoil as ‘Transition Cost,’* ABC NEWS (Apr. 10, 2025), <https://abcnews.com/Politics/trump-team-downplay-continued-market-turmoil-transition-cost/story?id=120677607> [https://perma.cc/FWP2-AJQB].

37. See *China Raises Stakes in Trump’s Tariffs ‘Game’ with 125% Levy on US Goods*, AL JAZEERA (Apr. 11, 2025), <https://www.aljazeera.com/news/2025/4/11/china-retaliates-by-raising-tariffs-on-us-goods-to-125-percent> [https://perma.cc/LG2N-WNEQ].

38. See Alex Gangitano, *Trump Says Tariff on China Will ‘Come Down Substantially’ from 145 Percent*, HILL (Apr. 22, 2025), <https://thehill.com/homenews/administration/5261948-trump-optimistic-china-trade/> [https://perma.cc/69GF-WNJV].

39. Zongyuan Zoe Liu, *Trump’s China Truce on Tariffs Comes at Cost to U.S. Credibility*, COUNCIL ON FOREIGN RELS. (May 12, 2025), <https://www.cfr.org/articles/trumps-china-truce-tariffs-comes-cost-us-credibility> [https://perma.cc/KRX2-W3GA].

40. Exec. Order No. 14360, 90 Fed. Reg. 54091, 54091 (Nov. 25, 2025) (exempting items such as beef, fruits, coffee, tea, spices, and some fertilizers from the reciprocal tariffs).

the American people.⁴¹ The IEEPA tariffs accounted for approximately 42% of that increase.⁴²

Eventually, the tariff hysteria subsided when the Trump administration reached a number of bilateral “framework deals” with trading partners, including the European Union, the United Kingdom, Canada, India, Japan, South Korea, Vietnam, and Switzerland. The Swiss deal followed an increase in the tariff rate on Swiss goods from 30% to 39% in August 2025, which came after a tense phone call between President Trump and former Swiss Confederation President Karin Keller-Sutter; Trump later said he raised the tariff rate to 39% because he did not like her “aggressive” and “repetitive” tone on the call.⁴³ After intense diplomatic maneuvering and a highly publicized charm offensive by Swiss officials and industry leaders, President Trump agreed to reduce the tariffs on Swiss imports to 15% in November 2025.⁴⁴ The clash between the United States and China also de-escalated when the president suspended the reciprocal tariffs on Chinese imports and the two countries agreed to freeze tariff rates at 30% and 10%, respectively, until further negotiations took place in the fall.⁴⁵ By the end of the summer, the stock market had stabilized as

41. York & Kraschel, *supra* note 23.

42. *Id.*

43. Jonathan Wolfe, ‘She Just Rubbed Me the Wrong Way’: Trump Suggests Swiss Tariffs Were Personal, N.Y. TIMES (Jan. 21, 2026), <https://www.nytimes.com/2026/01/21/us/politics/trump-switzerland-tariffs-personal-friction.html> [<https://perma.cc/C6L5-XMPW>].

44. As part of the charm offensive, Swiss industry leaders visited the White House and gave President Trump gifts, including a Rolex gold watch and a specially engraved gold bar from the Swiss-based gold refining company MKS. See Imogen Foulkes & Paul Kirby, *US Agrees Deal to Slash Swiss Tariffs to 15% After Golden Charm Offensive*, BBC (Nov. 14, 2025), <https://www.bbc.com/news/articles/ce8zkrplpdyo> [<https://perma.cc/H4RK-4TY8>].

45. Exec. Order No. 14358, 90 Fed. Reg. 50729, 50730 (Nov. 7, 2025); see Clara Fong, *The U.S.-China Trade Relationship: What’s Behind the Competition*, COUNCIL ON FOREIGN RELS. (May 15, 2026), <https://www.cfr.org/backgrounders/contentious-us-china-trade-relationship> [<https://perma.cc/KSG2-JXFS>]; see also AFP, *US and China Reduce Their Tariffs to 30% and 10% Respectively*, L’ORIENT TODAY (May 12, 2025), <https://today.lorientjour.com/article/1459736/us-and-china-reduce-their-tariffs-to-30-and-10-respectively.html> [<https://perma.cc/N7N2-8QV7>].

targeted trade deals locked in specific tariff rates and importers began to pass along tariff costs to consumers at the retail level.⁴⁶

By the time of the Supreme Court's ruling in February 2026, the US Government had collected over US\$160 billion worth of tariff revenue under the Trump administration's use of IEEPA.⁴⁷ As a result of the high tariffs, US retail prices of imported goods rose seven percentage points relative to the pre-tariff trend, costing the average US household roughly US\$1,700 in effective tax and welfare loss.⁴⁸ Specific products impacted the most by the tariffs included imported food (fish, seafood, cocoa, tea, and coffee), clothing, footwear, cars, household goods, and building materials.⁴⁹ Given the erratic nature of President Trump's tariff-setting policies, many companies adopted a "wait and see" approach before altering their pricing of consumer goods.⁵⁰ In the meantime, several lawsuits were filed against the Trump administration, two

46. See Sinem Hacıoğlu-Hoke, Sarojini Malladi & Leo Feler, *The Slow Climb: How Tariffs Gradually Raised Retail Prices in 2025*, BD. OF GOVERNORS OF THE FED. RESRV. SYS.: FEDS NOTES (Mar. 5, 2026), <https://www.federalreserve.gov/econres/notes/feds-notes/the-slow-climb-how-tariffs-gradually-raised-retail-prices-in-2025-20260305.html> [https://perma.cc/VDM5-7XMY]; Noel Randewich & Nikhil Sharma, *S&P and Nasdaq Rally to Record Highs on Optimism About Trade Deals*, REUTERS (July 23, 2025), <https://www.reuters.com/business/sp-500-nasdaq-rally-record-highs-on-optimism-about-trade-deals-2025-07-23/> [https://perma.cc/RGW7-G8TU].

47. See Erica York & Alex Durante, *Supreme Court Strikes Down President Trump's Tariffs*, TAX FOUND. (Feb. 20, 2026), <https://taxfoundation.org/blog/supreme-court-trump-tariffs-ruling/> [https://perma.cc/R4XR-9ZP6] [hereinafter York & Durante, *Supreme Court Strikes Down Tariffs*].

48. See Alex Durante, *Tariffs Increased Retail Prices of Imports by 7 Percentage Points Prior to Supreme Court Ruling*, TAX FOUND. (Mar. 3, 2026), <https://taxfoundation.org/blog/trump-tariffs-raise-prices-consumers/> [https://perma.cc/9KQQ-YMVC]; see also JOINT ECON. COMM., AMERICAN FAMILIES HAVE PAID MORE THAN \$1,700 EACH IN TARIFF COSTS SINCE TRUMP ENTERED OFFICE (2026), https://www.jec.senate.gov/public/_cache/files/7cc03e65-d40a-465f-9e88-09dd53d3502f/jec-fact-sheet-on-cost-of-tariffs-for-families-update.pdf [https://perma.cc/WX67-KZ33].

49. See York & Durante, *Supreme Court Strikes Down Tariffs*, *supra* note 47; Kyle Pomerleau, *Fiscal and Economic Effects of Tariffs*, AM. ENTER. INST. (May 28, 2026), <https://www.aei.org/commentary/fiscal-and-economic-effects-of-tariffs/> [https://perma.cc/8BM5-CHHP]; see also Aimee Picchi, *Which Products Will Be Affected by Tariffs? Here's What Trump's "Liberation Day" Could Make Pricier*, CBS NEWS (Apr. 3, 2025), <https://www.cbsnews.com/news/which-products-most-affected-tariffs/> [https://perma.cc/S86B-UCNN].

50. York & Durante, *Supreme Court Strikes Down Tariffs*, *supra* note 47.

of which made their way along separate tracks to the Supreme Court challenging the legality of the IEEPA tariffs.⁵¹

B. The Launch of Litigation Against President Trump's IEEPA Tariffs

In the aftermath of President Trump's "Liberation Day" announcement, courts across the country received an influx of lawsuits challenging the legality of the sweeping tariffs imposed under IEEPA.⁵² One lawsuit was filed in the US District Court for the District of Columbia by Learning Resources, Inc., a family-owned educational toy manufacturer based in Chicago, and its affiliate hand2mind, a producer of K-12 learning materials for teachers and parents.⁵³ In *Learning Resources, Inc. v. Trump*, the plaintiffs claimed that IEEPA does not authorize President Trump's drug trafficking or reciprocal tariffs.⁵⁴ The plaintiffs argued that although IEEPA authorizes the "regulation of imports," it does not grant the president the authority to tax or create tariffs.⁵⁵ The plaintiffs alleged that the new tariffs would increase their costs from US\$2.3 million to over US\$100 million per year if allowed to stay in effect.⁵⁶ A second lawsuit, *V.O.S. Selections v. Trump*, was a

51. See Lindsay Whitehurst & Josh Boak, *Federal Court Blocks Trump from Imposing Sweeping Tariffs Under Emergency Powers Law*, AP NEWS (May 29, 2025), <https://apnews.com/article/trump-tariffs-trade-court-0392dbd59f548e49ad4f64254ae3f94a> [<https://perma.cc/J366-ZVYQ>]; see also *Learning Resources*, 607 U.S. at 238–40 (recounting the separate paths of *Learning Resources* through the D.D.C. and *V.O.S. Selections* through the CIT and Federal Circuit).

52. See, e.g., Tony Romm, *Trump's Tariffs Prompt Wave of Lawsuits as States and Businesses Fight Back*, N.Y. TIMES (Apr. 27, 2025), <https://www.nytimes.com/2025/04/27/us/politics/trump-tariffs-lawsuits.html> [<https://perma.cc/94NK-U8H7>]; Ankush Khardori, *The Supreme Court Could Unleash Chaos on the Economy*, POLITICO (May 1, 2025), <https://www.politico.com/news/magazine/2025/05/01/trump-tariffs-injunction-supreme-court-00319135> [<https://perma.cc/N4LA-TH6Q>].

53. Nicholas P. Brown & Eric Cox, *From Longshot Lawsuit to Landmark Ruling: How a Family Toy Business Took on Trump's Tariffs*, REUTERS (Feb. 20, 2026), <https://www.reuters.com/world/longshot-lawsuit-landmark-ruling-how-family-toy-business-took-trumps-tariffs-2026-02-20/> [<https://perma.cc/2R44-5VSA>].

54. Complaint at 1, 7–8, *Learning Resources Inc. v. Trump*, No. 25-cv-01248 (D.D.C. Apr. 22, 2025).

55. *Id.* ¶¶ 68–69.

56. See Mark Walsh, *Educational Toy Companies Lead Supreme Court Battle over Trump's Tariffs*, EDUC. WK. (Oct. 28, 2025), <https://www.edweek.org/policy-politics/>

consolidated suit brought by twelve states and a group of small businesses that were impacted by the IEEPA tariffs.⁵⁷ The plaintiffs similarly claimed that the use of IEEPA to justify sweeping tariffs was an illegal overreach of executive authority.⁵⁸ Both cases drew widespread attention as public interest groups and constitutional law scholars filed amicus briefs contending that the authority to impose tariffs rests firmly in the hands of Congress, not the Executive Branch.⁵⁹

In addition to the *Learning Resources* and *V.O.S. Selections* cases, more than 2,000 corporate and state lawsuits were filed seeking injunctions and refunds on the grounds that the new tariffs lacked lawful authorization.⁶⁰ The twelve states in *V.O.S. Selections*, for their part, claimed that the use of IEEPA to impose tariffs without congressional approval exceeded the president's statutory authority and was causing substantial harm to state economies.⁶¹ In other lawsuits brought by corporations—including Costco, Goodyear, Bumble Bee Foods, GoPro, J.Crew, Revlon, Kawasaki Motors, and other major importers—plaintiffs argued that the IEEPA tariffs were “unlawfully collected duties” and that even a favorable ruling for tariff opponents would not guarantee these companies refunds—especially if their tariff entries were “liquidated” by US Customs and Border Protection (“CBP”) before

educational-toy-companies-lead-supreme-court-battle-over-trump-tariffs/2025/10 [https://perma.cc/E4XZ-JDSB].

57. See Romm, *supra* note 52; see also Angie Orellana Hernandez & Tobi Raji, *How a Small Wine Company Complicated Trump's Sweeping Tariff Plans*, WASH. POST (May 31, 2025), <https://www.washingtonpost.com/nation/2025/05/31/trump-tariff-lawsuit-wine-importer/> [https://perma.cc/AQC6-B4BA].

58. Complaint at 2–3, *V.O.S. Selections, Inc. v. United States*, No. 25-00066 (Ct. Int'l Trade Apr. 14, 2025).

59. See, e.g., Brief of Amici Curiae Former Senator and Governor George F. Allen et al. in Support of Appellees and Affirmance at 5–9, *Learning Res., Inc. v. Trump*, No. 25-5202 (D.C. Cir. July 29, 2025), https://s3.amazonaws.com/pdfs.taxnotes.com/2025/2025-22725_TNTCourts_LR_Individuals_Amicus_Brief.pdf [https://perma.cc/5PRK-8T8Z].

60. Ari Hawkins, *White House Faces Thousands of Lawsuits as It Tries to Slow-Walk Tariff Refunds*, POLITICO (Mar. 3, 2026), <https://www.politico.com/news/2026/03/02/businesses-ready-battle-white-house-tariff-refunds-00808048> [https://perma.cc/Y9RH-NS56].

61. See Associated Press, *A Dozen States Sue the Trump Administration to Stop Tariff Policy*, NPR (Apr. 23, 2025), <https://www.npr.org/2025/04/23/g-s1-62417/trump-tariff-lawsuits-states> [https://perma.cc/2YPY-RUSC] [hereinafter Associated Press, *Dozen States Sue*].

final decisions were rendered by the courts.⁶² That concern was well founded: CBP typically takes 314 days to review and liquidate a formal tariff entry, and once an entry is liquidated the revenue is sent to the US Treasury Department.⁶³

In response to the lawsuits, the Trump administration denied requests to delay the “liquidation” process pending the outcome of litigation and, instead, accelerated efforts in some cases to deposit as much revenue raised from the tariffs as possible into the US Treasury.⁶⁴ The first wave of disputed tariff revenue stemming from the duties imposed on China, Canada, and Mexico for the alleged fentanyl trafficking emergency was due in December 2025, and the Department of Justice (“DOJ”) took the position that the issue is “still under consideration” by the courts.⁶⁵ According to the DOJ, the CIT should deny importers’ requests for a delay of the “liquidation” process because the court could still order “reliquidation” and refunds for the plaintiffs if the Supreme Court invalidates the tariffs.⁶⁶ CBP regulations allow importers to voluntarily reliquidate an entry within ninety days of its original liquidation date “to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law,” or file a formal protest with CBP within 180 days after the date of

62. Alison Durkee, *These Companies Are Filing Fresh Lawsuits over Trump’s Tariffs—Including Costco, Revlon, and More*, FORBES (Dec. 2, 2025), <https://www.forbes.com/sites/alisondurkee/2025/12/02/these-companies-are-filing-fresh-lawsuits-over-trumps-tariffs-including-costco-revlon-and-more/> [https://perma.cc/RE7S-AMU6]; see also Amy Roach, *Big Brands Push Back: Costco, Revlon, Kawasaki and Others Sue for Tariff Refunds*, INBOUND LOGISTICS (Dec. 4, 2025), <https://www.inboundlogistics.com/articles/big-brands-push-back-costco-revlon-kawasaki-and-others-sue-for-tariff-refunds/> [https://perma.cc/WBY6-85XL].

