INTERNATIONAL TRADE LAW
THROUGH THE CASES

J.H.H. Weiler
NYU School of Law

Julian Arato
University of Michigan Law School

Sungjoon Cho
Chicago-Kent College of Law

Kathleen Claussen
Georgetown University Law Center

Unit XIII: The "America First" Trade Policy

 [Version of 6.3.2026]

International Trade Law Through the Cases

Unit XIII: The "America First" Trade Policy

Table of Contents

1. Introduction

1-1 ESSAY, THE "AMERICA FIRST TRADE POLICY" IN PRACTICE

Julian Arato, Kathleen Claussen, & Timothy Meyer, *The "America First Trade Policy" in Practice,* Essay, 119 AM. J. INT'L L. 668 (2025)

Tariffs are at the center of President Donald J. Trump's "America First Trade Policy" in his second term.[1] Citing emergency and national security concerns, the Trump administration has imposed double- and triple-digit percent tariffs on imports from nearly every country in the world.[2] By April 2025, the Trump tariffs had increased the average weighted U.S. tariff to 23 percent—a ten-fold increase from a year prior.[3] In addition to the economic and business ramifications of this policy, two major legal and political moves have followed the president's threats and unpredictable tariff policies: first, importers and other groups have sought relief from these policies in the U.S. courts, alleging that the president's wholesale remaking of tariff rates violate U.S. law; and second, governments across the globe have entered into negotiations with the United States, pursuing agreements to shield them from the worst of the tariffs. Both moves have prompted questions about the reach of the president's foreign commerce authority and the separation of trade law powers in U.S. foreign relations and constitutional law.

Article I, Section 8 of the U.S. Constitution grants the Congress the power to regulate commerce with foreign nations and to levy duties.[4] By contrast, the president's power over commerce and taxes is purely statutory.[5] Over the last century, Congress has delegated authority to the executive branch to increase tariff rates under certain circumstances, and has typically subjected those regulatory changes to judicial review.[6] For instance, U.S. trade remedies statutes allow importers to petition the U.S. Department of Commerce and the U.S. International Trade Commission to counteract unfair trade practices or address import surges that harm domestic industries by increasing tariff rates to those imports.[7] Each year, dozens of importers use these highly technical tools to pursue relief on products from roughly thirty different countries in more than twenty different industries.[8] Apart from trade remedies, a handful of statutes, such as Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974, grant the president discretion to impose trade restrictions, including tariffs, if he finds certain conditions

---

[1] *See* America First Trade Policy, 90 Fed. Reg. 8471 (Jan. 20, 2025).

[2] *See* Chad P. Bown, *Trump's Trade War Timeline 2.0: An Up-to-Date Guide*, PIIE REALTIME ECON. (Sept. 4, 2025), *at* https://www.piie.com/blogs/realtime-economics/2025/trumps-trade-war-timeline-20-date-guide.

[3] *See* Gordon Smith, *Q&A: Donald Trump's First 100 Days*, FIN. TIMES (Apr. 26, 2025), *at* https://www.ft.com/content/33eedc54-bcb5-4905-a970-b999e3244cc9.

[4] U.S. CONST. Art. I, § 8, cls. 1, 3.

[5] CONG. RSCH SERV., R44707, PRESIDENTIAL AUTHORITY OVER TRADE: IMPOSING TARIFFS AND DUTIES 1–2 (2016) ("Thus, because the President does not possess express constitutional authority to modify tariffs, he must find authority for tariff-related action in statute.").

[6] *See* Kathleen Claussen & Timothy Meyer, *Economic Security and the Separation of Powers*, 172 U. PA. L. REV. 1955, 1965 (2024).

[7] *See generally* 19 U.S.C. §§ 1671–1671h (countervailing duties), §§ 1673–1673i (anti-dumping duties).

[8] *See* Zachary Walker & Nathaniel Maandig Rickard, *Filing of New Antidumping and Countervailing Duty Petitions Surge in Fiscal Year* 2024, PICARD KENTZ & ROWE NEWS & INSIGHTS (Nov. 8, 2024), *at* https://pkrllp.com/news-insights/filing-of-new-antidumping-and-countervailing-duty-petitions-surge-in-fiscal-year-2024.

are met. However, the executive branch has rarely relied on these authorities to impose tariffs of any significance on imports to the United States in the last fifty years, and especially over the last thirty years since the creation of the World Trade Organization (WTO). That historical fact makes the Trump administration's implementation of new tariffs on most products from nearly every country especially striking.

The Trump 2.0 tariffs raise legal questions under both U.S. and international law, but the nature of the evaluation under each legal system is different. The issues facing U.S. courts include whether the administration has satisfied the prerequisites in the statutes it has invoked, as well as any applicable administrative procedures; whether those statutes are both capacious enough to authorize President Trump's actions and sufficiently constrained to satisfy constitutional limits on congressional delegations; and whether any concerns about statutory limits are overridden by the president's national security and foreign affairs prerogatives. These are issues of *method* and *authority*: does U.S. law authorize the president to impose these tariffs, and if so, has the president satisfied the preconditions set out in U.S. law to impose them?

By contrast, the issue under international law is whether the tariff increases are consistent with WTO rules and rules set out in U.S. free trade agreements (FTAs). That evaluation is one focused on the *substance* of the laws and the tariff measures. This Essay addresses the former while another contribution to this special issue addresses the latter.[9] Additional contributions discuss how nations, especially in Africa and Asia, have responded to the tariffs.[10]

The president's most impactful tariff action in his first six months in office has been his imposition of what have been called "worldwide tariffs."[11] On April 2, the president announced a 10 percent tariff on products from all countries and additional tariffs that vary by country of origin.[12] The president has claimed that these all-encompassing tariffs are authorized under the 1977 International Emergency Economic Powers Act (IEEPA).

IEEPA provides the president with certain extraordinary authorities that he may use to "deal with any unusual or extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat."[13] In this instance, the president declared an emergency regarding the "lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners' economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits."[14]

Having made an emergency declaration, IEEPA empowers the president, in relevant part, to:

> investigate, block during the pendency of an investigation, regulate, direct and compel,

---

[9] *See* Jeffrey L. Dunoff & Mark A. Pollack, *The Trump Administrations Trade Policy and the International Trading System*, 119 AJIL __ (2025).

[10] *See* Henry Gao, *From Great "Liberator" to "Landlord Seeking Rent": The Implications of United States Reciprocal Tariffs Policy in Asia and Beyond*, 119 AJIL __ (2025); Olabisi Akinkugbe, *Implications of U.S. Foreign Aid Reductions and Reciprocity Tariffs for African Countries*, 119 AJIL __ (2025).

[11] V.O.S. Selections, Inc. v. United States, No. 25-00066, slip op. at 14 (Ct. of Int'l Trade May 28, 2025) (per curiam) (noting that "the worldwide tariffs remain[ed] in place at 10 percent" at the time of writing).

[12] *See* Regulating Imports With a Reciprocal Tariff To Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits, Exec. Order14257, 90 Fed. Reg. 15041 (Apr. 7, 2025) (excepting articles encompassed by 50 U.S.C. 1702(b); steel, aluminum, automobiles, and automotive parts subject to current or future duties imposed pursuant to Section 232 of the Trade Expansion Act of 1962; other products enumerated in Annex II of the order, including copper, pharmaceuticals, semiconductors, lumber, critical minerals, energy products; and articles from a trading partner subject to the rates set forth in Column 2 of the Harmonized Tariff Schedule of the United States).

[13] International Emergency Economic Powers Act (IEEPA), 50 U.S.C. § 1701(a) (1977).

[14] Exec. Order14257, *supra* note 12.

> nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States.[15]

In addition to these global measures, the administration has implemented tariffs that are country and product-specific. In February, again relying on IEEPA, President Trump announced the imposition of so-called "trafficking" tariffs on products from some of the United States' biggest trading partners: Canada, China, and Mexico, referring to an "unusual and extraordinary threat" from those governments' failures to take sufficient actions to address unlawful migration to the United States and to prevent the entry of illicit drugs into the United States.[16] Similarly, the White House in March issued an executive order in which it authorized the secretary of state to determine whether imports to the United States from any third country found importing oil from Venezuela ought to be subject to a 25 percent tariff.[17] In August, President Trump proclaimed an additional 25 percent tariff on most imports from India in response to India's continued purchase of oil and gas from Russia, with Russia's invasion of Ukraine serving as the predicate emergency.[18] The Trump administration has also imposed an additional 40 percent tariff (on top of the 10 percent tariff applicable to all countries) on goods from Brazil due to Brazil's prosecution of its former president Jair Bolsonaro under IEEPA.[19]

IEEPA is exceptional in that it does not allocate any role to executive branch agencies or require any procedure apart from a declaration of an emergency by the president, a discretionary determination.[20] As a consequence, the president can act immediately under IEEPA.

