Trading Power: Congressional Delegation and Presidential Tariff Authority in U.S. Law

Center Forward Basics

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Overview

The authority to impose tariffs originates in the U.S. Constitution, granting Congress the power to regulate commerce and levy duties. Historically, Congress held primary control over tariff legislation until the 20th century, when it began delegating this power to the executive branch. Through various statutes, presidents have gained discretion in imposing tariffs based on national security, trade imbalances, or economic emergencies. Courts have largely upheld these delegations of power. President Donald Trump utilized this authority during his first term and has continued to do so in his second, particularly through tariffs tied to national emergencies. These moves underscore an ongoing shift in trade authority from Congress to the president, raising important questions about the scope and limits of executive power in shaping U.S. trade relations.

Congressional Authority

The congressional authority to impose tariffs is established in Article I, Section 8 of the U.S. Constitution. The section states Congress has the power to "regulate Commerce with foreign Nations" and to "lay and collect Taxes, Duties, Imposts and Excises," although tariffs "shall be uniform throughout the United States." Congress set tariff rates through legislation until 1930, when the Smoot-Hawley Tariff Act raised U.S. tariffs to their highest levels since 1828. As tariffs became a foreign policy tool, Congress delegated much of its authority to the President and the executive branch.

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Laws such as the Trade Expansion Act of 1962, the Trade Act of 1974, and the International Emergency Economic Powers Act of 1977 authorized the president to impose tariffs. Congress advises the president on tariff rates and trade agreements under these laws. When plaintiffs challenged the legislation in court, the judicial branch often reinforced the movement of authority and the president's discretion to impose and adjust tariffs.

Presidential Authority

The president possesses delegated power to impose tariffs in different circumstances. Some of the relevant legislation delegating these powers includes the Trade Expansion Act of 1962, the Trade Act of 1974, and the International Emergency Economic Powers Act of 1977.

During his first term, President Trump utilized Section 232 of the Trade Expansion Act to impose tariffs on steel and aluminum. Section 232 rests on protecting national security. Imposing tariffs under Section 232 requires the Commerce Secretary to conduct an investigation determining the effects of the imports in question on national security and report the findings to the President, who then makes the decision. Evidence in the investigation can include information from the Secretary of Defense, other officers, and interested parties as well as public hearings. Within 30 days of the determination, the president must provide Congress with reasons why actions were or were not taken. As an alternative action under Section 232, the president may negotiate an agreement with the country of origin. A threat to national security does not need to be "imminent" for the president to act.

If imports pose a threat to domestic industries rather than national security, the president can invoke Section 201 of the Trade Act of 1974. Interested parties, including representatives of the relevant domestic industry, the president, the U.S. Trade Representative (USTR), the House Committee on Ways and Means, or the Senate Committee on Finance, can petition the U.S. Court of International Trade (ITC) to investigate a surge in imports. The ITC can also initiate Section 201 investigations on its own. Petitioners and others may submit comments or plans during the investigation. The ITC submits its findings and recommendations to the president within 180 days of the beginning of the investigation, and the ITC must determine whether an import poses "serious injury, or the threat thereof" to a comparable domestic industry. Section 201 tariffs are limited in time frame and scale.

Section 301, also of the Trade Act, authorizes the USTR to respond to violations of international trade agreements, as well as burdens or restrictions on U.S. commerce, with tariffs. To levy these tariffs, the USTR must determine a foreign country is violating or denying U.S. rights under a trade agreement. Consultations with the foreign country in question are generally required. Interested parties are also able to give a "presentation of views" or request a public hearing. Once the investigation is concluded, and it is determined the foreign country is violating a trade agreement or discriminating against American products, the USTR is then authorized to impose import restrictions under the direction of the president. Any actions taken under Section 301 terminate after four years unless a petitioner requests a continuation.