63. 19 U.S.C. § 1504 (providing that liquidation must occur within one year of the entry of the goods, although the Secretary of the Treasury may extend the period in certain circumstances); see also CHRISTOPHER A. CASEY & CHRISTOPHER T. ZIRPOLI, CONG. RSCH. SERV., IF13150, POTENTIAL REFUNDS OF TARIFFS IMPOSED UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT (IEEPA) (2026).

64. See Ari Hawkins, *Trump Administration Races to Finalize Tariff Payments – and Hamstring Possible Refunds*, POLITICO (Dec. 14, 2025), <https://www.politico.com/news/2025/12/14/trump-hardball-tariff-fees-trade-00689892> [https://perma.cc/8XH6-VR7U].

65. *Id.*

66. *Id.*

liquidation.⁶⁷ By the end of 2025, importers had paid approximately US\$129 billion in estimated tariff deposits for entries covered by the IEEPA tariffs.⁶⁸

III. THE AUTHORITY TO REGULATE TRADE UNDER US LAW

A. *The Origins, Evolution, and Use of Tariff-Setting Power by the Executive Branch*

According to the US Constitution, the power to impose tariffs in the United States belongs to the legislative branch. Article I, Section 8, of the Constitution provides that “[t]he Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises.”⁶⁹ James Madison, in an 1828 letter to Joseph C. Cabell, wrote that “the Constitution vests in Congress, expressly, ‘the power to lay and collect taxes, duties, imposts and excises’; and ‘the power to regulate trade.’”⁷⁰ With what can now be viewed as remarkable foresight, Madison further explained in the same letter that the power to impose tariffs for revenue-generating purposes and the power to regulate trade are inextricably linked: “Nor can it be inferred, as has been ingeniously attempted, that a power to regulate trade does not involve a power to tax it.”⁷¹ The power to regulate trade, according to the Supreme Court in *Gibbons v. Ogden* (1824), belongs to Congress and is plenary, and the related power to lay duties on imports is a branch of Congress’s taxing power; and because tariffs raise revenue, bills imposing them must originate in the House of Representatives under the Origination Clause.⁷²

However, during the twentieth century, Congress enacted several laws delegating limited tariff-setting authority to the president for various specified reasons. The Fordney-McCumber Tariff Act of 1922, which established an average tariff on dutiable

67. 19 C.F.R. § 173.3 (2025); 19 U.S.C. § 1514(c)(3).

68. CASEY & ZIRPOLI, *supra* note 63, at 1.

69. U.S. CONST. art. I, § 8, cl. 1.

70. Letter from James Madison to Joseph C. Cabell (Sep. 18, 1828), FOUNDERS ONLINE, <https://founders.archives.gov/documents/Madison/99-02-02-1540> [<https://perma.cc/U637-6BTR>].

71. *Id.*

72. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 196–97, 201–02 (1824); *see* U.S. CONST. art. I, § 7, cl. 1.

imports of 38.5%, included a major provision known as the “flexible tariff provision” (Section 315) to enable the president to address dumping (the sale of imported merchandise for less than its foreign market value or cost of production) and other changing industrial conditions.⁷³ Specifically, Congress granted the president the authority to adjust tariff rates as a way to equalize differences in costs of production (“COP”) between domestic and imported products without requiring the enactment of new legislation for every minor adjustment.⁷⁴ However, this authority was heavily circumscribed, as the president was required to work through the bipartisan US Tariff Commission to conduct hearings and investigations before imposing any changes to tariff rates.⁷⁵ The president could only proclaim, modify, or veto determinations made by the Tariff Commission.⁷⁶ Section 315 became a principal tool used by President Calvin Coolidge to adjust import duties up or down by as much as 50% to equalize the differences in the costs of production between the United States and its trading partners during the 1920s.⁷⁷ Section 315 was then superseded by Section 336 of the Smoot-Hawley Tariff Act of 1930, which expanded the Tariff Commission’s role; however, the Tariff Commission’s Section 315/336 investigatory work was significantly reduced thereafter.⁷⁸

The Smoot-Hawley Tariff Act of 1930 was enacted in response to the 1929 stock market crash and the Great Depression.⁷⁹ The purpose of the Act was to shield domestic farmers and manufacturers from the beginning of the Great Depression by

73. U.S. INT’L TRADE COMM’N, A CENTENNIAL HISTORY OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION 123–25 (2016), https://www.usitc.gov/documents/final_centennial_history_508_compliant_v2.pdf [<https://perma.cc/NHQ2-9WW4>].

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 124–25 (finding that between 1922 and 1929, the Tariff Commission received 603 applications under Section 315 covering 375 commodities, resulting in upward and downward adjustments of duties); *see also Farmers: New Duties*, TIME (Mar. 17, 1924), <https://time.com/archive/6651144/farmers-new-duties/> [<https://perma.cc/J7FW-FY6U>].

78. U.S. INT’L TRADE COMM’N, *supra* note 73, at 124–25.

79. *See The Battle of Smoot-Hawley*, ECONOMIST (Dec. 18, 2008), <https://www.economist.com/christmas-specials/2008/12/18/the-battle-of-smoot-hawley> [<https://perma.cc/DUB7-UBRG>].

building a high tariff wall to reduce imports into the United States.⁸⁰ The Smoot-Hawley Tariff Act raised tariff rates to their second-highest level in US history (an average peak of 59.1% by 1932) on approximately 20,000 industrial and agricultural imports to protect the US economy.⁸¹ In a speech given at the time of the enactment of the Smoot-Hawley Tariff Act, President Hoover declared:

There are certain industries which cannot now successfully compete with foreign producers because of lower foreign wages and a lower cost of living abroad, and we pledge the next Republican Congress to an examination and where necessary a revision of these schedules to the end that the American labor in these industries may again command the home market, may maintain its standard of living, and may count upon steady employment in its accustomed field.⁸²

The Smoot-Hawley Tariff Act triggered widespread tariff retaliation from Europe and other major trading partners of the United States, sparking a global trade war.⁸³ Between 1929 and 1933, US imports and exports crashed by two-thirds.⁸⁴

Section 338 was passed as an original provision within the Smoot-Hawley Tariff Act. Section 338 grants the president limited authority to impose retaliatory tariffs of up to 50% on imports from countries where (1) the country has applied “an unreasonable charge, exaction, regulation, or limitation” on US goods, or (2) the country has specifically discriminated against US commerce.⁸⁵ Unlike Section 315/336, Section 338 does not have any domestic checks and balances, nor does it require an executive agency to conduct an investigation and make certain findings as a prerequisite to raising tariffs.⁸⁶ Moreover, the provision does not require congressional consent or consultation with the targeted

80. *Id.*

81. See generally DOUGLAS A. IRWIN, CLASHING OVER COMMERCE: A HISTORY OF U.S. TRADE POLICY ch. 8 (2017).

82. Statement on the Tariff Bill, 1930 PUB. PAPERS 230, 230 (June 16, 1930) (quoting Republican Party Platform of 1928).

83. See IRWIN, *supra* note 81, at 395–405.

84. See *id.* ch. 10.

85. Tariff Act of 1930, ch. 497, § 338, 46 Stat. 590, 704 (codified as amended at 19 U.S.C. § 1338).

86. *Id.*

trading partner.⁸⁷ Section 338 does have a maximum tariff ceiling, however, of 50%.⁸⁸

Section 338 was never used to impose tariffs, but it was referenced by Presidents Hoover and Franklin D. Roosevelt to threaten tariffs against US trading partners during the 1930s trade war. In 1932, President Hoover threatened to use Section 338 against France in response to discriminatory import quotas that heavily restricted or reduced the shipment of American products—radios, machine tools, electrical equipment, and fruits—resulting from a Franco-Belgian preferential trade arrangement that exempted Belgium from these measures.⁸⁹ The Hoover administration also threatened the use of Section 338 against Spain in 1932 as diplomatic leverage during bilateral negotiations regarding most-favored-nation (“MFN”) treatment for US imports.⁹⁰ Moreover, in 1935, the US Tariff Commission under President Roosevelt referenced Section 338 and considered utilizing the provision against Germany and Australia after determining that the countries were discriminating against US commerce.⁹¹ Furthermore, during the late 1930s, President Roosevelt briefly discussed imposing Section 338 tariffs against Japan in response to its aggressive military actions in East Asia and its efforts to reshape markets in China, which discriminated against US commerce.⁹² This period of political and economic crisis was the only time a president ever considered using Section 338, until President Trump invoked the provision on July 20, 2026, to impose 50% tariffs on US\$20 billion worth of Canadian imports.⁹³

87. *Id.*

88. *Id.*; see also Ana Elena Sancho & Fiama Angeles, *Section 338: The Return of the Authority*, GLOB. TRADE ALERT (July 21, 2026), <https://globaltradealert.org/blog/s338-the-return-of-the-authority> [<https://perma.cc/9FN2-TFPS>].

89. See Sancho & Angeles, *supra* note 88.

90. *Id.*

91. *Id.*

92. *Id.*

93. See Ana Swanson & Ian Austen, *Trump to Impose 50% Tariffs on Many Canadian Goods*, N.Y. TIMES (July 20, 2026), <https://www.nytimes.com/2026/07/20/business/economy/trump-tariffs-canada.html> [<https://perma.cc/Q7LU-RWYC>]; see also *Fact Sheet: President Donald J. Trump Imposes Additional Tariffs on Canada*, WHITE HOUSE (July 20, 2026), <https://www.whitehouse.gov/fact-sheets/2026/07/fact-sheet-president-donald-j-trump-imposes-additional-tariffs-on-canada/> [<https://perma.cc/Y8HY-6MYQ>].

In 1934, as tariff walls remained high and Americans continued to face economic hardship, Congress passed the Reciprocal Trade Agreements Act ("RTAA"), which gave President Roosevelt the authority to lower tariffs and boost global commerce.⁹⁴ The RTAA fundamentally altered US trade policy by transferring some constitutional power to the Executive Branch to negotiate bilateral trade deals and adjust tariff rates. Between 1934 and 1939, President Roosevelt used this authority to reduce tariffs by as much as 50% with several countries in exchange for reciprocal tariff reductions on US exports.⁹⁵ The average ad valorem duty declined from 46.7% to 37.3% in 1939, helping to revive international trade.⁹⁶ Moreover, the RTAA empowered the president to negotiate bilateral deals with US trading partners swiftly by allowing him to conclude them as executive agreements, requiring only a presidential signature, rather than as treaties, which require a full two-thirds majority Senate vote pursuant to the Constitution's Treaty Clause.⁹⁷ Furthermore, the tariff cuts negotiated by President Roosevelt under the RTAA were subject to MFN treatment, extending the benefits of tariff concessions to all other nations that granted similar treatment to the United States.⁹⁸ This non-discriminatory, MFN principle helped spark and expand US trade for decades to come and served as the foundation for the post-World War II rules-based multilateral trade system, eventually leading to the creation of the General Agreement on Tariffs and Trade ("GATT") in 1947 and, ultimately, the WTO in 1995.

94. See Reciprocal Trade Agreements Act, ch. 474, 48 Stat. 943 (1934) (codified as amended at 19 U.S.C. § 1351).

95. See IRWIN, *supra* note 81, at 419.

96. *Id.* at 441.

97. President Roosevelt, from 1934 to 1939, concluded bilateral trade agreements with nineteen countries, including Belgium, Brazil, Canada, Colombia, Costa Rica, Cuba, Czechoslovakia, Ecuador, El Salvador, Finland, France, Guatemala, Haiti, Honduras, the Netherlands, Nicaragua, Sweden, Switzerland, and the United Kingdom. See *New Deal Trade Policy: The Export-Import Bank & the Reciprocal Trade Agreements Act, 1934*, U.S. DEP'T OF STATE, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1921-1936/export-import-bank> [<https://perma.cc/2CMT-D7LK>] (last visited July 12, 2026); see also Andrew Glass, *House Opens Trade Gates, March 29, 1934*, POLITICO (Mar. 29, 2018), <https://www.politico.com/story/2018/03/29/house-opens-trade-gates-march-29-1934-484735> [<https://perma.cc/WB96-YXTX>].

98. Reciprocal Trade Agreements Act § 350(a), 48 Stat. at 943.

During the Cold War, Congress delegated specific authority to the president over trade policy to protect national security and allow for more flexibility to negotiate multilateral trade deals with other countries. One such delegation came at the height of that period, when Congress, under the Trade Expansion Act of 1962, granted the president broader authority to negotiate across-the-board tariff reductions (rather than tariff reductions on a product-by-product basis) within the GATT system.⁹⁹ The Act also laid the foundation for the Office of the United States Trade Representative (“USTR”) as an arm of the White House to handle trade negotiations and enforce trade agreements at the global institutional level.¹⁰⁰ President John F. Kennedy took advantage of this newly delegated authority to negotiate across-the-board tariff reductions on an MFN basis with more than sixty GATT contracting parties during the Kennedy Round of GATT Negotiations (1964–1967).¹⁰¹ Additionally, Section 232 of the Trade Expansion Act, as amended (19 U.S.C. § 1862), gave the president significant discretion in applying *sector-specific* tariffs to protect domestic producers of critical materials deemed necessary for national defense and infrastructure.¹⁰² Specifically, Section 232 provides that if the Secretary of Commerce, in consultation with the Secretary of Defense, conducts an investigation and prepares a report finding that an imported product “threatens to impair the national security” of the United States, the president can then take “such action as [he] deems necessary” to adjust the imports of the product.¹⁰³ Though Section 232 does not define “national security,” it describes steps the Secretary of Commerce shall take “to

99. See KYLA H. KITAMURA, CONG. RSCH. SERV., IF13006, SECTION 232 OF THE TRADE EXPANSION ACT (2026) [hereinafter KITAMURA, SECTION 232].