By contrast, the special tariffs imposed during President Trump's first term were based on delegations that first require an investigation and findings by an agency. These statutes enable the executive branch to raise tariffs when an agency identifies a threat to the U.S. economy from another government's actions or a threat to U.S. national security arising from the imports of a particular product.[21] The administration has deployed these powers again in its second term, in addition to its IEEPA-premised actions. For example, the administration has relied on Section 232 to increase the duties on imports of steel and aluminum and their derivative products from all countries, as well as to impose new duties on automobiles and certain automobile parts and

---

[15] 50 U.S.C. § 1702(a)(1)(B).

[16] *See* Imposing Duties to Address the Flow of Illicit Drugs Across Our Northern Border, Exec. Order 14193, 90 Fed. Reg. 9113 (Feb. 1, 2025); Imposing Duties to Address the Situation at Our Southern Border, Exec. Order 14194, 90 Fed. Reg. 9117 (Feb. 1, 2025); Imposing Duties to Address the Synthetic Opioid Supply Chain in the People's Republic of China, Exec. Order 14195, 90 Fed. Reg. 9121 (Feb. 1, 2025). The tariffs announced in Executive Order 14193 and Executive Order 14194 were suspended until March 2025. *See* Progress on the Situation at Our Northern Border, Exec. Order 14197, 90 Fed. Reg. 9183 (Feb. 3, 2025); Progress on the Situation at Our Southern Border, Exec. Order 14198, 90 Fed. Reg. 9185 (Feb. 3, 2025).

[17] *See* Imposing Tariffs on Countries Importing Venezuelan Oil, Exec. Order 14245, 90 Fed. Reg. 13829 (Mar. 24, 2025); *see also* Jacob Katz Cogan, Contemporary Practice of the United States, 119 AJIL 573, 586 (2025).

[18] *See* Addressing Threats to the United States by the Government of the Russian Federation, Exec. Order 14329, 90 Fed. Reg. 38701 (Aug. 6, 2025).

[19] *See* Addressing Threats to the United States by the Government of Brazil, Exec. Order 14323, 90 Fed. Reg. 37739 (July 30, 2025); *see also* Initiation of Section 301 Investigation: Brazil's Acts, Policies, and Practices Related to Digital Trade and Electronic Payment Services, 90 Fed. Reg. 34069 (July 18, 2025).

[20] *See* National Emergencies Act, 50 U.S.C. § 1621 (1976) (providing the president power to declare a national emergency without defining the term).

[21] *See* Kathleen Claussen, *Trade's Security Exceptionalism*, 72 STAN. L. REV. 1097, 1117–23 (2020).

copper.[22] Section 232 permits the president to "adjust imports" of an article where the secretary of commerce finds that the article is being imported "in such quantities or under such circumstances as to threaten to impair the national security."[23] Additionally, in the first six months of the second Trump term, the administration has turned to Section 232 as the basis for ongoing investigations into imports of timber and lumber, semiconductors, pharmaceuticals, trucks, critical minerals, and commercial aircraft, jet engines, polysilicon, and unmanned aircraft systems.[24]

Relying on Section 301 of the Trade Act of 1974, the Trump administration has threatened additional tariffs on products from countries imposing digital services taxes[25] and on countries engaged in unfair trade practices regarding fishing.[26] Section 301 permits the Office of the U.S. Trade Representative (USTR) to impose duties or other import restrictions where the USTR finds that an act, policy, or practice of a foreign country "is unreasonable or discriminatory and burdens or restricts [U.S.] commerce."[27] The Trump administration relied on Section 301 during his first term to impose tariffs on most imports from China, tariffs that the Biden administration continued and even increased with respect to some products.[28]

The Trump administration's use of these so-called "three digit tariffs"—such as those premised on Sections 232 and 301—are representative of U.S. trade law's structural dichotomy that the first Trump term laid bare: on the one hand, well-established statutory authorities enable the president to eliminate trade barriers through negotiations with U.S. trading partners;[29] on the other hand, different, previously lesser-used authorities allow the president to erect trade barriers on an exceptional basis where the government deems doing so is necessary for U.S. economic security.[30] To date the courts have largely rejected the challenges brought to the president's tariff actions under Sections 232 and 301, a testament to the limited role for judicial review that the courts have seen with respect to the exceptional, security-driven authorities.[31]

---

[22] *See* Adjusting Imports of Steel into the United States, Proclamation 10896, 90 Fed. Reg. 9817 (Feb. 10, 2025); Adjusting Imports of Automobiles and Automobile Parts into the United States, Proclamation 10908, 90 Fed. Reg. 14705 (Apr. 3, 2025); Adjusting Imports of Copper into the United States, Proclamation 10962, 90 Fed. Reg. 37727 (July 30, 2025).

[23] The steel, aluminum, and auto duties are based on Commerce Department investigations from President Trump's term that the Biden administration elected not to close, thus allowing President Trump to act immediately upon resuming office. *See* Trade Expansion Act of 1962, § 232, 19 U.S.C. § 1862.

[24] *See* Addressing the Threat to National Security from Imports of Timber, Lumber, and Their Derivative Products, Exec. Order 14223, 90 Fed. Reg. 11359 (Mar. 6, 2025).

[25] *See* Defending American Companies and Innovators from Overseas Extortion and Unfair Fines and Penalties, 90 Fed. Reg. 10685 (Feb. 21, 2025).

[26] *See* Restoring American Seafood Competitiveness, Exec. Order 14276, 90 Fed. Reg. 16993 (Apr. 22, 2025); *see also* Notice of Action and Proposed Action in Section 301 Investigation of China's Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance, 90 Fed. Reg. 17114 (Apr. 23, 2025) (instituting fees on Chinese maritime transport vessels); Colin Grabow, *New Shipping Fees and Requirements Pose Fresh Threat to US Economy*, CATO INST. (May 19, 2025), *at* https://www.cato.org/blog/new-shipping-fees-requirements-pose-fresh-threat-us-economy.

[27] *See* 19 U.S.C. § 2411(b)–(c).

[28] *See* Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 47974 (Sept. 21, 2018) (increasing duties on select imports from China by 10 percent, with future a future increase to 25 percent for the relevant imports) (Trump administration); Notice of Modification: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76581 (Sept. 18, 2024) (increasing duties on select imports from China, including electric vehicles, battery parts, solar modules, and critical minerals) (Biden administration).

[29] *See* Bipartisan Trade Promotion Authority Act of 2002, Pub. L. 107-210, Div. B, 116 Stat. 933, 993 (Aug. 6, 2002) (codified at 19 U.S.C. §§ 3801–3813).

[30] *See* Claussen, *supra* note 21, at 1117–23.

[31] *See* Claussen & Meyer, *supra* note 6, at 1974–78 ("While courts are free to reject the government's

The president's reliance on IEEPA in his second term has pushed this dichotomy to the breaking point. Although IEEPA has long been used as a basis for economic sanctions against foreign actors, it has not been a mainstay of the foreign commerce regulatory artillery. IEEPA does not expressly refer to duties and prior to 2025 no president had ever relied on it to impose duties.[32] Moreover, President Trump's use of IEEPA has highlighted the lack of limits of the kind that accompanies delegated tariff-setting authority. IEEPA requires no factfinding by administrative agencies, no opportunity to comment on proposed tariff rates, no time limits on the duration of the tariffs, no limits on the tariffs that can be imposed, and imposes no time limit on the president's ability to proclaim any changes in tariffs. Other tariff delegations include at least one, if not more, of these checks.[33] Moreover, in taking these actions, the president has relied on IEEPA to rewrite economy-wide tariff rates to which Congress consented in implementing statutes for numerous trade treaties, including the WTO Agreements and free trade agreements.[34]

This extraordinary claim of tariff-setting power, far beyond anything Congress has delegated elsewhere, has been the basis for more than a dozen lawsuits in U.S. courts. These cases focus primarily on the scope of the president's authority under IEEPA. At the time of writing, two trial courts have enjoined the tariffs as unlawful (or likely unlawful).[35] The U.S. Court of Appeals for the Federal Circuit heard an appeal in one of these cases *en banc*, on an expedited basis. On August 29, 2025, that court held by a vote of 7-4 that the tariffs are unlawful, although it remanded the case to the lower court to consider the proper scope of injunctive relief.[36] Shortly thereafter, the U.S. Supreme Court agreed to hear the case on an expedited basis, granting review of two questions: 1) whether IEEPA authorizes the tariffs, and 2) if it does authorize the tariffs, whether IEEPA unconstitutionally delegates legislative authority to the president in violation of the nondelegation doctrine. The Court also granted certiorari before judgment in the other case, which had been scheduled for argument at the U.S. Court of Appeals for the D.C. Circuit in September, setting both cases for argument in November.[37]

The plaintiffs in these cases have leveled three kinds of challenges to President Trump's IEEPA tariffs. First, the plaintiffs in the two cases that have been decided—small businesses and a group of U.S. states—have argued that the term "regulate" in IEEPA does not include the power to levy duties through taxes or tariffs.[38] As noted above, IEEPA does not use the words "tariffs," "taxes," or "duties."[39] The plaintiffs point out, also, that the Congress does not appear to have ever used the term "regulate" to encompass the power to tax and that interpreting it to do so would radically change the understanding of regulatory delegations throughout the U.S. Code. Because "regulate" in IEEPA also modifies actions such as "holding," "use," and "transfer," the

---

litigating position on the subject of foreign commerce power, circuit courts have largely acquiesced in the executive branch's efforts to securitize, and thus constitutionalize, foreign commerce.").