Table 1. Selected Authorities to Impose Tariffs

Summary of Key Provisions and Examples

	Section 232	Section 201	Section 301	Section 122	Section 338	IEEPA
***U.S. Code* Reference**	19 U.S.C. § 1862	19 U.S.C. §§ 2251–55	19 U.S.C. §§ 2411–20	19 U.S.C. § 2132	19 U.S.C. § 1338	50 U.S.C. §§ 1701–10
Subject Matter	Threats to national security	Injury to domestic industry	Trade agreement violations; certain other practices	International payments problems	Discrimination against U.S. commerce	National emergency
Agency Required to Make Findings	Secretary of Commerce	ITC	USTR	None	None	None
Maximum Limit on Duration of Action	None	4 years; may be extended to 8 years in total	4 years; may be extended with no upper limit	150 days	None	None
Maximum Limit on Tariff Rate	None	50%; note phasedown requirement	None	15%	50%	None
Selected Tariff Examples	Steel and aluminum, 2018–	Solar cell products, 2018–2026	Certain imports from PRC, 2018–	Never used to impose tariffs	Never used to impose tariffs	Imports from PRC, 2025–

Source: Compiled by CRS based on *U.S. Code* and CRS analysis of selected tariff actions.

Section 122 of the Trade Act allows the president to put measures in place, such as tariffs, to address "fundamental balance-of-payments deficits." Unlike other tariff powers, Section 122 does not require the president to initiate an investigation under the ITC, the USTR, or the Department of Commerce. Tariffs imposed under Section 140 cannot exceed 150 days. While Section 122 remains an option for the Trump Administration, tariffs under this section have never been used before and have no judicial interpretation.

The oldest example of presidential tariff power to be discussed is Section 338 of the Tariff Act of 1930. This section allows for tariffs of up to 50% on any country that discriminates against U.S. products. The ITC may inform the president of relevant instances of discrimination. Still, the president does not need to wait for an agency to conduct an investigation or make a determination before imposing Section 338 tariffs. While this section has previously been used as leverage, it has not been put into effect at the time of this writing.

Lastly, the International Emergency Economic Powers Act of 1977 (IEEPA) gives the president economic power in a national emergency declared under the National Emergencies Act. Previous uses of IEEPA include imposing sanctions and freezing foreign assets. A national emergency may be ended by the president or a joint resolution of Congress; otherwise, it will automatically end on its anniversary unless the president provides advance notice of an extension. The end of a national emergency would signal the end of trade restrictions under IEEPA. In February 2025, President Trump used IEEPA to impose tariffs on Canadian, Mexican, and Chinese imports based on a national emergency of illegal immigration and illicit drugs – this is the first instance of tariffs being levied under IEEPA.

Tariffs in the Second Trump Administration

During his first administration, President Trump used Section 232 to impose a 25% tariff on steel and a 10% tariff on aluminum imports. President Trump aimed to use these tariffs to protect U.S. manufacturers of steel and aluminum for national security purposes while boosting domestic production and creating jobs. Domestic manufacturing did pick up, but domestic prices increased, which negatively impacted other downstream industries.

The beginning of President Trump's second administration indicates that he is prepared to utilize the same tools for similar goals. The focus on the steel and aluminum industries continued when the president directed the USTR to investigate the threat to national security posed by imports under Section 232. 25% tariffs on steel were reinstated, and tariffs on aluminum rose to 25%.

Liberation Day tariffs are much broader and go beyond addressing national security to addressing a national emergency. After declaring multiple national emergencies related to border security, energy, and trade deficits, these tariffs, announced on April 2, 2025, were invoked under the International Emergency Economic Powers Act (IEEPA) to address trade deficits with specific countries. President Trump used this authority to impose a 10% tariff on all countries, which went into effect on April 5, 2025.

The order establishing these tariffs grants President Trump modification authority, allowing the administration to adjust the tariffs as needed in response to the actions of trading partners. National emergencies expire a year after their declaration, unless the president notifies Congress of an extension within 90 days of the anniversary. Emergencies may end sooner if the president proclaims their termination or if Congress passes a joint resolution to the same effect. According to the White House, the tariffs are intended to take back American trade sovereignty, reprioritize domestic manufacturing, and address trade imbalances.

Previous legislation allows for different tariffs to address various national concerns. The power to invoke these tools rests mainly in the hands of the executive branch, now more than ever. As President Trump continues his second administration, he may continue to utilize the tariff powers delegated to and defined by Congress and the courts.

Links to Other Resources

- Center for Strategic and International Studies – Making Tariffs Great Again: Does President Trump Have Legal Authority to Implement New Tariffs on U.S. Trading Partners and China?
- Congressional Research Service – Congressional and Presidential Authority to Impose Import Tariffs
- Reuters – What happened the last time Trump imposed tariffs on steel and aluminum
- The White House – Fact Sheet: President Donald J. Trump Declares National Emergency to Increase our Competitive Edge, Protect our Sovereignty, and Strengthen our National and Economic Security