100. See *id.*; *History of the United States Trade Representative*, U.S. TRADE REPRESENTATIVE, <https://ustr.gov/about-us/history> [<https://perma.cc/XX8A-PZU4>] (last visited July 12, 2026).

101. See generally Bernard Norwood, *The Kennedy Round: A Try at Linear Trade Negotiations*, 12 J.L. & ECON. 297, 319 (1969).

102. See KITAMURA, SECTION 232, *supra* note 99.

103. Under Section 232, the head of any department or agency, or any “interested party,” may request that the Secretary of Commerce investigate the effects of a specific import on US national security. The Commerce Secretary may also self-initiate an investigation. The Commerce Secretary must immediately notify the Secretary of Defense regarding any Section 232 investigation. *Id.*

determine effects on national security of imports of articles.”¹⁰⁴ The Section 232 process takes about six to nine months to complete.¹⁰⁵

Since the Trade Expansion Act’s enactment, the US Secretary of Commerce has determined national security threats from imported products in several cases. From 1962 to 2017, the United States initiated twenty-six Section 232 investigations, and found national security threats in nine of them (eight involving petroleum and one involving machine tools).¹⁰⁶ During President Trump’s first term in office from 2017 to 2021, his administration carried out seven Section 232 investigations and found a national security threat in all but one of them.¹⁰⁷ The products deemed to be a threat to US national security included steel, aluminum, automobiles and automobile parts, transformers and parts, and rare earth minerals.¹⁰⁸ President Trump imposed a 25% tariff on steel imports and a 10% duty on aluminum in 2018 and entered into negotiations with countries regarding the other sector-specific products.¹⁰⁹ From 2021 to 2025, the Biden administration conducted only one Section 232 investigation into imports of permanent magnets and found a national security threat.¹¹⁰ However, President Biden announced various actions to improve supply chain resiliency, rather than to solely impose tariffs on

104. The term “national security threat” is not defined in Section 232. Some groups argue that the Trump administration’s interpretation, particularly as it relates to economic factors, is overly broad, resulting in the overuse of Section 232. The White House asserts that “economic security is national security.” *Id.*

105. Under the Section 232 investigatory process, the Department of Commerce must “immediately initiate an appropriate investigation to determine the effects [of the subject imports] on the national security.” The Secretary of Commerce is to consult with the Secretary of Defense and other “appropriate officers of the United States,” and allow for public input if “appropriate and after reasonable notice.” Within 270 days of initiating a Section 232 investigation, the Secretary must submit to the President a report on the investigation’s findings with respect to the effect of an imported good “in such quantities or under such circumstances” upon US national security and recommendations for action or inaction. In conducting Section 232 investigations, the Secretary of Commerce and the President shall “recognize the close relation of the economic welfare of the Nation to [US] national security.” *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

imports.¹¹¹ In 2026, the Secretary of Commerce under President Trump has initiated multiple Section 232 investigations in an effort to maintain sweeping tariffs on various US trading partners.¹¹²

A decade after the enactment of the Trade Expansion Act, Congress passed the Trade Act of 1974, expanding the president's authority to impose tariffs and other trade measures to protect national security, address economic emergencies, and combat unfair trade practices. The two main aspects of the 1974 Trade Act are Title III, "Relief from Unfair Trade Practices" (referred to as "Section 301"),¹¹³ and Title II, "Relief from Injury Caused by Import Competition" (referred to as "Section 201").¹¹⁴ Section 301 grants USTR a range of responsibilities and authorities to investigate and penalize other countries' trade practices that are unjustifiable, unreasonable, discriminatory, or violate trade agreements.¹¹⁵ USTR may impose tariffs, quotas, or suspend trade concessions under Section 301.¹¹⁶ Unlike Section 232, however, key requirements of a Section 301 investigation include a hearing, public comment periods, and consultation with the governments concerned before imposing tariffs.¹¹⁷ In matters that involve a breach of a trade agreement, USTR is required to request formal dispute settlement proceedings with the WTO, or as prescribed by

111. See Ryan Mulholland & Mike Williams, *The Biden Administration's Targeted, Strategic Tariffs Are Effective Industrial Policy at Work*, CTR. FOR AM. PROGRESS (May 29, 2024), <https://www.americanprogress.org/article/the-biden-administrations-targeted-strategic-tariffs-are-effective-industrial-policy-at-work/> [https://perma.cc/589J-FSQM].

112. Since February 2025, the Trump administration has imposed or expanded tariffs under Section 232 in various sectors, including US imports of steel, aluminum, and copper, as well as associated derivatives (downstream products incorporating these metals); autos and auto parts; medium- and heavy-duty vehicles ("MHDVs"), MHDV parts, and buses; timber, lumber, and certain wood products; semiconductors; and pharmaceuticals. See *Fact Sheet: President Donald J. Trump Updates Tariffs on Steel, Aluminum, and Copper Imports*, WHITE HOUSE (June 1, 2026), <https://www.whitehouse.gov/fact-sheets/2026/06/fact-sheet-president-donald-j-trump-updates-tariffs-on-steel-aluminum-and-copper-imports/> [https://perma.cc/WQV6-A8GY]; see also Erica York & Alex Durante, *Tracking the Impact of the Trump Tariffs & Trade War*, TAX FOUND. (Sep. 10, 2026), <https://taxfoundation.org/research/federal-tax/trump-tariffs-trade-war/> [https://perma.cc/RS8S-UWCS].

113. Trade Act of 1974 § 301, 19 U.S.C. § 2411.

114. Trade Act of 1974 § 201, 19 U.S.C. § 2251.

115. DANIELLE M. TRACHTENBERG, CONG. RSCH. SERV., IF11346, SECTION 301 OF THE TRADE ACT OF 1974, at 1 (2026).

116. *Id.*

117. *Id.*

the applicable free trade agreement, and allow that process to conclude before taking retaliatory action.¹¹⁸ Once the process concludes, and the investigation results in a determination that the alleged foreign conduct is unfair or violates US rights under trade agreements, Section 301 authorizes USTR to (1) impose tariffs or other import restrictions; (2) withdraw or suspend trade concessions; or (3) enter into a binding agreement with the government concerned to cease the offending conduct or compensate the United States.¹¹⁹ Since 1974, USTR has conducted or initiated more than 200 Section 301 investigations.¹²⁰

Prior to the first Trump administration, the United States refrained from using Section 301 when possible and, instead, pursued dispute settlement proceedings under the GATT or WTO pursuant to its international legal obligations.¹²¹ Since 2017, however, the Trump and Biden administrations have initiated at least nine Section 301 investigations, and USTR found criteria for action in three of them.¹²² In 2018 and 2019, the United States imposed tariffs on more than US\$300 billion worth of Chinese exports, stemming from Chinese practices related to forced technology transfer and intellectual property rights, and tariffs on US\$7.5 billion worth of EU goods to counter EU subsidies on civil aircraft, which were removed a year later after the parties reached a settlement.¹²³ In 2020, a WTO panel found that the tariffs imposed on China violated international trade rules; however, the United States appealed this decision to the non-functioning WTO Appellate Body, where the case has lapsed due to the blockage of

118. *Id.*

119. *Id.*

120. *Id.*

121. "From the establishment of the World Trade Organization (WTO) in 1995 until the first Trump Administration [which initiated six investigations under Section 301], the United States used Section 301 primarily to build cases and pursue dispute settlement at the WTO." *Id.*

122. The Biden administration initiated three such investigations, all of which USTR determined "were actionable under Section 301." "As of June 2026, the second Trump Administration has initiated six investigations; four are ongoing and two investigations were completed in June 2026." *Id.*

123. *Id.*; see also WAYNE M. MORRISON, CONG. RSCH. SERV., IF10708, ENFORCING U.S. TRADE LAWS: SECTION 301 AND CHINA 1 (2019).

appellate judge appointments by the United States.¹²⁴ The Biden administration maintained the Section 301 tariffs imposed on China through 2024 and also carried out an investigation of Chinese shipping and shipbuilding practices, finding that these practices burdened or restricted US commerce.¹²⁵

Since President Trump returned to the White House in 2025, USTR has initiated several Section 301 actions targeting forced labor, excess manufacturing capacity, and trade practices affecting market access, intellectual property, and digital services.¹²⁶ The product categories include electronics, machinery, automobiles, electric vehicle batteries, solar wafers, medical supplies (masks/syringes), and apparel, with duty rates ranging from 25% to 100%.¹²⁷ On July 23, 2026, President Trump announced Section 301 tariffs, ranging between 10% and 12.5%, on more than eighty countries for allegedly failing to prevent the production of goods by means of forced labor.¹²⁸ The goods affected by the tariffs encompass 99.4% of US imports.¹²⁹ The duties effectively replaced President Trump's 10% temporary global tariffs imposed under an alternative tariff statute (Section 122, discussed below) that

124. See Panel Report, *United States—Tariff Measures on Certain Goods from China*, WTO Doc. WT/DS543/R (circulated Sep. 15, 2020); Notification of an Appeal by the United States, *United States—Tariff Measures on Certain Goods from China*, WTO Doc. WT/DS543/10 (Oct. 27, 2020) (noting that “no division of the Appellate Body can be established to hear this appeal”); *WTO Panel Rules Against U.S. Claim that Tariffs on Chinese Goods Are Justified as Necessary to Protect “Public Morals,”* 115 AM. J. INT’L L. 120, 124 (2021); see also *U.S. Blockade Continues to Thwart WTO Appellate Body Reformation, Stalling Global Trade Dispute Resolution*, LEGAL NEWS FEED (June 23, 2026), <https://legalnewsfeed.com/2026/06/23/u-s-blockade-continues-to-thwart-wto-appellate-body-reformation-stalling-global-trade-dispute-resolution/> [<https://perma.cc/D6HW-BTPK>].

125. KAREN M. SUTTER, CONG. RSCH. SERV., IF12666, SECTION 301 AND CHINA: SHIPPING AND SHIPBUILDING ISSUES 1 (2025).

126. *Section 301 Investigations*, U.S. TRADE REPRESENTATIVE, <https://ustr.gov/issue-areas/enforcement/section-301-investigations> [<https://perma.cc/PSC2-AZHP>] (last visited Oct. 10, 2026).

127. *Id.*

128. See Swanson, *Tariffs Go Into Effect*, *supra* note 7; see also Courtenay Brown, *Trump Rebuilds Trade Regime with New Tariffs on Global Trading Partners*, AXIOS (July 23, 2026), <https://www.axios.com/2026/07/23/trump-tariffs-trade-labor> [<https://perma.cc/9Y3T-X3AQ>].

129. See Elisabeth Buchwald & John Liu, *Trump Launches New Tariffs Targeting Dozens of Countries*, CNN (July 24, 2026), <https://www.cnn.com/2026/07/23/economy/trump-new-tariffs> [<https://perma.cc/AL9G-DAV9>].

expired on July 24, 2026.¹³⁰ The European Union and fifteen other trading partners, too, are currently facing Section 301 probes assessing structural excess capacity that allegedly threatens US commerce.¹³¹ Moreover, Brazil's practices related to digital trade and electronic payment services, tariffs, ethanol market access, intellectual property protection, anti-corruption enforcement, and deforestation were determined to be actionable under Section 301 pursuant to an investigation that was prompted by President Trump's dissatisfaction with the recent criminal prosecution of former President Jair Bolsonaro.¹³² The White House, on July 22, 2026, imposed a 25% tariff on more than US\$7 billion of Brazilian exports, which has been added to a separate 12.5% tariff for alleged forced labor violations.¹³³ Section 301 has become the primary legal tool used by the Trump administration to erect a protectionist tariff wall against US trading partners.

Section 201 of the Trade Act of 1974 is another limited legal tool available to the president to impose tariffs on imports. Section 201 "Safeguard" tariffs allow the president to apply "temporary" import relief (tariffs or quotas) to a domestic industry if surging imports cause or threaten to cause serious injury to that industry pursuant to an International Trade Commission ("ITC")

130. *See id.*; *see also* Swanson, *Tariffs Go Into Effect*, *supra* note 7.

131. The sixteen US trading partners include China, the EU, Singapore, Switzerland, Norway, Indonesia, Malaysia, Cambodia, Thailand, Korea, Vietnam, Taiwan, Bangladesh, Mexico, Japan, and India. *Fact Sheet: USTR Initiates Section 301 Investigations into Structural Excess Capacity and Production in Manufacturing Sectors*, U.S. TRADE REPRESENTATIVE (Mar. 11, 2026), <https://ustr.gov/about/policy-offices/press-office/fact-sheets/2026/march/fact-sheet-ustr-initiates-section-301-investigations-structural-excess-capacity-and-production> [<https://perma.cc/HST4-TYCZ>].

132. Press Release, Off. of the U.S. Trade Representative, USTR Section 301 Determination on Brazil's Unreasonable Acts, Policies, and Practices (June 1, 2026), <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/june/ustr-section-301-determination-brazils-unreasonable-acts-policies-and-practices> [<https://perma.cc/92W2-E6FX>]; *see also* Vanessa Buschschlüter, *Bolsonaro Sentenced to 27 Years in Jail – What You Need to Know*, BBC (Sep. 11, 2025), <https://www.bbc.com/news/articles/cy4d409v2neo> [<https://perma.cc/XF8Q-8QYS>].

133. Luciana Novaes Magalhaes, *New US 25% Tariff Hits Billions of Dollars in Brazilian Exports*, REUTERS (July 22, 2026), <https://www.reuters.com/world/americas/new-us-25-tariff-hits-billions-dollars-brazilian-exports-2026-07-22/> [<https://perma.cc/LC7Q-A4UZ>].

investigation and finding.¹³⁴ The injury standard under Section 201 is more difficult to meet than the standards under other unfair trade statutes, requiring that the injury or threatened injury caused to domestic industry be “serious” and “substantially caused” by increased imports.¹³⁵ The ITC conducts an investigation and generally must make its finding within 120 days.¹³⁶ If the ITC’s finding is affirmative, the president is notified and a recommendation is made for relief.¹³⁷ The president then determines what relief, if any, will be imposed.¹³⁸ Such relief may be in the form of tariffs, quantitative restrictions, or orderly marketing agreements.¹³⁹

In 2017, Section 201 was invoked by the Trump administration to impose tariffs on imported solar cells/modules and residential washing machines.¹⁴⁰ The ITC found that increased imports, particularly from China, Canada, Mexico, and South Korea, caused financial harm to US washing machine producers, such as Whirlpool, and domestic solar cell manufacturers.¹⁴¹ In 2022, South Korea successfully challenged the washing machine tariffs under the WTO dispute settlement procedure, and the dispute was subsequently settled.¹⁴² Canada successfully challenged the US solar tariffs before a panel established under the United States-Mexico-Canada Agreement (“USMCA”), and the two parties settled

134. Trade Act of 1974, Pub. L. No. 93-618, § 201, 88 Stat. 1978, 2011 (codified as amended at 19 U.S.C. § 2251).

135. *Understanding Section 201 Safeguard Investigations*, U.S. INT’L TRADE COMM’N, https://www.usitc.gov/understanding_section_201_safeguard_investigations.htm [<https://perma.cc/38SW-55AW>] (last visited July 16, 2026).