32 *See* 50 U.S.C. § 1701–1710 (omitting tariffs and other duties from the authorities delegated to the president under the Act). Additionally, IEEPA is not codified under Title 19 of the Code of Federal Regulations, which houses most trade-related delegations to the president. *See, e.g.*, 19 U.S.C. §§ 2411–2420 (granting the president authority to negotiate trade agreements, provide procedures for implementing them, and empowering the executive to impose trade remedies).

33 *See, e.g.*, 19 U.S.C. § 1862(b) (requiring a Commerce Department investigation before the president may act under Section 232).

34 *See, e.g.*, Uruguay Round Agreements Act, Pub. L. 103-465, 108 Stat. 4809 (1994) (codified as amended at 19 U.S.C. §§ 3501–3624).

35 *See* Opinion, V.O.S. Selections, Inc. v. United States, No. 25-00066 (Ct. Int'l Trade May 28, 2025); Memorandum Opinion, Learning Resources Inc. v. United States, No. 25-1248 (D.D.C. May 29, 2025).

36 Opinion, V.O.S. Selections, Inc. v. United States, No. 25-1812 (Fed. Cir. Aug. 29, 2025).

37 *See* Docket, Trump v. V.O.S. Selections, Inc., No. 25-250 (Sup. Ct. Sept. 9, 2025).

38 Brief for Plaintiffs-Appellees, at 19–20, V.O.S. Selections, Inc. v. Trump, No. 25-1812 (Fed. Cir. July 8, 2025).

39 *See* 50 U.S.C. § 1701–1710.

government's interpretation would also allow the president to impose sales taxes, wealth taxes, and property taxes under IEEPA.[40] Moreover, taxes work through incremental changes, while in IEEPA "regulate" appears in a string of verbs—such as "prohibit," "prevent," "nullify," and "void"—that carry more absolute meaning. Under the doctrine of *noscitur a sociis*, ambiguous words in a list are typically interpreted in light of the list's other contents.[41] Finally, the plaintiffs have pointed out that the president has a wealth of other statutory authorities he can use to impose tariffs in response to a range of situations if he stays within the limits set in those statutes. The existence of those specific authorities would be superfluous if the president could use IEEPA to impose any tariffs he wants.

Second, the plaintiffs have invoked the Supreme Court's new "major questions doctrine." In a series of rulings, mostly involving emergency powers deployed in response to the COVID-19 pandemic, the Court has relied on that doctrine to strike down government action that arguably falls within the scope of a broad statute but is not specifically authorized.[42] The doctrine has two parts. First, the courts must determine whether the government action in question is of "economic and political significance," that is, whether it is a major question.[43] If it is a major question, of the kind "that Congress would likely have intended for itself," then Congress must have clearly authorized the government's action.[44] The plaintiffs have argued that the president's tariff actions easily meet these criteria.[45] Finally, the plaintiffs have also maintained that IEEPA should be read not to authorize tariffs in order to avoid constitutional concerns. Specifically, interpreting IEEPA to authorize tariffs would, in the plaintiffs' view, lead to an unconstitutional delegation of Congress's power to levy duties and regulate foreign commerce—a violation of the nondelegation doctrine—given the lack of any limits on the president's actions under IEEPA.[46]

Third, the plaintiffs have raised several other alleged defects with President Trump's orders imposing the tariffs. Some have argued that the emergencies the president has declared do not arise from an "unusual and extraordinary threat."[47] The United States has had a trade deficit every year since 1976, making it difficult to argue that the trade deficit is either unusual or extraordinary in any ordinary sense of those terms.[48] Plaintiffs in these lawsuits also have maintained that the tariffs have no nexus to the underlying emergencies.[49] It is unclear, for instance, how tariffs on goods from Canada will reduce drug smuggling.

The Trump administration has three principal counterarguments. First, the government has argued that IEEPA's authorization to "regulate . . . importation" implicitly authorizes tariffs because tariffs have the effect of changing, or "regulating," behavior.[50] The government has also

---

[40] "Regulate" also applies to "exportation," but export taxes are unconstitutional, making it even less likely that Congress intended the term "regulate" to carry the power to tax. *See* Erik M. Jensen, *The Export Clause*, 6 FLA. TAX. REV. 1, 16–17 (2003).
[41] For an illustration of the *noscitur a sociis* canon of construction, see *United States v. Williams*, 553 U.S. 285, 294 (2008) (instructing that the *noscitur a sociis* canon "counsels that a word is given more precise content by the neighboring words with which it is associated").
[42] *See* Daniel T. Deacon & Leah M. Litman, *The New Major Questions Doctrine*, 109 VA. L. REV. 1009, 1011 (2023).
[43] West Virginia v. EPA, 597 U.S. 697, 700 (2022) (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000)).
[44] *See id.* at 730.
[45] Brief for Plaintiffs-Appellees, *supra* note 38, at 46.
[46] *Id.* at 54–55.
[47] Brief for Plaintiffs-Appellees, *supra* note 38, at 40–42.
[48] Maurice Obstfeld, *The U.S. Trade Deficit: Myths and Realities*, BROOKINGS PAPERS ECON. ACTIVITY (Mar. 26, 2025), *at* https://www.brookings.edu/articles/the-us-trade-deficit-myths-and-realities [https://perma.cc/GM4N-SX6Z].
[49] Brief for Plaintiffs-Appellees, *supra* note 38, at 40–42.
[50] Opening Brief for Defendants-Appellants, at 32, V.O.S. Selections, Inc. v. Trump, No. 25-1812 (Fed.

argued that the diplomatic leverage created by tariffs creates the necessary nexus with the underlying emergency by allowing it to negotiate a resolution to the underlying emergency.[51]

Second, the government notes that in 1971 President Nixon relied on the Trading with the Enemy Act (TWEA), which also authorized the president to "regulate . . . importation," to impose a 10 percent surcharge on imports.[52] In *United States v. Yoshida International, Inc.*, the predecessor court to the Federal Circuit upheld that use of authority, albeit with the caveat that "[t]o uphold the specific surcharge imposed . . . is not to approve in advance any future surcharge of a different nature, or any surcharge differently applied or any surcharge not reasonably related to the emergency declared."[53] The Trump administration has maintained that the president's IEEPA-based actions ought to be upheld, citing the Nixon case as applicable precedent.[54]

The Trump administration's third response has been that courts should uphold the president's tariffs because of their relationship to foreign affairs. Under an approach to judicial review known as "foreign affairs exceptionalism," courts often suspend the normal rules of interpretation that apply in the domestic context when foreign affairs are implicated.[55] Applied here, the administration has sought to characterize the president's actions as having constitutional underpinnings that should trigger deferential review by the judiciary.[56]

The majority opinion of the Federal Circuit Court of Appeals stopped short of saying that tariffs are never authorized under IEEPA. The majority pointed out that IEEPA does not mention tariffs,[57] does not include the kinds of limitations found in statutes delegating tariff authority,[58] and had never previously been used to impose tariffs.[59] The court rejected the government's assertion of any constitutional power for the president to set tariff rates, holding that "[a]bsent a valid delegation by Congress, the President has no authority to impose taxes."[60] Likewise, the court interpreted *Yoshida*'s holding to rest "on the limits of President Nixon's Proclamation" and concluded that, in passing IEEPA, Congress had at most incorporated *Yoshida*'s limited understanding of the power conferred by the term "regulate . . . importation."[61] The court also relied on the major questions doctrine, concluding that Congress would have had to clearly authorize tariffs of the size and scope of the challenged tariffs and had not done so.[62]

The court's opinion was accompanied by two separate opinions. Expressing "additional views," four members of the majority would have gone further and held that IEEPA never authorizes tariffs, for the reasons discussed above.[63] The four dissenters would have held that IEEPA does authorize tariffs—accepting the government's textual argument about the scope of the term "regulate"—and that it does so without violating the nondelegation doctrine.[64] Common

---

Cir. June 24, 2025).