136. *See id.*

137. *See id.*

138. *See id.*

139. *See id.*

140. *See Section 201 Investigations*, U.S. TRADE REPRESENTATIVE, <https://ustr.gov/issue-areas/enforcement/section-201-investigations> [<https://perma.cc/GK2X-Q6WG>] (last visited July 16, 2026).

141. News Release, U.S. Int’l Trade Comm’n, Increased Imports of Large Residential Washers Injure U.S. Industry, USITC Determines (Oct. 5, 2017), https://www.usitc.gov/press_room/news_release/2017/er100511841.htm [<https://perma.cc/TXK9-E9ZL>].

142. *See Korea, US Reach Mutually Agreed Solution in Large Residential Washers Dispute*, WTO (Apr. 28, 2023), https://www.wto.org/english/news_e/news23_e/dsb_28apr23_e.htm [<https://perma.cc/EKG4-W92K>].

the matter as well on July 8, 2022.¹⁴³ However, the solar tariffs remained applicable to China, South Korea, and Mexico until their expiration and were eventually replaced by more targeted trade measures in February 2026.¹⁴⁴

The Trade Act of 1974 also authorizes the president to impose tariffs and other trade measures in response to an international monetary emergency.¹⁴⁵ Under Section 122, the president may impose import quotas or tariffs capped at 15% for up to 150 days to address large and serious balance-of-payments deficits, imminent significant depreciation of the US dollar, or an international balance-of-payments disequilibrium, unless Congress passes legislation to extend the timeline.¹⁴⁶ Section 122 was enacted in the wake of the “Nixon Shock” policies of 1971, when President Richard Nixon imposed 10% tariffs on imported goods to pressure countries to revalue their currencies after the United States suspended convertibility of the US dollar to gold.¹⁴⁷ The purpose of the statute is to protect the US economy if senior officials determine that the United States faces “fundamental international payments problems” that threaten economic and national security.¹⁴⁸ However, unlike Section 232 or 201, its use is tied specifically to balance-of-payments crises, which are historically rare for the United States, rather than general trade policy or protectionist goals.¹⁴⁹ Section 122 was never used by a

143. See Anu Bhambhani, *US & Canada Settle Solar Trade Dispute: Canadian Solar Products Off Safeguard Tariffs List of US Government*, TAIYANG NEWS (July 8, 2022), <https://taiyangnews.info/markets/us-canada-settle-solar-trade-dispute> [https://perma.cc/XT5A-L4XY].

144. See Kelly Pickerel, *End of an Era: Sec. 201 Tariffs on Imported Solar Panels Expire*, SOLAR POWER WORLD (Feb. 9, 2026), <https://www.solarpowerworldonline.com/2026/02/end-of-an-era-sec-201-tariffs-on-imported-solar-panels-expire/> [https://perma.cc/HD7X-YT9T]; see also Nadja Popovich & Mark Chediak, *How the US Is Trying to End Solar Tariff Whack-a-Mole*, BLOOMBERG (Aug. 9, 2026), <https://www.bloomberg.com/graphics/2026-solar-panel-tariffs/> [https://perma.cc/8FME-ZZSH].

145. See Trade Act of 1974 § 122, 19 U.S.C. § 2132.

146. See *id.*

147. Clark Packard & Alfredo Carrillo Obregon, *Section 122: The Trump Administration's Illegal Stopgap*, CATO INST. (May 14, 2026), <https://www.cato.org/briefing-paper/section-122-trump-administrations-illegal-stopgap> [https://perma.cc/3JNQ-3XJN].

148. 19 U.S.C. § 2132.

149. See Christine Abely, *Section 122 of the Trade Act of 1974 Isn't for Trade Deficits*, YALE J. ON REGUL.: NOTICE & COMMENT (Mar. 30, 2026), <https://www.yalejreg.com/nc/>

sitting president until President Trump invoked it in February 2026, immediately following the ruling in the *Learning Resources* case, announcing a universal 10% tariff to address alleged “fundamental international payments problems.”¹⁵⁰ The Section 122 tariffs expired on July 24, 2026, and were immediately replaced with Section 301 tariffs imposed on more than eighty countries.¹⁵¹

Notwithstanding the limited delegations of authority over tariffs to the president during the twentieth century, the ultimate legal and constitutional authority to “lay and collect” tariffs is still vested in Congress, which possesses the power to amend or revoke these delegations.¹⁵² The Founders intended the use of tariffs and other trade measures as a legislative, not executive, function, reflecting the view that the power to tax and raise revenue required democratic accountability.¹⁵³ For most of the period between 1789 and 1930, Congress set tariff rates directly.¹⁵⁴ After the passage of the Smoot-Hawley Tariff Act of 1930, the president used expanded tariff negotiating authority granted by Congress to promote trade liberalization, protect national security, and guard against unfair trade practices. Over time, Congress increasingly delegated more authority to the president with the passage of Sections 232, 301, 201, and 122, but with the requirement that the Executive Branch carry out specific procedural processes involving investigations, findings of fact, and consultations with other

section-122-of-the-trade-act-of-1974-isnt-for-trade-deficits-by-christine-abely/
[<https://perma.cc/53GG-F7WR>].

150. Proclamation No. 11012, 91 Fed. Reg. 9339 (Feb. 25, 2026); *see also* Tony Romm & Ana Swanson, *The Trade Statutes Trump Will Use to Keep Imposing Tariffs*, N.Y. TIMES (Feb. 20, 2026), <https://www.nytimes.com/2026/02/20/us/politics/trump-other-options-tariffs.html> [<https://perma.cc/7SX5-FDAL>].

151. *See* David J. Lynch, *Trump Is Poised to Launch New Tariffs That Sidestep Supreme Court*, WASH. POST (July 23, 2026), <https://www.washingtonpost.com/business/2026/07/23/trump-set-adopt-forced-labor-tariffs-following-supreme-court-setback/> [<https://perma.cc/9NZG-3MRS>].

152. U.S. CONST. art. I, § 8, cl. 1.

153. *See, e.g.*, Alan Wm. Wolff, *Why the Founding Fathers Did Not Give the President the Power to Impose Tariffs*, PETERSON INST. FOR INT’L ECON.: REALTIME ECON. (July 7, 2026), <https://www.piie.com/blogs/realtime-economics/2026/why-founding-fathers-did-not-give-president-power-impose-tariffs> [<https://perma.cc/C73Q-MLX3>].

154. *See* ANDREW D. AUSTIN, CONG. RSCH. SERV., IN12482, *TARIFFS AND FEDERAL FINANCES: A THUMBNAILED HISTORY 1* (2025).

governments. This broadening of executive tariff-setting powers was central to the tariff actions of several presidents during the past half century and has led to President Trump's 2025 "Liberation Day" tariffs, and, most recently, his July 24, 2026, Section 301 tariffs, among others.

B. The Delegation of Trade Authority Under IEEPA

In 1976, Congress enacted the National Emergencies Act ("NEA") to rein in the president's excessive use of emergency powers during the Cold War, the Vietnam War, and in response to the "Nixon Shock" tariffs of 1971.¹⁵⁵ The NEA called for the termination of several existing national emergencies and placed limits on presidential emergency powers by increasing transparency and accountability.¹⁵⁶ IEEPA, one of more than 100 emergency statutes under the umbrella of the NEA, grants authority to the president to impose economic sanctions and other measures in response to extraordinary threats to US national security.¹⁵⁷ Congress passed IEEPA in 1977 to limit the emergency economic powers that it had delegated to the Executive Branch under the Trading with the Enemy Act ("TWEA"), which had for decades been used by the White House to declare national emergencies in times of war and peace and impose economic sanctions against foreign adversaries.¹⁵⁸

155. According to a bipartisan special committee chaired by Senators Frank Church and Charles Mathias, which was created to reevaluate delegations of emergency authority to the President, the United States had technically "been in a state of national emergency since March 9, 1933" and had "on the books at least 470 significant emergency statutes without time limitations delegating to the Executive extensive discretionary powers, ordinarily exercised by the Legislature, which affect the lives of American citizens in a host of all-encompassing ways." SPECIAL COMM. ON NAT'L EMERGENCIES & DELEGATED EMERGENCY POWERS, 93D CONG., A BRIEF HISTORY OF EMERGENCY POWERS IN THE UNITED STATES 40-42 (Comm. Print 1974).

156. See CHRISTOPHER A. CASEY ET AL., CONG. RSCH. SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE 9 (2025).

157. See *id.* at 9-10.

158. Congress passed TWEA in 1917 to regulate international transactions with enemy powers after the entry of the United States into the First World War. Over time, Congress expanded TWEA to allow the President to declare a national emergency in times of peace and assume sweeping powers over both domestic and international transactions. Between 1945 and the early 1970s, TWEA became the central means to impose economic sanctions during the Cold War. Presidents used TWEA to block international financial

There are several key requirements regarding the president's use of IEEPA. The president must first declare an emergency affecting national security, foreign policy, or the economy, and then take any of the following actions to deal with the threat: "investigate . . . *regulate*, direct and compel, nullify, void, prevent or *prohibit* any acquisition, holding, withholding, use, transfer, withdrawal, transportation, *importation or exportation of*, or dealing in . . . any property in which any foreign country or a national thereof has an interest."¹⁵⁹

The president may invoke IEEPA only to deal with "an unusual and extraordinary threat with respect to which a national emergency has been declared" for purposes of IEEPA, and "not for any other purpose."¹⁶⁰ Each new threat for which IEEPA is invoked requires the president to make a new declaration.¹⁶¹ Moreover, the president must consult with Congress "in every possible instance" before exercising any of the authorities granted under IEEPA.¹⁶² Afterwards, the president must report on the actions taken under IEEPA at least once in every succeeding six-month interval that the authorities are exercised.¹⁶³ It is important to note that while IEEPA expressly delegates to the president the power to "regulate" or "prohibit" imports, it does not mention tariffs or taxes.¹⁶⁴

Since 1977, IEEPA (though amended eight times) has been used more than any other tool under the NEA to address threats to national security. The statute has been invoked more than seventy-five times (forty-six of which are ongoing) across multiple presidencies and used to address issues like hostage-taking, regime change, terrorist financing, banning imports of blood diamonds, and barring transactions with those who disrupt the Middle East peace process; but *never* invoked by a president to

transactions, seize US-based assets held by non-US nationals, restrict exports, modify regulations to deter the hoarding of gold, and limit direct investment abroad by US companies. Moreover, President Nixon invoked TWEA in 1971 to impose a temporary 10% surcharge on imports into the United States. *See id.* at 3–6.

159. International Emergency Economic Powers Act §§ 202–203, 50 U.S.C. §§ 1701(a), 1702(a)(1)(B) (emphasis added).

160. *Id.* § 1701(b).

161. *See id.*

162. *Id.* § 1703(a).

163. *See id.*

164. *Id.* § 1702.

impose tariffs.¹⁶⁵ President Jimmy Carter declared the first state of emergency under IEEPA in 1979 to justify the imposition of economic sanctions against Iran following the taking of American hostages.¹⁶⁶ President Ronald Reagan issued Executive Order 12513 in 1985 prohibiting “imports into the United States of goods and services of Nicaraguan origin” and “exports from the United States of goods to or destined for Nicaragua.”¹⁶⁷ After that, US presidents increasingly used IEEPA to target not just state actors, but the assets of organizations and individuals involved in weapons proliferation, global terrorism, cyber-attacks, and trade practices.¹⁶⁸ In the wake of the September 11, 2001, terrorist attacks on US soil, President George W. Bush declared a national emergency and invoked IEEPA to freeze assets of “persons who commit, threaten to commit, or support terrorism.”¹⁶⁹ President Barack Obama, too, issued executive orders declaring national emergencies under IEEPA, responding to the growing threats posed by transnational criminal organizations and persons engaging in cyber-attacks against the United States.¹⁷⁰ Even President Trump invoked IEEPA during his first term in regard to national concerns related to China, declaring an emergency to impose transaction bans against “foreign adversaries” who were “creating and exploiting vulnerabilities in information and communications technologies and services.”¹⁷¹ However, he did not invoke IEEPA to levy tariffs during his first term.

It was not until President Trump’s second term that he began levying tariffs pursuant to IEEPA. He targeted US trading partners whose trade practices, he alleged, were flooding the US market with fentanyl and “suppress[ing] domestic wages and consumption.”¹⁷² In February 2025, he declared a national emergency related to fentanyl trafficking, invoking IEEPA to impose 25% tariffs on Canada and Mexico and a 10% tariff rate on

165. 50 U.S.C. § 1702.

166. See Exec. Order No. 12170, 44 Fed. Reg. 65729 (Nov. 15, 1979).

167. Exec. Order No. 12513, 50 Fed. Reg. 18629 (May 2, 1985).

168. See CASEY ET AL., *supra* note 156, at 18–19.

169. Exec. Order No. 13224, 66 Fed. Reg. 49079, 49079–80 (Sep. 25, 2001).

170. See, e.g., Exec. Order No. 13581, 76 Fed. Reg. 44757 (July 27, 2011); Exec. Order No. 13694, 80 Fed. Reg. 18077 (Apr. 2, 2015).

171. Exec. Order No. 13873, 84 Fed. Reg. 22689 (May 17, 2019).

172. CASEY ET AL., *supra* note 156, at 23.

imports from China.¹⁷³ He also declared a national emergency on April 2, 2025, referencing “reciprocal” trade concerns and trade deficits, and imposed a global tariff of at least 10%, with higher, country-specific tariffs, on more than eighty countries.¹⁷⁴ As discussed in the previous section, the Trump administration subsequently paused, altered, or reclassified many of these tariffs as bilateral negotiations with various countries unfolded after these declarations. The use of IEEPA to enact sweeping tariffs was a novel application of the statute, which traditionally focused on other forms of sanctions, including freezing bank accounts or assets, or more targeted sanctions. The legality of these IEEPA tariffs was challenged in 2025 by several states and small businesses, and eventually two cases made their way along separate federal tracks to the US Supreme Court.¹⁷⁵

IV. THE LEARNING RESOURCES RULING AND THE OVERREACH OF EXECUTIVE POWER

A. The Limits of IEEPA

The procedural path to the Supreme Court in deciding the limits of the president’s authority under IEEPA was accelerated given the magnitude and scope of President Trump’s sweeping tariffs. In the *Learning Resources* case, despite the US Government’s efforts to transfer the case based on lack of jurisdiction, the US District Court for the District of Columbia granted the plaintiffs’ motion for a preliminary injunction, concluding that IEEPA did not grant the president the power to impose tariffs.¹⁷⁶ The US Government argued that the district court lacked jurisdiction because 28 U.S.C. § 1581(i)(1) gives the CIT “‘exclusive jurisdiction of any civil action commenced against’ the Government ‘that arises out of any law of the United States providing for . . . tariffs’ or their ‘administration and enforcement.’”¹⁷⁷ In the *V.O.S. Selections* case,

173. See, e.g., Exec. Order No. 14193, 90 Fed. Reg. 9113, 9114 (Feb. 7, 2025); Exec. Order No. 14194, 90 Fed. Reg. 9117, 9118 (Feb. 7, 2025); Exec. Order No. 14195, 90 Fed. Reg. 9121, 9122 (Feb. 7, 2025).

174. See Exec. Order No. 14257, 90 Fed. Reg. 15041, 15045–49 (Apr. 7, 2025).

175. See Associated Press, *Dozen States Sue*, *supra* note 61.

176. See *Learning Res., Inc. v. Trump*, 784 F. Supp. 3d 209, 233 (D.D.C. 2025).

177. *Id.* at 215, 220.

the CIT granted the plaintiffs' motion for summary judgment, and on appeal, the US Court of Appeals for the Federal Circuit, sitting en banc, agreed with the CIT that IEEPA's grant of authority to "regulate . . . importation" did not authorize the challenged tariffs, which are "unbounded in scope, amount and duration."¹⁷⁸ The *Learning Resources* plaintiffs filed a petition for certiorari with the Supreme Court before judgment in the US Court of Appeals for the D.C. Circuit, and the US Government filed a petition for certiorari in *V.O.S. Selections*. The Supreme Court granted both petitions and consolidated the two cases on September 9, 2025.¹⁷⁹ On an expedited schedule, the Supreme Court heard oral arguments on November 5, 2025.¹⁸⁰

The key question before the Supreme Court was whether IEEPA authorizes the president to impose tariffs.¹⁸¹ The Court addressed three main points in determining the limits of executive power under IEEPA. First, and most importantly, the Court considered whether the express language of IEEPA authorizing the president to "regulate . . . importation" includes the power to impose tariffs.¹⁸² Second, the Court analyzed the "major questions" doctrine and key precedents involving claims by the Executive Branch for broad and expansive power under ambiguous statutory language.¹⁸³ Third, the Court examined the historic use of tariffs as an "emergency powers" tool by past presidents to determine whether IEEPA authorizes such use for national security reasons during times of war and peace.¹⁸⁴

178. *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1338–40 (Fed. Cir. 2025) (en banc).

179. See Ian Blodger et al., *The Supreme Court Update – September 10, 2025*, JD SUPRA (Sep. 11, 2025), <https://www.jdsupra.com/legalnews/the-supreme-court-update-september-10-8949> [<https://perma.cc/9DVX-MY8K>].

180. See Ann E. Marimow, *Highlights of the Supreme Court's Arguments on Trump's Tariffs*, N.Y. TIMES (Nov. 5, 2025), <https://www.nytimes.com/live/2025/11/05/us/trump-tariffs-supreme-court> [<https://perma.cc/3D93-LPL9>].

181. See *Learning Resources*, 607 U.S. at 237–40.

182. *Id.* at 247–54.

183. See *id.* at 240–44.

184. See *id.* at 244–54.

1. The Meaning of “Regulate” and the Power to Impose Tariffs

The central inquiry for the Supreme Court in deciding the legality of the Trump administration’s sweeping tariff actions under IEEPA was the meaning of the term “regulate” and whether Congress intended to convey the distinct and extraordinary power to impose tariffs to the Executive Branch. IEEPA specifically provides that the president may “investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit . . . importation or exportation.”¹⁸⁵ There is no mention of tariffs or duties among the list of powers in this provision. According to Chief Justice John Roberts, writing for the Court’s majority in the decision, “[i]t stands to reason that had Congress intended to convey the distinct and extraordinary power to impose tariffs, it would have done so expressly—as it consistently has in other tariff statutes.”¹⁸⁶ In the absence of any reference to tariffs or duties, the Court focused on the meaning of the phrase “regulate . . . importation” and whether this phrase included the power to impose tariffs.¹⁸⁷ “Our task today,” Roberts wrote, “is to decide only whether the power to ‘regulate . . . importation,’ as granted to the President in IEEPA, embraces the power to impose tariffs. It does not.”¹⁸⁸

The Court’s majority addressed three concerns with the Trump administration’s position that the phrase “regulate . . . importation” includes the power to impose tariffs. First, the Court noted that if the Government’s argument is accepted, then the other verbs accompanying the phrase “regulate . . . importation” in Section 1702(a)(1)(B) are “wasted ink.”¹⁸⁹ According to the Court:

“Regulate” is one of nine verbs listed in § 1702(a)(1)(B). Each authorizes a distinct action a President might take in sanctioning foreign actors or controlling domestic actors engaged in foreign commerce—blocking imports, for example, or prohibiting transactions. . . . None of IEEPA’s authorities includes the distinct and extraordinary power to raise

185. 50 U.S.C. § 1702(a)(1)(B).

186. *Learning Resources*, 607 U.S. at 248.

187. *Id.* at 249–52.

188. *Id.* at 251.

189. *Id.* at 249.

revenue. And the fact that no President has ever found such power in IEEPA is strong evidence that it does not exist.¹⁹⁰

The Court referenced two recent instances in which previous presidents invoked Section 1702(a)(1)(B): (1) to block the importation of diamonds from Sierra Leone; and (2) to prohibit transactions with those who threaten to disrupt the Middle East peace process.¹⁹¹ “Tariffs . . . are different in kind, not degree, from the other authorities in IEEPA.”¹⁹² The Court wrote, “[u]nlike those authorities, tariffs operate directly on domestic importers to raise revenue for the Treasury.”¹⁹³

The second concern with the Government’s expansive view of the phrase “regulate . . . importation,” in the Court’s view, was the failure to distinguish the power to regulate from the power to tax. The Court noted that there are numerous statutes “granting the Executive the authority to ‘regulate’ someone or something,” but the Government “cannot identify any statute in which the power to regulate includes the power to tax.”¹⁹⁴ The Court referenced the Securities and Exchange Commission’s limited authority to regulate, but not tax, the trading of securities under Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. § 78i(h)(1)), as well as the power of states to “tax persons, franchises, or private property” that Congress expressly distinguishes from the “power to regulate the private lands” in the Smith River National Recreation Area Act (16 U.S.C. § 460bbb-9(a)).¹⁹⁵ Chief Justice Roberts wrote: “When Congress addresses both the power to regulate and the power to tax, it does so separately and expressly. . . . That Congress did not grant those authorities separately here is strong evidence that ‘regulate’ in IEEPA does not include taxation.”¹⁹⁶

The Court’s third concern with the Government’s expansive interpretation of the phrase “regulate . . . importation” was that it was inconsistent with the intent of the Framers regarding the

190. *Id.* at 250.

191. *See id.*; *see also* Exec. Order No. 13194, 66 Fed. Reg. 7389 (Jan. 23, 2001); Exec. Order No. 12947, 60 Fed. Reg. 5079 (Jan. 25, 1995).

192. *Learning Resources*, 607 U.S. at 252.

193. *Id.*

194. *Id.* at 249.

195. *See id.* at 249–50.

196. *Id.* at 250.

taxation of exports.¹⁹⁷ A closer reading of IEEPA revealed that the statute authorizes the president to “regulate . . . importation or exportation.”¹⁹⁸ The Court noted that “[t]axing exports, however, is expressly forbidden by the Constitution.”¹⁹⁹ Thus, the Government’s interpretation of the meaning of “regulate” would render IEEPA partly unconstitutional.

In sum, the Court concluded that the phrase “regulate . . . importation” under IEEPA did not embrace the power to impose tariffs.²⁰⁰ Though Congress has given the president this power in a limited capacity under other statutes, it was never expressly granted under IEEPA. “We are therefore skeptical,” Chief Justice Roberts wrote, “that in IEEPA—and IEEPA alone—Congress hid a delegation of its birth-right power to tax within the quotidian power to ‘regulate.’ . . . Accordingly, the President must point to clear congressional authorization to justify his extraordinary assertion of the power to impose tariffs.”²⁰¹

2. The Major Questions Doctrine and the Delegation of Authority

The Major Questions Doctrine is an administrative law principle that requires a federal agency to have clear congressional authorization to issue regulations on an issue of vast economic or political significance. Under this doctrine, Congress can delegate broad responsibility to the president to help address significant policy issues, but it must do so explicitly and pursuant to specific limits.²⁰² Historically, courts relied on a doctrine known as *Chevron* deference, which required courts to defer to reasonable agency interpretations of ambiguous statutes, but the Supreme Court overturned this doctrine in 2024 in the landmark case of *Loper Bright Enterprises v. Raimondo*.²⁰³ Thus, the Supreme Court has

197. *Id.*

198. 50 U.S.C. § 1702.

199. *Learning Resources*, 607 U.S. at 250.

200. *See id.* at 240.

201. *Id.* at 248–49 (internal quotation marks omitted).

202. *See* Dane Stangler, *What Are the Major Questions and Nondelegation Doctrines and Why Do They Matter?*, BIPARTISAN POL’Y CTR. (June 5, 2025), <https://bipartisanpolicy.org/article/what-are-the-major-questions-and-nondelegation-doctrines-and-why-do-they-matter/> [https://perma.cc/T52P-4TAN].

203. *See* *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984), *overruled by* *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

shifted its approach in recent years to rely more on the Major Questions Doctrine to decide issues involving ambiguous statutory texts, extraordinary delegations of congressional powers, and separation of powers principles.

An analysis of prior “major questions” cases reveals that the Supreme Court has been reluctant to accept extraordinary delegations of Congress’s power to the Executive Branch based upon ambiguous statutory language. In *West Virginia v. Environmental Protection Agency*, for example, the Court limited the Environmental Protection Agency’s authority to regulate carbon dioxide emissions from power plants, declining to read authorization to determine the “best system of emission reduction” as a delegation of authority to force a nationwide transition away from coal.²⁰⁴ Moreover, in *Biden v. Nebraska*, the Supreme Court’s most recent prior decision involving the Major Questions Doctrine, the Court applied the doctrine to strike down the Biden administration’s US\$430 billion student loan forgiveness program, refusing to interpret authorization to “waive or modify” statutory provisions related to financial assistance programs as a delegation of power to cancel the debt.²⁰⁵ The Court held that Congress did not grant the Executive Branch clear and unambiguous authority under the Higher Education Relief Opportunities for Students Act of 2003 (“HEROES Act”) to implement such a massive and economically transformative program.²⁰⁶ The Court in *Learning Resources* cited to these and other “major questions” precedents to make the point that Congress would not have delegated “highly consequential power” over taxes and tariffs through ambiguous language.²⁰⁷

204. See *West Virginia v. EPA*, 597 U.S. 697, 732 (2022).

205. See *Biden v. Nebraska*, 600 U.S. 477, 494 (2023).

206. See *id.* at 504; see also Evan C. Zoldan, *The Major Questions Doctrine in the States*, STATE CT. REP. (Nov. 20, 2023), <https://statecourtreport.org/our-work/analysis-opinion/major-questions-doctrine-states> [<https://perma.cc/K49M-W5XU>].

207. *Learning Resources*, 607 U.S. at 243. Other cases discussed in the majority’s opinion include *National Federation of Independent Business v. OSHA*, 595 U.S. 109, 117–19 (2022) (per curiam) (declining to read authorization to ensure “safe and healthful working conditions” as a delegation of power to impose a vaccine mandate on 84 million Americans), and *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–60 (2000) (blocking the FDA from regulating tobacco on the basis that Congress could not have intended to delegate such a major question to the FDA without expressly saying so).

In *Learning Resources*, the Major Questions Doctrine issue centered on whether the president could impose tariffs during peacetime based upon vague language in IEEPA. The Government's position was that the Major Questions Doctrine should not apply in the context of emergency statutes or foreign affairs.²⁰⁸ The plurality, for its part, emphasized the president's assertion of broad "statutory power over the national economy" and the "economic and political significance" of the sweeping tariffs that he had imposed.²⁰⁹ President Trump repeatedly declared that the fate of the US economy hinges on his protectionist trade agenda and the Government's brief asserted that "[w]hether we are a rich nation" or a "poor" one hangs in the balance.²¹⁰ "These stakes," Chief Justice Roberts wrote, "dwarf those of other major questions cases."²¹¹

The plurality, however, responded cautiously to President Trump's bold assertions and expressly rejected the emergency statutes and foreign affairs carve-outs to the doctrine. Citing to previous Major Questions Doctrine cases, the plurality stated that "[t]he President's assertion here of broad statutory power over the national economy is extravagant by any measure," and the "economic and political significance" of the authority the President claims "provide[s] a 'reason to hesitate before concluding that Congress meant to confer such authority.'"²¹² "As in those cases," the plurality noted, "'a reasonable interpreter would [not] expect' Congress to 'pawn[]' such a 'big-time policy call[] . . . off to another branch.'"²¹³

In regard to the emergency statutes carve-out, the plurality likewise was skeptical of the Government's arguments. The Government contended that an emergency statute should be interpreted broadly because the "whole point" of such a statute is to "provide substantial discretion to . . . respond to unforeseen

208. See *Learning Resources*, 607 U.S. at 246–47.

209. *Id.* at 246.

210. *Id.*; see also Amy Howe, *Supreme Court Strikes Down Tariffs*, SCOTUSBLOG (Feb. 20, 2026, 4:21 PM), <https://www.scotusblog.com/2026/02/supreme-court-strikes-down-tariffs/> [<https://perma.cc/M8YW-R4C7>].

211. *Learning Resources*, 607 U.S. at 246.

212. *Id.*; see also *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014); *West Virginia v. EPA*, 597 U.S. 697, 721 (2022).