[51] Brief for Defendants-Appellants, at 4–5.

[52] Brief for Defendants-Appellants, at 9–10; Proclamation 4074, 36 Fed. Reg. 15724 (Aug. 17, 1971).

[53] United States v. Yoshida Int'l, Inc., 526 F.2d 560, 583 (C.C.P.A. 1975).

[54] Brief for Defendants-Appellants, at 9–10.

[55] *See* Ganesh Sitaraman & Ingrid Wuerth, *The Normalization of Foreign Relations Law*, 128 HARV. L. REV. 1897, 1900 (2015).

[56] Brief of Defendants-Appellants, at 59 ("Such determinations [about what constitutes an 'extraordinary and unusual threat'] are not susceptible to meaningful judicial review because of both their discretion-laden nature and the lack of judicially manageable standards.").

[57] V.O.S. Selections, Inc. v. Trump, No. 25-1812, slip op. at 26-27 (Fed. Cir. Aug. 29, 2025).

[58] *Id*. at 30.

[59] *Id*. at 35.

[60] *Id*. at 38.

[61] *Id*. at 41.

[62] *Id*. at 36-38.

[63] V.O.S. Selections, Inc. v. Trump, No. 25-1812 (Fed. Cir. Aug. 29, 2025) (Cunningham, J. expressing additional views).

[64] V.O.S. Selections, Inc. v. Trump, No. 25-1812 dissenting op. at 4 (Fed. Cir. Aug. 29, 2025) (Taranto, J.,

ground across all of the opinions was that the Court of International Trade (CIT) has exclusive jurisdiction over cases challenging the imposition of tariffs and that the case should be remanded to the CIT to reconsider whether its injunction against the government collecting the tariffs from any importer, not only the plaintiffs, is appropriate in light of a recent Supreme Court decision significantly narrowing the circumstances in which courts may grant so-called "universal injunctions."[65]

In the other case consolidated for argument before the Supreme Court, the district court granted a preliminary injunction to two small businesses, concluding that the plaintiffs were likely to succeed because IEEPA does not authorize the president to impose tariffs in light of the law's text and context, and in view of nondelegation and major questions concerns. That conclusion was also the basis for the court's decision that it had subject matter jurisdiction. The CIT has exclusive jurisdiction over cases "aris[ing] out of any law of the United States providing for . . . tariffs."[66] As noted above, the Federal Circuit concluded that the CIT has exclusive jurisdiction over cases challenging tariffs, and other district courts had concluded that the Harmonized Tariff Schedule of the United States is itself a statute providing for tariffs, thus affording the CIT exclusive jurisdiction over challenges to IEEPA tariffs even if IEEPA itself did not authorize tariffs. The D.C. district court disagreed, though, holding that if IEEPA does not authorize tariffs at all, then the CIT would not have exclusive jurisdiction over challenges to actions taken under that statute (even if such unauthorized actions took the form of tariffs).

Even if the courts were to conclude that IEEPA does not permit the president to levy tariffs, the president need only pivot to other statutes that would allow him to do so, such as Section 122 of the Trade Act of 1974, or Section 338 of the Tariff Act of 1930, or back to Section 232 and Section 301.[67] Although those statutes have additional guardrails and limitations, and thus tend to impose greater accountability, a president could likely leverage them to achieve a similar outcome.[68] Only Congress can close off these pathways.

Thus, a more all-inclusive approach to ending or limiting the Trump administration's heavy use of tariffs would require congressional action to amend the statutory scheme it set out during the Cold War to clarify the scope of the president's tariff-related authority through legislation, as some commentators have advocated.[69] Such an intervention from Congress is unlikely, though. In April, the Senate delivered a rare rebuke to the president's trade program by passing, by a vote of 51-48, a measure that would terminate the national emergency on illicit drugs with respect to Canada—a first step to reining in one set of tariffs.[70] The resolution did not make further progress, however, and no comprehensive legislation has been introduced.

While the courts have considered the president's authority under IEEPA, President Trump has demanded that countries commence negotiations with the United States in the hopes of avoiding higher tariff rates for their exporters, claiming in April that his administration would

---

dissenting).

[65] *Id*. at 3; V.O.S. Selections, Inc. v. Trump, No. 25-1812 slip op. 24, 44 (Fed. Cir. Aug. 29, 2025).

[66] 28 U.S.C. § 1581(i).

[67] *See* Claussen, *supra* note 21, at 1117–23.

[68] *See* Warren Maruyama, Lyric Galvin & William Alan Reinsch, *Making Tariffs Great Again: Does President Trump Have Legal Authority to Implement New Tariffs on U.S. Trading Partners and China?*, CTR. STRATEGIC & INT'L STUD. (Oct. 10, 2024), *at* https://www.csis.org/analysis/making-tariffs-great-again-does-president-trump-have-legal-authority-implement-new-tariffs [https://perma.cc/EA8C-UEWF].

[69] Claussen & Meyer, *supra* note 6, at 1979–81.

[70] *See* Frank Thorp V, Scott Wong & Sahil Kapur, *Senate Passes Measure to Revoke New Canada Tariffs as Four Republicans Break with Trump*, NBC NEWS (Apr. 2, 2025), *at* https://www.nbcnews.com/politics/congress/senate-republicans-vote-rebuke-trump-tariffs-canada-rcna199336.

negotiate "90 deals in 90 days."[71] According to the administration, such trade-related agreements would be necessary to eliminate the national emergency concerning the U.S. trade deficit by extracting tariff and non-tariff concessions from these countries.[72] The United States and the United Kingdom announced the reciprocal implementation of certain trade-related guarantees in June.[73] Shortly thereafter, the administration said that the United States and China agreed to a de-escalation of tariffs and other retaliatory measures, after President Trump had raised tariffs as high as 145 percent on Chinese imports and China had imposed tariffs of up to 125 percent and begun restricting exports on goods like critical minerals.[74] As the administration's self-imposed deadline of August 1 approached, President Trump announced that his administration had concluded agreements with, the European Union, Indonesia, Japan, the Philippines, South Korea, and Vietnam.[75] At the same time, President Trump announced a new round of "reciprocal" tariffs on a range of other countries.[76] The terms of the deals announced varied based on the country. As of writing, no final agreement text has been made publicly available, negotiations appear to be ongoing with respect to the details, and the nations involved have made sometimes contradictory statements about what has been agreed.[77] Consequently, the status of the "deals" announced thus far as legally binding in any sense is doubtful.

The current U.S. approach to trade agreements raises significant separation of powers

---

[71] Megan Messerly, Daniel Desrochers & Ari Hawkins, *Trump Wanted "90 Deals in 90 Days." Instead, He's Finding Wins Where He Can*, POLITICO (June 12, 2025), *at* https://www.politico.com/news/2025/06/12/trump-wanted-90-deals-in-90-days-instead-hes-finding-wins-where-he-can-00403638.

[72] U.S. Senate Committee on Finance, The President's 2025 Trade Policy Agenda 23 (Apr. 8, 2025), *at* https://www.finance.senate.gov/imo/media/doc/responses_to_questions_for_the_record_to_jamieson_greer2.pdf [https://perma.cc/J7EP-9UB9] (responses of Jamieson Greer, U.S. Trade Representative, to questions for the record).

[73] *See* White House Press Release, Implementing the General Terms of the U.S.-U.K. Economic Prosperity Deal (June 17, 2025), *at* https://www.whitehouse.gov/fact-sheets/2025/06/fact-sheet-implementing-the-general-terms-of-the-u-s-uk-economic-prosperity-deal [https://perma.cc/B8D4-FQJE]. At the time of writing, no written binding international agreement had been completed.

[74] *See* Kevin Breuninger, *U.S.-China Trade Talks End Without Extension of Tariff Truce, as Trump Weighs Options*, CNBC (July 29, 2025), *at* https://www.cnbc.com/2025/07/29/trump-china-trade-tariffs-bessent.html; Arendse Huld, *Trump Raises Tariffs on China to 145% – Overview and Trade Implications*, CHINA BRIEFING (Apr. 11, 2025), *at* https://www.china-briefing.com/news/trump-raises-tariffs-on-china-to-145-overview-and-trade-implications; Lewis Jackson & Amy Lv, *China's Export Controls Are Curbing Critical Mineral Shipments to the World*, REUTERS (Apr. 21, 2025), *at* https://www.reuters.com/world/china/chinas-export-controls-are-curbing-critical-mineral-shipments-world-2025-04-20.

[75] *See* White House Press Release, President Donald J. Trump Further Modifies the Reciprocal Tariff Rates (July 31, 2025), *at* https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-further-modifies-the-reciprocal-tariff-rates [https://perma.cc/7BD7-CML2].