213. *Learning Resources*, 607 U.S. at 246; see also *Biden v. Nebraska*, 600 U.S. 477, 515 (2023).

emergencies” when “the most major of major questions” arises.²¹⁴ The plurality explained:

We rejected that argument in *Nebraska*, and we reject it here as well. “Emergency powers,” after all, “tend to kindle emergencies.” Dozens of IEEPA emergencies remain ongoing today, including the first—declared over four decades ago in response to the Iranian hostage crisis. . . . And as the Framers understood, emergencies can “afford a ready pretext for usurpation” of congressional power.²¹⁵

Moreover, the plurality asserted that a statute dealing with major issues should not be “read to delegate all major powers for which there may be a ‘colorable textual basis.’”²¹⁶ Indeed, the plurality continued, “[i]t is in precisely such cases that we should be alert to claims that sweeping delegations—particularly delegations of core congressional powers—‘lurk[]’ in ‘ambiguous statutory text.’”²¹⁷

With respect to the foreign affairs carve-out to the doctrine, the plurality acknowledged that the president enjoys some “independent constitutional power[s]” in this realm, but that the power to impose tariffs was not one of those powers.²¹⁸ The Court stated that “‘the President and Congress *do not* enjoy concurrent constitutional authority’ to impose tariffs during peacetime.”²¹⁹ “The Framers gave that power to ‘Congress alone’—notwithstanding the obvious foreign affairs implications of tariffs.”²²⁰ Nonetheless, the plurality reiterated that Congress may give the president substantial authority and flexibility to act in many foreign affairs matters, but that he should not expect Congress to “relinquish its tariff power through vague language, or without careful limits.”²²¹ Thus, in the end, the plurality asserted that “[t]here is no major questions exception to the major

214. *Learning Resources*, 607 U.S. at 247–48.

215. *Id.* at 247.

216. *Id.* at 248 (quoting *West Virginia*, 597 U.S. at 722).

217. *Id.* (quoting *West Virginia*, 597 U.S. at 723).

218. *Id.* at 247.

219. *Id.*

220. *Id.* at 248.

221. *Id.*

questions doctrine,” nor can the president bypass Congress on tariff powers.²²²

3. The Lack of Historical Precedent for IEEPA Tariffs

Since the enactment of IEEPA in 1977, no president has invoked the statute to impose tariffs for national security or any other reason. The Court’s majority noted that past presidents regularly invoked IEEPA for other purposes and, at times, invoked “other statutes—but never IEEPA—to impose tariffs” on products ranging from cars to washing machines.²²³ But those tariffs did not come close to the size or scope of President Trump’s “Liberation Day” tariffs or other tariffs imposed during his first 100 days in office. Chief Justice Roberts wrote, “[t]he ‘lack of historical precedent’ for the IEEPA tariffs, ‘coupled with the breadth of authority’ that the President now claims, ‘is a telling indication’ that the tariffs extend beyond the President’s ‘legitimate reach.’”²²⁴

In the absence of IEEPA precedents on point, the Court focused its historical analysis on non-IEEPA precedents cited by the Government under TWEA (IEEPA’s predecessor), as invoked in 1971, and Section 232(b) of the Trade Expansion Act of 1962. The landmark 1975 ruling by the US Court of Customs and Patent Appeals in *United States v. Yoshida International, Inc. (Yoshida)* addressed the issue of whether President Nixon could impose tariffs under TWEA to combat a balance-of-payments crisis.²²⁵ The US Government in *Yoshida* argued that the tariffs were authorized under Section 5(b) of TWEA, which allowed the president to “regulate . . . importation” during a national emergency.²²⁶ The court of appeals held that TWEA’s broad language granting the president authority to “regulate . . . importation” included the

222. *Id.*

223. The Court addressed the Government’s reference to the 1981 *Dames & Moore v. Regan* case—which dealt with the President’s authority to nullify judicial attachments and suspend claims against foreign governments to settle expropriation disputes—as supporting authority for its position, but concluded that this case “was exceedingly narrow, did not address the President’s power to ‘regulate,’ and did not involve tariffs at all.” *Id.* at 254–56; see *Dames & Moore v. Regan*, 453 U.S. 654, 660 (1981).

224. *Learning Resources*, 607 U.S. at 245–46 (quoting Nat’l Fed’n of Indep. Bus. v. OSHA, 595 U.S. 109, 119 (2022) (per curiam)).

225. *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560 (C.C.P.A. 1975).

226. *Id.* at 575.

power to impose tariffs during a genuine economic emergency as long as the tariffs were temporary, limited in scope, and not intended to permanently supplant Congress's primary tariff scheme.²²⁷ However, *Yoshida* did not grant the president unbounded authority to impose sweeping tariffs on more than eighty countries and to rewrite tariff laws at will. The same "regulate . . . importation" language in TWEA was enshrined in IEEPA in 1977.²²⁸

In *Learning Resources*, the Supreme Court concluded that the appellate court's interpretation of the "regulate . . . importation" language in *Yoshida* was not well-settled nor was it consistent with Congress's intent in passing TWEA.²²⁹ "While this Court sometimes assumes that Congress incorporates judicial definitions into legislation," Roberts wrote, "we do so only when [the] term's meaning was 'well-settled' before the adoption. . . . A single, expressly limited opinion from a specialized intermediate appellate court does not clear that hurdle."²³⁰ Moreover, the Court clarified that the purpose of TWEA was to impose economic sanctions against belligerents in situations of national emergency, not to rewrite tariff laws. "The tariff authority asserted by Nixon," according to Roberts, "was 'far removed' from TWEA's original purposes of sanctioning foreign belligerents."²³¹ Accordingly, the Court viewed Nixon's prior use of tariff policy under TWEA and the *Yoshida* case as inapplicable and unpersuasive.

The Supreme Court in *Learning Resources* also considered the Government's reliance on another key precedent, *Federal Energy Administration v. Algonquin SNG, Inc.*, which involved President Gerald Ford's use of license fees on oil imports for national security reasons under Section 232(b) of the 1962 Trade Expansion Act.²³² In *Algonquin*, the Supreme Court ruled unanimously (9–0) in favor of the constitutionality of Section 232 and established that the statute grants the president broad authority to impose license fees,

227. *Id.* at 582–84.

228. *See* 50 U.S.C. § 1702(a)(1)(B).

229. *Learning Resources*, 607 U.S. at 252–53.

230. *Id.* at 252.

231. *Id.* at 253.

232. *Id.* at 254; *see also* *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976).

quantitative restrictions (import bans and quotas), and monetary exactions (tariffs and fees) to regulate imports to protect national security.²³³ The Court in that case reasoned that the statute, which provides that the president is authorized to “take such action . . . as he deems necessary” to adjust imports, is extensive and provides clear standards—an “intelligible principle”—for the president’s actions in the event of a threat to national security.²³⁴ According to the Court in *Learning Resources*, however, “that holding bears little on the meaning of IEEPA . . . IEEPA does not contain such sweeping, discretion-conferring language.”²³⁵ Moreover, Chief Justice Roberts noted, Section 232 explicitly mentions “duty or other import restriction” in its text, whereas IEEPA makes no mention of such terms.²³⁶ Thus, the *Algonquin* case, in the Court’s view, was inapplicable to the Trump administration’s IEEPA tariff case.

Finally, the Supreme Court addressed the Government’s more generalized position that the Executive Branch possesses an “inherent” power to impose tariffs during armed conflict based on the Court’s wartime precedents. The Government’s position relied upon an amicus brief filed by University of Virginia law professor Aditya Bamzai (supporting neither party) that recognized the president’s wartime authority to impose tariffs during the last two centuries.²³⁷ He argued that early precedents from the nineteenth century and later actions taken by various presidents after the enactment of TWEA in 1917 implicitly included the power to impose tariffs in regulating trade during wartime and were subsequently incorporated into the text of IEEPA in 1977.²³⁸ The Supreme Court, though, stated that these “wartime” precedents were “inapposite,” because “all agree that [President Trump] has no inherent peacetime authority to impose tariffs.”²³⁹

233. *Algonquin*, 426 U.S. at 548–49.

234. *Id.* at 559–60.

235. *Learning Resources*, 607 U.S. at 253–54.

236. *Id.* at 253–55.

237. *Id.* at 253 (citing Brief of Professor Aditya Bamzai as Amicus Curiae in Support of Neither Party, *Learning Resources*, 607 U.S. 229 (Nos. 24-1287, 25-250), and Reply Brief for the Federal Parties at 9–11, 18, *Learning Resources*, 607 U.S. 229 (Nos. 24-1287, 25-250)).

238. *Id.*

239. *Learning Resources*, 607 U.S. at 253.

The Supreme Court's 2026 decision to strike down President Trump's IEEPA tariffs was a milestone in US history that clarified the meaning of IEEPA under a rigorous constitutional analysis. The Court concluded: "Based on two words separated by 16 others in Section 1702(a)(1)(B) of IEEPA—'regulate' and 'importation'—the President asserts the independent power to impose tariffs on imports from any country, of any product, at any rate, for any amount of time. Those words cannot bear such weight."²⁴⁰

By enforcing this distinction that the power to regulate does not include the power to impose tariffs, the Court severely limited President Trump's power to impose sweeping tariffs to build his tariff wall. Moreover, the plurality opinion reaffirmed the importance of the Major Questions Doctrine and the rule that a president must point to explicit, unambiguous statutory authority from Congress to claim extraordinary economic powers. Accordingly, the ruling curtailed Executive Branch tariff overreach, reinforcing the constitutional principle that the power to tax—"the most important of the authorities proposed to be conferred upon the Union"—resides exclusively with Congress.²⁴¹ Lastly, the Court held that the CIT has exclusive subject matter jurisdiction over legal challenges to tariff authority, thus affirming the Federal Circuit's judgment in *V.O.S. Selections* and vacating the US District Court's ruling in *Learning Resources*, along with any other competing rulings from federal district courts.²⁴² Centralizing jurisdiction in a single specialized court that handles trade disputes ensures uniform interpretations of tariff statutes and laws, and enables the CIT to more efficiently direct CBP to process refunds for all affected importers, not just those who file lawsuits.

B. Beyond IEEPA: The Pivot to Alternative Tariff Authorities

In response to the Supreme Court's February 20, 2026, ruling striking down the IEEPA tariffs as unlawful, President Trump terminated all IEEPA-based tariffs by executive order issued that

^{240.} *Id.* at 240.

^{241.} *Id.* (quoting THE FEDERALIST NO. 33, at 202–03 (Alexander Hamilton) (Clinton Rossiter ed., 1961)).

^{242.} *Id.* at 254–55.

same day.²⁴³ He later lashed out at Justices Amy Coney Barrett and Neil Gorsuch, who voted with the 6–3 majority decision, writing in a May 10, 2026, Truth Social post:

They [Justices Barrett and Gorsuch] were appointed by me, and yet have hurt our Country so badly! I do not believe they meant to do so, but their decision on Tariffs cost the United States 159 Billion Dollars that we have to pay back to enemies, and people, companies, and Countries, that have been ripping us off for years . . . They have to do the right thing, but it's really OK for them to be loyal to the person that appointed them to 'almost' the highest position in the land, that is, a Justice of the United States Supreme Court.²⁴⁴

The February 20 executive order terminated nearly all IEEPA tariffs imposed in 2025 even though the plaintiffs in *Learning Resources* only challenged the drug-trafficking tariffs imposed on Mexico, Canada, and China and the global reciprocal tariffs.²⁴⁵ However, the Trump administration continues to use IEEPA to suspend the *de minimis* entry exemption in 19 U.S.C. § 1321, which authorizes the Secretary of the Treasury to allow the duty-free importation of goods valued at US\$800 or less.²⁴⁶ On August 13, 2026, the CIT, in *Axle of Dearborn, Inc. v. Department of Commerce*, upheld the administration's use of IEEPA to suspend the *de minimis* importation exemption, concluding that the *Learning Resources* decision does not foreclose this action by the Executive Branch.²⁴⁷

To bypass the Supreme Court's ruling, President Trump announced, in a separate Proclamation on February 20, 2026, a new 10% tariff on all imports under Section 122 of the Trade Act of 1974, a statute that had never been used to impose tariffs by any

243. Exec. Order No. 14389, 91 Fed. Reg. 9437 (Feb. 25, 2026).

244. Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (May 10, 2026, 6:34 PM ET), <https://truthsocial.com/@realDonaldTrump/posts/116552659719497289> [<https://perma.cc/W8EA-XWZ4>]; see also Ashleigh Fields, *Trump Slams Barrett, Gorsuch over Tariff Decision*, HILL (May 10, 2026), <https://thehill.com/homenews/administration/5872012-trump-scolds-justices-barrett-gorsuch/> [<https://perma.cc/4UMX-SZM2>] [hereinafter Fields, *Trump Slams Barrett*].

245. Exec. Order No. 14389, 91 Fed. Reg. at 9437.

246. Exec. Order No. 14388, 91 Fed. Reg. 9433 (Feb. 25, 2026).

247. *Axle of Dearborn, Inc. v. Dep't of Com.*, No. 25-00091, 2026 WL 2350891, at *11 (Ct. Int'l Trade Aug. 13, 2026); see also Nana Ama Sarfo, *Axle of Dearborn and the Death of De Minimis*, FORBES (Sep. 21, 2026), <https://www.forbes.com/sites/taxnotes/2026/09/21/axle-of-dearborn-and-the-death-of-de-minimis/> [<https://perma.cc/Z8TC-VKGC>].

previous administration.²⁴⁸ Section 122 authorizes the president to impose a “temporary” import levy of up to 15% for a maximum of 150 days “to deal with large and serious United States balance-of-payments deficits” and certain other fundamental balance-of-payments problems.²⁴⁹ Similar to the IEEPA tariffs, President Trump cited “large and persistent trade deficits” to justify the imposition of these tariffs.²⁵⁰ It is unclear, however, whether Section 122 authorizes tariffs to address trade deficits. The phrase “balance-of-payments deficit” in Section 122 has never been interpreted to include “trade deficits” by economists or the US Government until President Trump announced these tariffs in 2026. On May 7, 2026, the CIT ruled in *Oregon v. United States* that the Trump administration’s Section 122 tariffs were unlawful and exceeded the president’s authority, concluding in a divided decision that the proclamation did not identify the type of balance-of-payments deficit the statute requires. The court, however, limited relief to the importer plaintiffs, dismissing the state plaintiffs’ claim for lack of standing. The Government has since appealed.²⁵¹

On July 24, 2026, the Section 122 tariffs expired and were replaced with the imposition of Section 301 tariffs ranging from 10% to 12.5% on imports from more than eighty nations.²⁵² The latest tariffs apply to nearly all US trading partners and cover 99.4% of US imports. A lawsuit was filed in the CIT by two small businesses immediately following President Trump’s announcement of these Section 301 replacement tariffs.²⁵³ The lawsuit argues that the Trump administration is using Section 301 as a pretext to re-create the same tariff regime that the Supreme Court struck down in the *Learning Resources* case.²⁵⁴ Section 301, according to the plaintiffs in their complaint, “is not a freestanding authorization to tax substantially all imports from substantially all

248. Proclamation No. 11012, 91 Fed. Reg. at 9339.

249. 19 U.S.C. § 2132(a).