[76] *Id.*

[77] *See, e.g.*, Alice Hancock, *EU-US Trade Pact Causes Peak Confusion in Brussels*, FIN. TIMES (Aug. 4, 2025), *at* https://www.ft.com/content/c6389de3-3f6b-4522-8a0b-e430600a1928. Details of and joint statements regarding so-called "framework agreements" have been released by some governments, though the legal status of these agreements remains unclear as of the time of writing. *See, e.g.*, Memorandum of Understanding Between the Government of Japan and the Government of the United States of America with Respect to Strategic Investments (Sept. 4, 2025), *at* https://www.cas.go.jp/jp/seisaku/tariff_measures/houmon/pdf/250905oboegaki.pdf [https://perma.cc/495X-MN9B]; Joint Statement on a United States-European Union Framework on an Agreement on Reciprocal, Fair and Balanced Trade (Aug. 21, 2025), *at* https://policy.trade.ec.europa.eu/news/joint-statement-united-states-european-union-framework-agreement-reciprocal-fair-and-balanced-trade-2025-08-21_en [https://perma.cc/KT6Q-KYWP].

concerns. U.S. Trade Representative Jamieson Greer has said that the administration would not seek congressional approval and implementation of the agreements; rather, they would be "negotiate[d] and conclude[d] . . . as executive agreements."[78] Ambassador Greer justified this position by asserting that the agreements would include few if any commitments by the United States, and he "[did] not foresee that any U.S. law would need to be changed."[79] The Office of the U.S. Trade Representative has long argued that trade agreements that do not make changes to U.S. law are within the constitutional authority of the president and not Congress.[80] But the more widely accepted view,[81] as reiterated by a bipartisan Congress,[82] is that, regardless of the form of agreement and regardless of whether an agreement requires changes to U.S. law, the executive branch does not have independent power to enter into a trade-related agreement without that authorization. Moreover, these agreements do appear to involve changes to U.S. law that require congressional authorization. Specifically, they contemplate that the United States will raise duties on partner countries permanently, a change that conflicts with trade agreements implemented by statute.[83]

To be sure, Congress has delegated its trade agreement power to the executive in several statutes. Most familiar to the trade policy world is the detailed statutory scheme for free trade agreements (FTAs) known as Trade Promotion Authority (TPA).[84] Under this framework, the executive can seek expedited legislative approval of an FTA so long as the FTA covers congressionally approved objectives, among other legislative requirements. In addition to TPA, the three-digit tariff authorizations, discussed above, give the president latitude to make agreements to resolve investigations initiated under their terms. Section 301 authorizes the executive branch to enter into an agreement in the context of a Section 301 investigation to eliminate any burden or restriction on U.S. commerce that results from a trading partner's actions.[85] Section 232 likewise authorizes the president to negotiate an agreement that limits or restricts certain imports.[86] Congress asserted its trade agreement authority recently by approving the Biden administration's trade agreement with Taiwan after that agreement had been signed.[87] That post hoc legislation was exceptional, although members of Congress have introduced bills that would have a similar effect with respect to the United Kingdom, among other trading

[78] 2025 Agenda Hearing, *supra* note 72, at 23
[79] *Id.*
[80] *See* Claussen & Meyer, *supra* note 6, at 1956–58.
[81] *See* Written Testimony of Professor Kathleen Claussen, United States House of Representatives Committee on Ways and Means, Trade Subcommittee 3 (Mar. 25, 2025), *at* https://www.congress.gov/119/meeting/house/118047/witnesses/HHRG-119-WM04-Wstate-ClaussenK-20250325.pdf [https://perma.cc/YF7C-HT7T] ("Congress retains the final word to review, provide input on, and ultimately, to approve and implement into U.S. law the trade agreement that the executive negotiates.").
[82] *See* United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, Sec. 2(7), Pub. L. 118-13, 137 Stat. 63, 63 (codified at 19 U.S.C. § 2112 note).
[83] *See, e.g.*, 19 U.S.C. § 3521(c) (limiting duty increases to countries that are not members of the World Trade Organization and limiting the increases to the base or bound tariff rates listed in Schedule XX).
[84] *See* U.S.C. §§ 3801–3813.
[85] *See* Trade Act of 1974, Sec. 301, 19 U.S.C. § 2411 (authorizing the Trade Representative to circumvent Mandatory action under subsection (a) upon finding that the foreign country has "agreed to an imminent solution to the burden or restriction on United States commerce that is satisfactory to the Trade Representative").
[86] *See* Trade Expansion Act of 1972, Sec. 232, (c)(3)(A)(i), 19 U.S.C. § 1862 (noting that the president may negotiate "an agreement which limits or restricts the importation into, or the exportation to, the United States of the article that threatens to impair national security").
[87] *See* Jacob Katz Cogan, Contemporary Practice of the United States, 117 AJIL 702, 707 (2023).

partners.[88]

Even apart from the separation of powers issues, reaching agreement with the Trump administration presents significant difficulties. First, some trading partners are reluctant to enter into these agreements because they may violate WTO rules.[89] Second, the Trump administration's decision to violate its own past agreements, including the United States-Mexico-Canada Agreement it negotiated during its first term, has severely undermined the credibility of its promises. Third, although the United States is a party to hundreds of small trade-related agreements, there is no particular template for these tariff-linked agreements, so negotiators lack a model text that could expedite their work.[90] Fourth, given the lack of a template, negotiators have both greater flexibility and greater uncertainty in the substance of their agreements. Already in the U.S.-UK negotiations, the parties have covered considerable regulatory territory beyond tariffs. They have also addressed longstanding non-tariff barriers to their trade relationship, and they have expanded their discussions to cover economic security and "commercial considerations."[91] Other agreements could include commitments to make purchases like the so-called China Phase-One Deal did in 2020, or they could seek to mix and match from other areas of foreign affairs like defense, or debt relief, or they may even include guarantees regarding specific private or private-public transactions.[92] For instance, the administration has touted its arrangement with Japan according to which Japan will invest more than $500 billion in the United States and will purchase $8 billion of U.S. goods.[93] In the end, these agreements may not resemble modern trade agreements at all. That complexity muddies the relationship between foreign affairs and foreign commerce in an already fraught legal environment.

Over the last several years, the executive branch has sought to take advantage of what some see as blurry lines between international commerce, national security, and foreign policy to defend broad actions by agencies and by the president in international trade. The government was successful in the litigation that challenged President Trump's first-term trade actions. The president has blurred the lines even further in his second term by invoking IEEPA to institute a major global economic program. The lawfulness of using IEEPA to impose tariffs remains in doubt, as challenges to several of the president's recent actions wind their way through the courts. For the moment, however, the trade posture of the United States increasingly resembles a vortex

---

[88] *See, e.g.*, Undertaking Negotiations on Investment and Trade for Economic Dynamism (UNITED) Act, H.R. 1743, 119th Cong., 1st Sess. (2025).

[89] *See* Kathleen Claussen, *What Just Happened: The Tariff Litigation Advances*, JUST SECURITY (June 4, 2025).

[90] *See* Kathleen Claussen, *Trade's Mini-Deals*, 62 VA. J. INT'L L. 315, 326 (2022).

[91] *See* White House Press Release, General Terms for the United States of America and the United Kingdom of Great Britain and Northern Ireland Economic Prosperity Deal (May 8, 2025), *at* https://www.whitehouse.gov/briefings-statements/2025/05/general-terms-for-the-united-states-of-america-and-the-united-kingdom-of-great-britain-and-northern-ireland-economic-prosperity-deal [https://perma.cc/35SW-26KT] (committing to leverage "government policies, licenses, and programs and private-sector participation to facilitate" strategic commercial integration).

[92] *See* Chad P. Bown, *U.S.-China Phase One Tracker: China's Purchases of U.S. Goods*, PIIE (July 19, 2022), *at* https://www.piie.com/research/piie-charts/us-china-phase-one-tracker-chinas-purchases-us-goods [https://perma.cc/7M8D-9KKJ]; *see* David LaRoss, *Could Nippon Steel-U.S. Steel "Investment" Deal Ease Trade Talks With Japan?*, INSIDE TRADE (May 30, 2025), *at* https://insidetrade.com/daily-news/could-nippon-steel-us-steel-investment-deal-ease-trade-talks-japan.

[93] *See* White House Press Release, President Donald J. Trump Secures Unprecedented U.S.-Japan Strategic Trade and Investment Agreement (July 23, 2025), *at* https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-secures-unprecedented-u-s-japan-strategic-trade-and-investment-agreement [https://perma.cc/RZ85-PVAK]; *see also* Ana Swanson & River Akira Davis, *U.S. and Japan Reach Trade Deal*, N.Y. TIMES (July 22, 2025), *at* https://www.nytimes.com/2025/07/22/us/politics/trump-japan-trade-deal.html.

of escalating and often unpredictable tariffs, punctuated by occasional informal agreements with particular trading partners.

2. Statutory Text

2-1 50 USC Ch. 35: International Emergency Economic Powers Act (IEEPA)

Section 1701

Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 1702 of this title may be exercised to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

Section 1702

Presidential authorities

(a) In general

(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities,

by any person, or with respect to any property, subject to the jurisdiction of the United States;

(B) investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States; and.1

(C) when the United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals, confiscate any property, subject to the jurisdiction of the United States, of any foreign person, foreign organization, or foreign country that he determines has planned, authorized, aided, or engaged in such hostilities or attacks against the United States; and all right, title, and interest in any property so confiscated shall vest, when, as, and upon the terms directed by the President, in such agency or person as the President may designate from time to time, and upon such terms and conditions as the President may prescribe, such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) Exceptions to grant of authority

The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value;

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances; or

(3) the importation from any country, or the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of any information or informational materials, including but not limited to, publications, films,

posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. The exports exempted from regulation or prohibition by this paragraph do not include those which are otherwise controlled for export under section 4604 of this title, or under section 4605 3 of this title to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States, or with respect to which acts are prohibited by chapter 37 of title 18; or

(4) any transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(c) Classified information

In any judicial review of a determination made under this section, if the determination was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act) such information may be submitted to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review.

Section 1703

Consultation and reports

(a) Consultation with Congress

The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this chapter and shall consult regularly with the Congress so long as such authorities are exercised.

(b) Report to Congress upon exercise of Presidential authorities

Whenever the President exercises any of the authorities granted by this chapter, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

(c) Periodic follow-up reports

At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) with respect to an exercise of authorities under this chapter, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b).

(d) Supplemental requirements

The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act [50 U.S.C. 1641].

* * *

3. Executive Orders and Actions

3-1 IMPOSING DUTIES TO ADDRESS THE SYNTHETIC OPIOID SUPPLY CHAIN IN THE PEOPLE'S REPUBLIC OF CHINA

Executive Order, 1 February 2025

I hereby determine and order:

Section 1. (a) As President of the United States, my highest duty is the defense of the country and its citizens. I will not stand by and allow our citizens to be poisoned, our laws to be trampled, our communities to be ravaged, or our families to be destroyed.

I previously declared a national emergency with respect to the grave threat to the United States posed by the influx of illegal aliens and drugs into the United States in Proclamation 10886. Pursuant to the NEA, I hereby expand the scope of the national emergency declared in that proclamation to cover the failure of the PRC government to arrest, seize, detain, or otherwise intercept chemical precursor suppliers, money launderers, other TCOs, criminals at large, and drugs. In addition, this failure to act constitutes an unusual and extraordinary threat, which has its source in substantial part outside the United States, to the national security, foreign policy, and economy of the United States. I hereby declare and reiterate a national emergency under the NEA and IEEPA to deal with that threat. This national emergency requires decisive and immediate action, and I have decided to impose, consistent with law, ad valorem tariffs on articles that are products of the PRC as set forth in this order. In doing so, I invoke my authority under section 1702(a)(1)(B) of IEEPA, and specifically find that action under other authority to impose tariffs is inadequate to address this unusual and extraordinary threat.

Sec. 2. (a) All articles that are products of the PRC, as defined by the *Federal Register* notice described in section 2(d) of this order (the *Federal Register* notice), shall be, consistent with law, subject to an additional 10 percent ad valorem rate of duty. Such rate of duty shall apply with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on February 4, 2025, except that goods entered for consumption, or withdrawn from warehouse for consumption, after such time that were loaded onto a vessel at the port of loading or in transit on the final mode of transport prior to entry into the United States before 12:01 a.m. eastern time on February 1, 2025, shall not be subject to such additional duty, only if the importer certifies to U.S. Customs and Border Protection within the Department of Homeland Security as specified in the *Federal Register* notice.

(b) The rates of duty established by this order are in addition to any other duties, fees, exactions, or charges applicable to such imported articles.

(c) Should the PRC retaliate against the United States in response to this action through import duties on United States exports to the PRC or similar measures, the President may increase or expand in scope the duties imposed under this Executive Order to ensure the efficacy of this action.

(d) In order to establish the duty rate on imports of articles that are products of the PRC, the Secretary of Homeland Security shall determine the modifications necessary to the Harmonized Tariff Schedule of the United States (HTSUS) in order to effectuate the objectives of this order consistent with law and shall make such modifications to the HTSUS through notice in the *Federal Register*. The modifications made to the HTSUS by this notice shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on February 4, 2025, except as otherwise noted in subsection 2(a) of this section, and shall continue in effect until such actions are expressly reduced, modified, or terminated.

(e) Articles that are products of the PRC, except those that are eligible for admission under "domestic status" as defined in 19 CFR 146.43, which are subject to the duties imposed by this order and are admitted into a United States foreign trade zone on or after 12:01 a.m. eastern time on February 4, 2025, except as otherwise noted in subsection 2(a) of this section, must be admitted as "privileged foreign status" as defined in 19 CFR 146.41. Such articles will be subject upon entry for consumption to the rates of duty related to the classification under the applicable HTSUS subheading in effect at the time of admittance into the United States foreign trade zone.

(f) No drawback shall be available with respect to the duties imposed pursuant to this order.

(g) For avoidance of doubt, duty-free *de minimis* treatment under 19 U.S.C. 1321 shall not be available for the articles described in subsection (a) of this section.

(h) Any prior Presidential Proclamation, Executive Order, or other presidential directive or guidance related to trade with the PRC that is inconsistent with the direction in this order is hereby terminated, suspended, or modified to the extent necessary to give full effect to this order.

(i) The articles described in subsection (a) of this section shall exclude those encompassed by 50 U.S.C. 1702(b).

Sec. 3. (a) The Secretary of Homeland Security shall regularly consult with the Secretary of State, the Attorney General, the Assistant to the President for National Security Affairs, the Attorney General, and the Assistant to the President for Homeland Security on the situation regarding the PRC. The Secretary of Homeland Security shall inform the President of any circumstances that, in the opinion of the Secretary of Homeland Security, indicate that the PRC government has taken adequate steps to alleviate the opioid crisis through cooperative actions. Upon the President's determination of sufficient action to alleviate the crisis, the tariffs described in section 2 of this order will be removed.

(b) The Secretary of Homeland Security, in coordination with the Secretary of State, the Attorney General, the Assistant to the President for National Security Affairs, and the Assistant to the President for Homeland Security, shall recommend additional action, if necessary, should the PRC fail to take adequate steps to alleviate the illicit drug crisis through cooperative enforcement actions.

Sec. 4. The Secretary of Homeland Security, in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Commerce, is hereby authorized to take such actions, including adopting rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to implement this order. The Secretary of Homeland Security may, consistent with applicable law, redelegate any of these functions within the Department of Homeland Security. All executive departments and agencies shall take all appropriate measures within their authority to implement this order.

Sec. 5. The Secretary of Homeland Security, in coordination with the Secretary of the Treasury, the Secretary of Commerce, the Assistant to the President for National Security Affairs, the Attorney General, and the Assistant to the President for Homeland Security, is hereby authorized to submit recurring and final reports to the Congress on the national emergency under IEEPA declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

* * *

3-2 REGULATING IMPORTS WITH A RECIPROCAL TARIFF TO RECTIFY TRADE PRACTICES THAT CONTRIBUTE TO LARGE AND PERSISTENT ANNUAL UNITED STATES GOODS TRADE DEFICITS

Executive Order, 2 April 2025

Just as a nation that does not produce manufactured products cannot maintain the industrial base it needs for national security, neither can a nation long survive if it cannot produce its own food. Presidential Policy Directive 21 of February 12, 2013 (Critical Infrastructure Security and Resilience), designates food and agriculture as a "critical infrastructure sector" because it is one of the sectors considered "so vital to the United States that [its] incapacity or destruction . . . would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters." Furthermore, when I left office, the United States had a trade surplus in agricultural products, but today, that surplus has vanished. Eviscerated by a slew of new non-tariff barriers imposed by our trading partners, it has been replaced by a projected $49 billion annual agricultural trade deficit.

For these reasons, I hereby declare and order:

<u>Section 1. National Emergency.</u> As President of the United States, my highest duty is ensuring the national and economic security of the country and its citizens.