250. Proclamation No. 11012, 91 Fed. Reg. at 9339.

251. *Oregon v. United States*, 835 F. Supp. 3d 1307, 1341 (Ct. Int’l Trade 2026).

252. See Lynch, *supra* note 151.

253. See Kevin Breuninger, *Trump Sued Hours After New Tariffs Take Effect, as Experts Say They May Not Hold Up*, CNBC (July 24, 2026), <https://www.cnbc.com/2026/07/24/trump-tariffs-lawsuit-301-ieepa.html> [https://perma.cc/D4FQ-STPG].

254. See *id.*

trading partners at rates selected to replicate the invalidated IEEPA tariff regime rather than to eliminate identified foreign practices.”²⁵⁵ The Trump administration claims that it is not merely looking for ways to continue its “Liberation Day” tariffs and that it is implementing the Section 301 tariffs at this time “to avoid complexity.”²⁵⁶

The legal basis for the Trump administration’s Section 301 replacement tariffs, effective as of July 24, 2026, is problematic and yet another example of the president’s chaotic use of limited statutory authority to justify building a broad tariff wall.²⁵⁷ Though “forced labor” concerns under Section 301 provide stronger legal footing than IEEPA to impose tariffs on imports, the unprecedented, sweeping scope of the tariffs across so many countries still leaves the administration vulnerable to legal challenges.²⁵⁸ Applying Section 301 to more than eighty countries and over 99% of US imports stretches the statute beyond its purpose, which is to allow the president to use it for targeted, sector-specific, and country-specific disputes.²⁵⁹ In addition, plaintiffs will likely rely on the plurality’s reasoning under the Major Questions Doctrine enunciated in *Learning Resources* that the erection of a sweeping, near-global tariff wall in one big move is an “extraordinary” power grab requiring explicit congressional approval, although that reasoning did not command a majority of the Court.²⁶⁰ Moreover, any reviewing court will have to assess

255. *See id.*

256. *See id.*

257. The new Section 301 replacement tariffs are expected to raise only about US\$105 billion a year, which is 60% of the tariff revenue lost when the Supreme Court invalidated the administration’s IEEPA regime. This is because the administration’s replacement tariff regime is narrower in scope and contains more carve-outs than the previous IEEPA tariffs. Estimates show that these new duties, including the new tariffs imposed on Canada and Brazil, will raise only approximately US\$950 billion by 2036, compared to the expected US\$1.7 trillion from the IEEPA tariffs. *See* Courtenay Brown, *Tariff Revenue’s \$825 Billion Gap*, AXIOS (July 24, 2026), <https://www.axios.com/2026/07/24/tariffs-import-taxes> [<https://perma.cc/R7WW-SVGP>].

258. *See* CHRISTOPHER T. ZIRPOLI, CONG. RSCH. SERV., LSB11460, LEGAL AUTHORITY FOR SECTION 301 TARIFFS TO ADDRESS FORCED LABOR AND EXCESS MANUFACTURING CAPACITY 2, 4–6 (2026).

259. *Id.* at 5–6.

260. *Learning Resources*, 607 U.S. at 248; *see also* ZIRPOLI, *supra* note 258, at 5–6 (noting that three Justices endorsed the major questions analysis).

whether the “acts, policies and practices” of countries, such as the United Kingdom, Switzerland, Denmark, Canada, Japan, and other advanced countries, regarding forced labor practices in other parts of the world are “unreasonable,” “burden or restrict” US commerce, or “permit” or “constitute” “a persistent pattern of conduct” in violation of labor standards.²⁶¹ Does one country’s failure to prevent the importation of goods made from forced labor in another country necessarily constitute “a persistent pattern of conduct that permits” forced labor? No US court has ever answered this question. Accordingly, the legal basis for the new Section 301 replacement tariffs, while ostensibly aimed at combating forced labor practices, is dubious at best and is instead intended, as the plaintiffs allege in their complaint, “to preserve substantially the same tariff regime that this Court [CIT] and the Supreme Court have held Congress did not authorize.”²⁶²

Alongside the new Section 301 tariffs, President Trump also issued proclamations imposing new Section 232 national security tariffs on pharmaceutical imports and proclaimed adjustments to existing Section 232 national security tariffs on aluminum, steel, and copper imports and certain derivative products. Proclamation 11020, issued on April 2, 2026, calls for 100% duties on pharmaceuticals and associated pharmaceutical ingredients pending negotiations with countries exporting these products.²⁶³ Proclamation 11021, issued that same day, imposes a baseline 50% tariff rate on products made of aluminum, steel, and copper, while a 25% duty was imposed on direct derivatives of these products.²⁶⁴ Subsequently, Section 232 tariff regimes were extended to aluminum lithographic plates and steel shelving/racks, and adjusted downward from 25% to 15% for agricultural equipment (e.g., harvesters) and mobile industrial equipment (e.g., bulldozers, forklifts) pursuant to a June 4, 2026, proclamation.²⁶⁵ These modified tariffs took effect on June 8, 2026,

261. ZIRPOLI, *supra* note 258, at 1–2.

262. See Breuninger, *supra* note 253.

263. Proclamation No. 11020, 91 Fed. Reg. 18183 (Apr. 9, 2026).

264. Proclamation No. 11021, 91 Fed. Reg. 18201 (Apr. 9, 2026).

265. Proclamation No. 11032, 91 Fed. Reg. 34085 (June 4, 2026); see also Trump *Signs Proclamation Amending Tariffs on Steel, Aluminum and Copper Imports*, REUTERS (June

and are to remain in place as a temporary framework until December 31, 2027. Furthermore, new Section 232 national security investigations were launched into other industries, such as large-scale batteries, cast iron and iron fittings, plastic piping, industrial chemicals, and telecom equipment, in the wake of the *Learning Resources* decision.²⁶⁶

Lastly, to skirt the *Learning Resources* ruling, the Trump administration on July 20, 2026, invoked Section 338 for the first time since the Great Depression era to impose a 50% tariff on US\$20 billion worth of Canadian imports.²⁶⁷ Section 338 lay dormant as a dead-letter statute until President Trump issued three proclamations calling for tariff hikes on Canadian motor vehicles, and dairy and alcohol products.²⁶⁸ President Trump asserted that these tariff measures are necessary to offset Canadian discrimination against the United States stemming from Canada's imposition of retaliatory tariffs on US steel, aluminum, automobiles, and dairy products, and the removal of alcohol from Canadian store shelves.²⁶⁹ On August 22, 2026, the Section 338

1, 2026), <https://www.reuters.com/world/us/trump-signs-proclamation-amending-tariffs-steel-aluminum-copper-imports-2026-06-02/> [<https://perma.cc/ZK4L-X4XD>].

266. See Gavin Bade, *Trump Considers New National Security Tariffs After Supreme Court Ruling*, WALL ST. J. (Feb. 23, 2026), <https://www.wsj.com/politics/policy/trump-considers-new-national-security-tariffs-after-supreme-court-ruling-c9187773> [<https://perma.cc/8AHU-E8KZ>].

267. See Ryan Patrick Jones & David Lawder, *US Imposes New 50% Tariffs on \$20 Billion Worth of Canadian Products*, REUTERS (July 22, 2026), <https://www.reuters.com/business/us-imposes-new-50-tariffs-canadian-products-2026-07-20/> [<https://perma.cc/KUA9-8XAR>]. President Trump's invocation of Section 338 "marked the law's first known usage in nearly a century of existence." *Id.*

268. The motor vehicle proclamation targets 439 tariff lines (though no motor vehicle lines specifically), while the dairy and alcoholic beverages tariff proclamations cover fifty-two and sixty-three tariff lines in the relevant sectors, respectively, among other sectors (sugar, syrup, wood, paper, and sports equipment). See Sancho & Angeles, *supra* note 88.

269. See *Fact Sheet: President Donald J. Trump Imposes Additional Tariffs on Canada*, *supra* note 93; see also Press Release, Off. of the U.S. Trade Representative, Ambassador Greer Issues Statement on President Trump Imposing Section 338 Tariffs on Canada (July 20, 2026), <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/july/ambassador-greer-issues-statement-president-trump-imposing-section-338-tariffs-canada> [<https://perma.cc/VC8F-YBM7>]; Jones & Lawder, *supra* note 267; Mike Crawley & Anya Zoledziowski, *As Trump Threatens New 50% Tariffs, Here's a Timeline of How Canada Got Here*, CBC NEWS (July 31, 2025), <https://www.cbc.ca/news/politics/trump-tariffs-canada-timeline-1.7598349> [<https://perma.cc/76PR-3JFM>]; Nicola Carruthers, *Coalition Calls for US-Canada Resolution*, SPIRITS BUS. (Sep. 22, 2026), <https://www.>

Canada tariffs went into effect, and Canada responded on September 8 by imposing retaliatory tariffs on US\$20 billion worth of US goods.²⁷⁰ The tit-for-tat North American trade war escalated thereafter.²⁷¹

By invalidating President Trump's IEEPA tariffs, the Supreme Court triggered a wave of refund requests from corporations and small businesses as well as lawsuits filed by consumers and retailers against those importers who passed the tariff costs down the supply chain. The *Learning Resources* decision left the Trump administration facing approximately US\$160 billion in potential refund claims for duties previously collected, covering some 330,000 importers of record.²⁷² The Supreme Court did not address refunds for previously paid tariffs, but instead remanded the issue back to the lower court, leaving importers on their own to navigate the procedural uncertainties of litigation in the wake of its landmark ruling.²⁷³ President Trump announced that he would "remember" companies that do not request a tariff refund.²⁷⁴

On March 4, 2026, the CIT issued another landmark ruling directing the federal government to refund IEEPA tariff payments to all importers of record.²⁷⁵ The CIT then, in a separate action, partially stayed the order on individual importer lawsuits to allow CBP time to develop its Consolidated Administration and

thespiritsbusiness.com/2026/09/coalition-calls-for-us-canada-resolution/
[https://perma.cc/YY2N-CHYP].

270. See KYLA H. KITAMURA, CONG. RSCH. SERV., R49349, U.S. TARIFFS ON CANADIAN IMPORTS: SECTION 338 OF THE TARIFF ACT OF 1930, at 1 (2026).

271. *Id.*; see also Daniel Desrochers, *Poll: Canadians and Americans Agree, Trump Was in the Wrong with Trade War*, POLITICO (Sep. 23, 2026), <https://www.politico.com/news/2026/09/23/poll-trump-wrong-canada-trade-war-01086475> [https://perma.cc/7YB6-P39H]. Majorities of both US and Canadian adults agree that President Trump was wrong to launch his trade war on Canada, and 75% of polled Canadians backed Prime Minister Carney's September 8 retaliatory tariffs. *Id.*

272. Fields, *Trump Slams Barrett*, *supra* note 244.

273. In his dissent, Justice Kavanaugh noted that "[t]he United States may be required to refund billions of dollars to importers who paid the IEEPA tariffs, even though some importers may have already passed on costs to consumers or others." *Learning Resources*, 607 U.S. at 334 (Kavanaugh, J., dissenting).

274. Fields, *Trump Slams Barrett*, *supra* note 244.

275. *Atmus Filtration, Inc. v. United States*, No. 26-01259, 2026 WL 616128, at *2 (Ct. Int'l Trade Mar. 4, 2026), *amended by* 2026 WL 679285 (Ct. Int'l Trade Mar. 5, 2026).

Processing of Entries (“CAPE”) system.²⁷⁶ By the end of July 2026, following the creation of the CAPE system, CBP had processed over 250,000 refund applications covering more than 25 million import entries, with over US\$100 billion completed and forwarded to the Treasury Department for reimbursement.²⁷⁷ In the meantime, the statutory two-year deadline to file suit requesting refunds continues to run, and non-litigant importers waiting for the appeal to conclude could eventually be time-barred from requesting refunds on disputed entries.

*V. THE LEGAL IMPLICATIONS OF THE LEARNING RESOURCES
DECISION FOR EXECUTIVE POWER AND THE SEARCH FOR A MORE
DURABLE LEGAL BASIS TO IMPOSE TARIFFS*

The legal implications of the *Learning Resources* decision for executive power and the rule of law are significant. First, under the separation of powers principle, the ruling establishes a key precedent solidifying the notion that executive emergency power is limited in the trade context and cannot be read to authorize tariffs absent an explicit statutory grant by Congress. The Supreme Court clarified that under IEEPA, tariffs (a form of taxation) require explicit congressional authorization and cannot be enacted simply by declaring a national emergency.²⁷⁸ The ruling striking down President Trump’s tariffs effectively wrests tariff-making power out of the unilateral hands of the Executive Branch and returns it to Congress, where the Framers intended the authority to reside in the first place. Thus, the ruling answers a long-standing question concerning the scope of the president’s power under IEEPA and raises new questions about the extent of the president’s authority to invoke alternative statutes (i.e., Sections 301, 232, 122, and 338)

276. *Atmus Filtration, Inc. v. United States*, No. 26-01259, 2026 WL 2199122, at *1 (Ct. Int’l Trade Mar. 27, 2026) (continuing to suspend the amended refund order “to the extent that it requires immediate compliance”); *see also* *Euro-Notions Fla., Inc. v. U.S. Customs & Border Prot.*, No. 25-00595, 2026 WL 2199123, at *1 (Ct. Int’l Trade Apr. 14, 2026) (noting CBP’s confirmation that CAPE Phase 1 would launch on April 20, 2026).

277. *See US Refunds US\$100 Billion in Overturned “Liberation Day” Tariffs, Court Filing Shows*, ONLINE CITIZEN (Aug. 7, 2026), <https://news.theonlinecitizen.com/2026/08/07/us-refunds-us-100-billion-in-overturned-liberation-day-tariffs-court-filing-shows> [<https://perma.cc/F756-6RL3>].

278. *Learning Resources*, 607 U.S. at 245–55.

to impose similar sweeping tariffs based on spurious grounds under the separation of powers principle.

Second, the Supreme Court's decision in *Learning Resources* was significant because its plurality opinion marked a notable application of the Major Questions Doctrine curbing executive overreach in the application of tariff policy. The plurality relied heavily on this doctrine, asserting that policies with vast economic and political significance cannot be based on broad readings of emergency statutes like IEEPA, but must require clear, explicit congressional delegation.²⁷⁹ Consistent with recent key precedents such as *Biden v. Nebraska* and *West Virginia v. EPA*, a plurality of the Court concluded that the Major Questions Doctrine was applicable in this case because President Trump used IEEPA in a novel and extraordinary way that fundamentally transformed or exceeded the Executive Branch's statutory role, and was of great political and economic significance.²⁸⁰ However, the Justices were divided over the doctrine's applicability and whether it operates as a linguistic canon that aids in finding the best statutory reading or as a substantive clear-statement rule that weighs against executive action.²⁸¹ Accordingly, while the legal implications of the ruling based upon this doctrine make it much harder for the current president (or future presidents) to use broad, vague statutory powers to enact sweeping domestic and international economic changes, there is still sufficient ambiguity regarding the doctrine's precise boundaries for courts to interpret in future legal challenges to executive power.

Third, a major effect of the Supreme Court's ruling in *Learning Resources* was to call into question the president's broad use of the national security rationale to justify the imposition of sweeping tariffs under IEEPA. Though Chief Justice Roberts was careful not

279. *Id.* at 240–45.

280. *Id.*

281. *Id.* at 247–48; *see also id.* at 271–72, 277–79 (Gorsuch, J., concurring) (describing the doctrine as a clear-statement rule grounded in Article I); *id.* at 301–03 (Barrett, J., concurring) (describing the doctrine as “an ordinary application of textualism” rather than a “strong-form” substantive canon); Max Sarinsky, *Tallying the Votes from Learning Resources, the Major Questions Doctrine Remains Relatively Confined*, *YALE J. ON REGUL.: NOTICE & COMMENT* (Feb. 24, 2026), <https://www.yalejreg.com/nc/tallying-the-votes-from-learning-resources-the-major-questions-doctrine-remains-relatively-confined/> [https://perma.cc/KDP6-L2R5].

to scrutinize President Trump's subjective reasoning for the tariffs, he did allude to the ease with which the national security rationale can be used as a pretext for the use of such measures. "All it takes to unlock that extraordinary power," he wrote, "is a Presidential declaration of emergency, which the Government asserts is unreviewable."²⁸² "That view, if credited," he added, "would 'represent[] a transformative expansion' of the President's authority over tariff policy."²⁸³ This skepticism of President Trump's use of tariff policy for *alleged* national security reasons is fair given the pronouncements he made about his strong preference for the use of tariffs while campaigning for a second term and the sheer scale of the tariffs eventually imposed by his administration after he assumed office. Moreover, the rationale given to justify the imposition of IEEPA tariffs against Canada, Mexico, the United Kingdom, Switzerland, various North Atlantic Treaty Organization ("NATO") and EU allies, Brazil, and many smaller countries had little to do with US national security, suggesting that the national security justification required by the statute was being exploited to pursue other political and personal ends. In Switzerland's case, specifically, President Trump stated that the reason for hiking tariffs on Swiss imports was simply due to the fact that he did not like the former President of the Swiss Confederation's tone over the phone.²⁸⁴ As for Brazil, Trump imposed tariffs pursuant to IEEPA based on the arrest and prosecution of former President Bolsonaro, a purely domestic matter.²⁸⁵ Thus, the national security argument for imposing tariffs in some cases was misplaced and used rather loosely by the president to expand executive power over tariff policy. Nonetheless, the Supreme Court chose not to address the national security rationale head-on even though the majority opinion calls into question the credibility of this issue for the president and future presidents.

282. *Learning Resources*, 607 U.S. at 244.

283. *Id.*

284. See Wolfe, *supra* note 43.

285. Andrea Mitchell & Julie Cerullo, *Trump Hits Brazilian Products with 50% Tariffs over Bolsonaro*, NBC NEWS (Aug. 2, 2025), <https://www.nbcnews.com/politics/trump-administration/trump-brazilian-products-tariffs-bolsonaro-rcna222534> [<https://perma.cc/FB7M-SGE8>].

The Supreme Court, however, did telegraph to the Trump administration that it may have better luck pursuing the national security argument as a basis for exercising executive power over tariff policy under an alternative statute, such as Section 232 of the 1962 Trade Expansion Act.²⁸⁶ Section 232(a) provides that “[n]o action shall be taken” to “decrease or eliminate” an existing “duty or other import restriction” if doing so would threaten national security.²⁸⁷ Citing to its previous holding in the *Algonquin* case, the Court noted that this “explicit reference to duties . . . renders it natural for Section 232(b) itself to authorize duties.”²⁸⁸ In *Algonquin*, the Court read Section 232(b) to allow the president to “adjust the imports” of particular goods to protect national security in the context of license fees.²⁸⁹ But, the Court in *Learning Resources* explained that “as a textual matter, Section 232(b) authorizes the President not only to ‘adjust . . . imports,’ but to ‘take such action . . . as he deems necessary’ to adjust the imports of a good.”²⁹⁰ Accordingly, the Court signaled to the Trump administration that even though IEEPA did not confer any tariff authority on the president, Section 232 does grant such authority to protect national security interests.²⁹¹ The Trump administration took note of this wording by launching several Section 232 investigations in response to the Supreme Court’s opinion and raising tariffs ranging from 25% to 100% on imports of pharmaceuticals, large-scale batteries, cast iron and iron fittings, plastic piping, industrial chemicals, and telecom equipment to sidestep the IEEPA decision.²⁹²

286. *Learning Resources*, 607 U.S. at 253.

287. KITAMURA, SECTION 232, *supra* note 99; 19 U.S.C. § 1862.

288. *Learning Resources*, 607 U.S. at 254.

289. *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548 (1976).

290. *Learning Resources*, 607 U.S. at 254.

291. *Id.* at 254 (explaining that Section 232’s text and context, unlike IEEPA’s, support the President’s authority to impose duties to protect national security).

292. See Peter E. Harrell, *Trump’s New Tariffs Expand the Boundaries of Section 232*, *LAWFARE* (Apr. 27, 2026), <https://www.lawfaremedia.org/article/trump-s-new-tariffs-expand-the-boundaries-of-section-232> [https://perma.cc/P287-FHH8]; see also *Current and Forthcoming Section 232 Actions by the Trump Administration*, COVINGTON (Apr. 23, 2026), <https://www.cov.com/news-and-insights/insights/2026/04/current-and-forthcoming-section-232-actions-by-the-trump-administration> [https://perma.cc/AN5V-QCFP].

Fourth, the Supreme Court's ruling in *Learning Resources* forced the Trump administration to resort to alternative statutes and rationales to justify the continued existence of high tariffs on imports. Since the February decision, President Trump has pivoted to the use of Sections 122 and 301 to maintain tariffs ranging from 10% to 12.5% on imports from virtually every US trading partner, arguing that such tariff rates are necessary to target general trade deficits (Section 122), combat forced labor violations (Section 301), and address structural excess capacity concerns in manufacturing sectors (Section 301).²⁹³ The legality of the use of these alternative statutes is still undetermined, though the CIT has ruled in *Oregon v. United States* that the Trump administration's Section 122 tariffs were unlawful.²⁹⁴ Government officials and business groups clashed with labor advocates at a July 2026 hearing in Washington, D.C., over USTR's Section 301 investigations and, specifically, whether the imposition of Section 301 tariffs on more than eighty countries for alleged forced labor violations was legal and would improve workers' rights or raise costs.²⁹⁵ In the months ahead, President Trump's broad use of sweeping tariffs against US trading partners under these alternative statutes may meet a similar fate to the IEEPA tariffs and be curtailed.

Finally, the outcome of the *Learning Resources* ruling has global implications for the rule of law and international trade relations as well. A key question is whether the bilateral tariff deals negotiated between the United States and its trading partners prior to the Supreme Court's decision are null and void as a result of the ruling invalidating President Trump's IEEPA tariffs. The

293. See Kurtzleben, *supra* note 6; see also Courtenay Brown, *Small Businesses Launch New Trump Tariff Challenge*, AXIOS (July 27, 2026), <https://www.axios.com/2026/07/27/trump-tariff-court-small-business> [<https://perma.cc/DW6E-WWXZ>].

294. *Oregon*, 835 F. Supp. 3d at 1341.

295. Officials and business representatives from Brazil, India, Mexico, Honduras, and other countries attended the hearing to oppose the tariffs and defend their labor practices, while Chinese officials challenged both the forced labor probe and the Section 301 investigation into what the Trump administration describes as "excess industrial capacity." See Han Li, *US Hearing Weighs Higher Tariffs over Alleged Forced Labour, Targeting China*, S. CHINA MORNING POST (July 9, 2026), <https://www.scmp.com/news/us/article/3359904/us-hearing-weighs-higher-tariffs-over-alleged-forced-labour-targeting-china> [<https://perma.cc/RJM2-TSG5>].

ruling does not automatically void the bilateral tariff deals reached beforehand because it pertains strictly to matters of domestic statutory interpretation, which means it is limited to the president's domestic authority to impose or adjust tariff rates. Under domestic law, the text and underlying commitments of prior deals remain in effect, unless the Trump administration formally terminates them, or specific contractual conditions are breached.

Bilateral trade arrangements reached prior to the Supreme Court's decision remain legally valid based on distinct international and constitutional law principles. Article 27 of the Vienna Convention on the Law of Treaties ("VCLT"), for instance, states that a party may not invoke the provisions of its internal law (including domestic court rulings) as justification for its failure or refusal to perform or abide by a treaty.²⁹⁶ This rule is an extension of the customary international law principle known as *pacta sunt servanda*, codified in Article 26 of the VCLT, which means that every treaty in force is binding upon the parties and must be performed in good faith until a party formally invokes the agreement's specific termination, withdrawal, or renegotiation clauses.²⁹⁷ Thus, an invalidating domestic ruling does not legally terminate a country's responsibilities under a bilateral treaty. Moreover, under the US Constitution's Supremacy Clause, valid treaties are "the supreme law of the land," and the Supreme Court has consistently held that domestic courts cannot invalidate treaty commitments.²⁹⁸ At most, a domestic court ruling can make a treaty unenforceable internally, but such a ruling has no effect on US legal obligations internationally. Many of these arrangements, moreover, are framework agreements or joint statements rather

296. Vienna Convention on the Law of Treaties art. 27, May 23, 1969, 1155 U.N.T.S. 331, 339. The United States has signed, but not ratified, the VCLT, though it is recognized and enforceable as customary international law.

297. *Id.* art. 26, 1155 U.N.T.S. at 339; see generally Jiang Zhifeng, *Pacta Sunt Servanda and Empire: A Critical Examination of the Evolution, Invocation, and Application of an International Law Axiom*, 43 MICH. J. INT'L L. 745 (2022).

298. See, e.g., *Missouri v. Holland*, 252 U.S. 416 (1920) (valid treaty overrides conflicting state laws regarding enforceability of the Migratory Bird Treaty with Great Britain); *Chirac v. Chirac's Lessee*, 15 U.S. (2 Wheat.) 259 (1817) (state law attempting to restrict property inheritance rights of non-citizens did not supersede a federal treaty with France giving French citizens enforceable land ownership rights in US courts); *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796) (state sequestration laws could not cancel the debt obligations owed by American citizens to Great Britain pursuant to the 1783 peace treaty).

than treaties, and their legal effect will depend on their specific terms. Furthermore, from the standpoint of contract law, once a bilateral agreement is finalized and signed, it exists as an independent legal instrument; therefore, the leverage that IEEPA tariffs gave the Trump administration on “Liberation Day” to force trading partners to the table and negotiate deals before such tariffs were invalidated has no legal bearing on the enforceability of the final agreements. Accordingly, though President Trump, in 2025, relied on the threat of tariff hikes under IEEPA to obtain deals with various countries, the *Learning Resources* ruling has little impact on US obligations under those deals other than to undermine the practical leverage of the US Government in future trade negotiations.

VI. CONCLUSION

For the past one hundred years, the story of executive power over tariff policy in the United States has been characterized by the idea of limited authority. Under the US Constitution, the separation of powers principle vests the core authority over tariff policy exclusively in Congress, and the president has no independent or inherent power to levy tariffs during peacetime or via emergency declarations without a clear, specific statute passed by Congress. The Supreme Court’s landmark 6–3 decision in *Learning Resources, Inc. v. Trump* reaffirmed this idea by invalidating President Trump’s use of IEEPA to assume a sweeping power to impose tariffs without explicit legislative authorization for such executive action. The triumph of the Constitution and the rule of law over executive power in this instance was momentous, and was never a foregone conclusion, as President Trump from the outset of his second term made it clear that he intended to rebuild America’s tariff wall and upend the post-World War II global trade order with the help of a pliant Republican-controlled Congress. He did not anticipate, however, that Chief Justice Roberts and two of his first-term Court appointees, Justices Neil Gorsuch and Amy Coney Barrett, would stand firm on the separation of powers principle and interpret the textual meaning of the phrase “regulate...

importation” in the IEEPA statute as not granting him the power to impose or adjust tariffs.²⁹⁹

Since the landmark decision in *Learning Resources*, President Trump’s efforts to rebuild America’s tariff wall have continued unabated as he has pivoted to the use of several alternative statutes to justify his unilateralist, heavy-handed trade policy. He has invoked Sections 122, 301, 232, and 338 (for the first time) to impose tariffs ranging from 10% to 100% on more than eighty countries, affecting 99.4% of US trade, and shows no sign of relenting as new challenges to the president’s authority and the legality of these measures play out in court. The legal implications of these cases will be significant in terms of the president’s ability to stretch the limits of statutory authority under the Constitution and impose sweeping tariffs on US trading partners. These tariff measures, again, call into question the president’s use of the national security rationale, and new alternative rationales such as balance-of-payments crises, forced labor violations, and excess industrial capacity to justify the imposition of extensive tariffs. How the courts will treat this new tariff strategy is uncertain, but an early indication from some of President Trump’s appointees to the Bench in the *Learning Resources* case suggests that the use of some of these alternative statutes (e.g., Sections 301 and 232) to justify sweeping tariff measures may fare better and be sustained on appeal as compared to others (e.g., Sections 122 and 338) that are more likely to fail constitutional scrutiny. In the meantime, the *Learning Resources* ruling stands as a bulwark against the excesses of executive power and reaffirms the Framers’ intent that the authority to tax and impose tariffs remains with Congress under the Constitution, and that no president may act above the law to usurp that authority.

299. *Learning Resources*, 607 U.S. at 245–51.