I have declared a national emergency arising from conditions reflected in large and persistent annual U.S. goods trade deficits, which have grown by over 40 percent in the past 5 years alone, reaching $1.2 trillion in 2024. This trade deficit reflects asymmetries in trade relationships that have contributed to the atrophy of domestic production capacity, especially that of the U.S. manufacturing and defense-industrial base. These asymmetries also impact U.S. producers' ability to export and, consequentially, their incentive to produce.

Specifically, such asymmetry includes not only non-reciprocal differences in tariff rates among foreign trading partners, but also extensive use of non-tariff barriers by foreign trading partners, which reduce the competitiveness of U.S. exports while artificially enhancing the competitiveness of their own goods. These non-tariff barriers include technical barriers to trade; non-scientific sanitary and phytosanitary rules; inadequate intellectual property protections; suppressed domestic consumption (e.g., wage suppression); weak labor, environmental, and other regulatory standards and protections; and corruption. These non-tariff barriers give rise to significant imbalances even when the United States and a trading partner have comparable tariff rates.

The cumulative effect of these imbalances has been the transfer of resources from domestic producers to foreign firms, reducing opportunities for domestic manufacturers to expand and, in turn, leading to lost manufacturing jobs, diminished manufacturing capacity, and an atrophied industrial base, including in the defense-industrial sector. At the same time, foreign firms are better positioned to scale production, reinvest in innovation, and compete in the global economy, to the detriment of U.S. economic and national security.

The absence of sufficient domestic manufacturing capacity in certain critical and advanced industrial sectors — another outcome of the large and persistent annual U.S. goods trade deficits — also compromises U.S. economic and national security by rendering the U.S. economy less resilient to supply chain disruption. Finally, the large, persistent annual U.S. goods trade deficits, and the concomitant loss of industrial capacity, have compromised military readiness; this vulnerability can only be redressed through swift corrective action to rebalance the flow of imports into the United States. Such impact upon military readiness and our national security posture is especially acute with the recent rise in armed conflicts abroad. I call upon the public and private sector to make the efforts necessary to strengthen the international economic position of the United States.

Sec. 2. Reciprocal Tariff Policy. It is the policy of the United States to rebalance global trade flows by imposing an additional ad valorem duty on all imports from all trading partners except as otherwise provided herein. The additional ad valorem duty on all imports from all trading partners shall start at 10 percent and shortly thereafter, the additional ad valorem duty shall increase for trading partners enumerated in Annex I to this order at the rates set forth in Annex I to this order. These additional ad valorem duties shall apply until such time as I determine that the underlying conditions described above are satisfied, resolved, or mitigated.

Sec. 3. Implementation. (a) Except as otherwise provided in this order, all articles imported into the customs territory of the United States shall be, consistent with law, subject to an additional ad valorem rate of duty of 10 percent. Such rates of duty shall apply with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 5, 2025, except that goods loaded onto a vessel at the port of loading and in transit on the final mode of transit before 12:01 a.m. eastern daylight time on April 5, 2025, and entered for consumption or withdrawn from warehouse for consumption after 12:01 a.m. eastern daylight time on April 5, 2025, shall not be subject to such additional duty.

Furthermore, except as otherwise provided in this order, at 12:01 a.m. eastern daylight time on April 9, 2025, all articles from trading partners enumerated in Annex I to this order imported into the customs territory of the United States shall be, consistent with law, subject to the country-specific ad valorem rates of duty specified in Annex I to this order. Such rates of duty shall apply with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on April 9, 2025, except that goods loaded onto a vessel at the port of loading and in transit on the final mode of transit before 12:01 a.m. eastern daylight time on April 9, 2025, and entered for consumption or withdrawn from warehouse for consumption after 12:01 a.m. eastern daylight time on April 9, 2025, shall not be subject to these country-specific ad valorem rates of duty set forth in Annex I to this order. These country-specific ad valorem rates of duty shall apply to all articles imported pursuant to the terms of all existing U.S. trade agreements, except as provided below.

(b) The following goods as set forth in Annex II to this order, consistent with law, shall not be subject to the ad valorem rates of duty under this order: (i) all articles that are encompassed by 50 U.S.C. 1702(b); (ii) all articles and derivatives of steel and aluminum subject to the duties imposed pursuant to section 232 of the Trade Expansion Act of 1962 and proclaimed in Proclamation 9704 of March 8, 2018 (Adjusting Imports of Aluminum Into the United States), as amended, Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), as amended, and Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), as amended, Proclamation 10895 of February 10, 2025 (Adjusting Imports of Aluminum Into the United States), and Proclamation 10896 of February 10, 2025 (Adjusting Imports of Steel into the United States); (iii) all automobiles and automotive parts subject to the additional duties imposed pursuant to section 232 of the Trade Expansion Act of 1962, as amended, and proclaimed in Proclamation 10908 of March 26, 2025 (Adjusting Imports of Automobiles and Automobile Parts Into the United States); (iv) other products enumerated in Annex II to this order, including copper, pharmaceuticals, semiconductors, lumber articles, certain critical minerals, and energy and energy products; (v) all articles from a trading partner subject to the rates set forth in Column 2 of the Harmonized Tariff Schedule of the United States (HTSUS); and (vi) all articles that may become subject to duties pursuant to future actions under section 232 of the Trade Expansion Act of 1962.

(c) The rates of duty established by this order are in addition to any other duties, fees, taxes, exactions, or charges applicable to such imported articles, except as provided in subsections (d) and (e) of this section below.

(d) With respect to articles from Canada, I have imposed additional duties on certain goods to address a national emergency resulting from the flow of illicit drugs across our northern border pursuant to Executive Order 14193 of February 1, 2025 (Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border), as amended by Executive Order 14197 of February 3, 2025 (Progress on the Situation at Our Northern Border), and Executive Order 14231 of March 2, 2025 (Amendment to Duties To Address the Flow of Illicit Drugs Across Our Northern Border). With respect to articles from Mexico, I have imposed additional duties on certain goods to address a national emergency resulting from the flow of illicit drugs and illegal migration across our southern border pursuant to Executive Order 14194 of February 1, 2025 (Imposing Duties To Address the Situation at Our Southern Border), as amended by Executive Order 14198 of February 3, 2025 (Progress on the Situation at Our Southern Border), and Executive Order 14227 of March 2, 2025 (Amendment to Duties To Address the Situation at Our Southern Border). As a result of these border emergency tariff actions, all goods of Canada or Mexico under the terms of general note 11 to the HTSUS, including any treatment set forth in subchapter XXIII of chapter 98 and subchapter XXII of chapter 99 of the HTSUS, as related to the Agreement between the United States of America, United Mexican States, and Canada (USMCA), continue to be eligible to enter the U.S. market under these preferential terms. However, all goods of Canada or Mexico that do not qualify as originating under USMCA are presently subject to additional ad valorem duties of 25 percent, with energy or energy resources and potash imported from Canada and not qualifying as originating under USMCA presently subject to the lower additional ad valorem duty of 10 percent.

(e) Any ad valorem rate of duty on articles imported from Canada or Mexico under the terms of this order shall not apply in addition to the ad valorem rate of duty specified by the existing orders described in subsection (d) of this section. If such orders identified in subsection (d) of this section are terminated or suspended, all items of Canada and Mexico that qualify as originating under USMCA shall not be subject to an additional ad valorem rate of duty, while articles not qualifying as originating under USMCA shall be subject to an ad valorem rate of duty of 12 percent. However, these ad valorem rates of duty on articles imported from Canada and Mexico shall not apply to energy or energy resources, to potash, or to an article eligible for duty-free treatment under USMCA that is a part or component of an article substantially finished in the United States.

(f) More generally, the ad valorem rates of duty set forth in this order shall apply only to the non-U.S. content of a subject article, provided at least 20 percent of the value of the subject article is U.S. originating. For the purposes of this subsection, "U.S. content" refers to the value of an article attributable to the components produced entirely, or substantially transformed in, the United States. U.S. Customs and Border Protection (CBP), to the extent permitted by law, is authorized to require the collection of such information and documentation regarding an imported article, including with the entry filing, as is necessary to enable CBP to ascertain and verify the value of the U.S. content of the article, as well as to ascertain and verify whether an article is substantially finished in the United States.

(g) Subject articles, except those eligible for admission under "domestic status" as defined in 19 CFR 146.43, which are subject to the duty specified in section 2 of this order and are admitted into a foreign trade zone on or after 12:01 a.m. eastern daylight time on April 9, 2025, must be admitted as "privileged foreign status" as defined in 19 CFR 146.41.

(h) Duty-free de minimis treatment under 19 U.S.C. 1321(a)(2)(A)-(B) shall remain available for the articles described in subsection (a) of this section. Duty-free de minimis treatment under 19 U.S.C. 1321(a)(2)(C) shall remain available for the articles described in subsection (a) of this section until notification by the Secretary of Commerce to the President that adequate systems are in place to fully and expeditiously process and collect duty revenue applicable pursuant to this subsection for articles otherwise eligible for de minimis treatment. After such notification, duty-free de minimis treatment under 19 U.S.C. 1321(a)(2)(C) shall not be available for the articles described in subsection (a) of this section.

(i) The Executive Order of April 2, 2025 (Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China as Applied to Low-Value Imports), regarding low-value imports from China is not affected by this order, and all duties and fees with respect to covered articles shall be collected as required and detailed therein.

(j) To reduce the risk of transshipment and evasion, all ad valorem rates of duty imposed by this order or any successor orders with respect to articles of China shall apply equally to articles of both the Hong Kong Special Administrative Region and the Macau Special Administrative Region.

(k) In order to establish the duty rates described in this order, the HTSUS is modified as set forth in the Annexes to this order. These modifications shall enter into effect on the dates set forth in the Annexes to this order.

(l) Unless specifically noted herein, any prior Presidential Proclamation, Executive Order, or other Presidential directive or guidance related to trade with foreign trading partners that is inconsistent with the direction in this order is hereby terminated, suspended, or modified to the extent necessary to give full effect to this order.

Sec. 4. Modification Authority. (a) The Secretary of Commerce and the United States Trade Representative, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Homeland Security, the Assistant to the President for Economic Policy, the Senior Counselor for Trade and Manufacturing, and the Assistant to the President for National Security Affairs, shall recommend to me additional action, if necessary, if this action is not effective in resolving the emergency conditions described above, including the increase in the overall trade deficit or the recent expansion of non-reciprocal trade arrangements by U.S. trading partners in a manner that threatens the economic and national security interests of the United States.

(b) Should any trading partner retaliate against the United States in response to this action through import duties on U.S. exports or other measures, I may further modify the HTSUS to increase or expand in scope the duties imposed under this order to ensure the efficacy of this action.

(c) Should any trading partner take significant steps to remedy non-reciprocal trade arrangements and align sufficiently with the United States on economic and national security matters, I may further modify the HTSUS to decrease or limit in scope the duties imposed under this order.

(d) Should U.S. manufacturing capacity and output continue to worsen, I may further modify the HTSUS to increase duties under this order.

Sec. 5. Implementation Authority. The Secretary of Commerce and the United States Trade Representative, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Homeland Security, the Assistant to the President for Economic Policy, the Senior Counselor for Trade and Manufacturing, the Assistant to the President for National Security Affairs, and the Chair of the International Trade Commission are hereby authorized to employ all powers granted to the President by IEEPA as may be necessary to implement this order. Each executive department and agency shall take all appropriate measures within its authority to implement this order.

Sec. 6. Reporting Requirements. The United States Trade Representative, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Homeland Security, the Assistant to the President for Economic Policy, the Senior Counselor for Trade and Manufacturing, and the Assistant to the President for National Security Affairs, is hereby authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

* * *

3-3 GENERAL TERMS FOR THE UNITED STATES OF AMERICA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND ECONOMIC PROSPERITY DEAL

8 May 2025

President Donald J. Trump and Prime Minister Sir Keir Starmer committed to deliver shared prosperity for American and British citizens alike. Our governments have a unique opportunity to enhance our economic partnership through the U.S.-UK Economic Prosperity Deal (EPD).

A first of its kind, the United States and the United Kingdom expect the EPD to address three core objectives, based on fairness and reciprocity:

1. To grow the quality and volume of mutually beneficial trade between the United States and the United Kingdom, creating good, high-paying jobs and growth in both countries;
2. To remove barriers to make it easier for American and British businesses to operate, invest and trade in both countries; and
3. To ensure that the Special Relationship is rooted in an enduring economic partnership that is fair, reciprocal, future-facing, and built on a shared vision of the challenges that face our economies.

This document serves to define the general terms for the EPD that set forth the shared desires of the United States and the United Kingdom to make bilateral trade fairer, easier, and more substantial. Alongside this document covering our trading relationship, we are continuing discussions toward a transformative technology partnership between our countries.

The United States and United Kingdom are immediately beginning negotiations of the EPD to develop and formalize the proposals made in this document. Once the initial proposals have been formalized and implemented, the United States and United Kingdom understand that the EPD can further be expanded over time to cover additional areas. Each country intends to continue to improve market access under the EPD.

Both the United States and the United Kingdom recognize that this document does not constitute a legally binding agreement.

1. Addressing Tariffs

(a) Following a reasonable period of negotiation: (i) the United Kingdom intends to reduce its applied tariff rates on a preferential basis on a range of originating goods of the United States in sectors of importance to the United States; and (ii) the United States intends to reduce its applied tariff rates on a preferential basis on a range of originating goods of the United Kingdom in sectors of importance to the United Kingdom. The countries intend to coordinate the timing of their respective tariff reductions to be as soon as practicable, taking into consideration their respective domestic processes. On request of the United Kingdom, the United States will consider reducing its applied tariff rates for a UK territory or territories for whose international relations the United Kingdom is responsible on a preferential basis.

(b) U.S. beef exports to the United Kingdom are currently subject to a 20 percent tariff within a quota of 1,000 metric tons (mt). The United Kingdom will remove the 20 percent tariff. Additionally, the United Kingdom will create a preferential duty-free quota of 13,000 mt for U.S. beef. In return, the United States will reallocate to the United Kingdom 13,000 mt of its existing "Other Countries" tariff rate quota (TRQ) for beef. Additionally, the United Kingdom will offer a preferential duty-free TRQ of 1.4 billion liters for U.S. ethanol.

(c) The United States intends to provide certain key UK imports with modified reciprocal tariff treatment, based on our balanced trading relationship and shared national security priorities. Any such modifications will be consistent with those shared national security priorities, including priorities identified in future U.S. Section 232 investigations.

> (i) The United States will create a quota of 100,000 vehicles for UK automotive imports at a 10 percent tariff rate, and an accompanying arrangement for attendant auto parts for such autos.
>
> (ii) The United Kingdom will work to promptly meet U.S. requirements on the security of the supply chains of steel and aluminum products intended for export to the United States and on the nature of ownership of relevant production facilities. Understanding the United Kingdom will meet these requirements, the United States will promptly construct a quota at most favored nation (MFN) rates for UK steel and aluminum and certain derivative steel and aluminum products.
>
> (iii) Contingent on the findings of the U.S. Section 232 investigation on pharmaceuticals and pharmaceutical ingredients, and consistent with the United Kingdom's compliance with the supply chains security requirements described in subparagraph (ii), the United States and the United Kingdom intend to promptly negotiate significantly preferential treatment outcomes on pharmaceuticals and pharmaceutical ingredients. The United Kingdom confirms that it will endeavor to improve the overall environment for pharmaceutical companies operating in the United Kingdom.
>
> (iv) In addition to products already addressed in this document, the United States and the United Kingdom intend to adopt a structured, negotiated approach to other sectors that may be subject to Section 232 investigations or other tariff measures with a view to a significantly preferential outcome. Any such approach is contingent on the United Kingdom ensuring the security of supply chains, using appropriate measures, of products intended for export to the United States and on the findings of related U.S. investigations of, or other tariff measures related to, such sectors.

(d) To ensure U.S. and UK firms can benefit from these changes in practice, both countries intend to apply rules of origin that maximize bilateral trade and prevent non-participants from using our bilateral arrangement to circumvent tariffs. The United States affirms that it intends to take into consideration during the negotiations of the EPD the United Kingdom's request that the United States continues to work to lower tariffs on UK goods imposed by U.S. executive authority as well as those subject to Congressional approval.

2. Addressing Non-Tariff Barriers

(a) The United Kingdom and the United States plan to work constructively in an effort to enhance agricultural market access. Further, both countries positively support future discussions to strengthen bilateral agricultural trade. The United Kingdom and the United States affirm that imported food and agricultural goods must comply with the importing country's sanitary and phytosanitary (SPS) standards and other mutually agreed standards. The United Kingdom and the United States commit to working together to improve market access for agricultural products, to highlight concerns, and to increase agricultural cooperation on areas such as certain export verification programs to facilitate greater trade, and more formal bilateral engagement through international standard setting bodies.

(b) The United Kingdom and the United States each confirms its intent to accord to conformity assessment bodies of the other treatment no less favorable than that it accords to conformity assessment bodies located in its own territory. Treatment under this paragraph includes procedures, criteria, fees, and other conditions relating to accrediting, approving, licensing, or otherwise recognizing conformity assessment bodies.

(c) Both countries intend to build on an existing set of Mutual Recognition Agreements (MRAs) by negotiating additional agreements, as appropriate, across certain industrial goods and advance toward an agreement on services domestic regulation.

(d) The United Kingdom and United States intend to discuss the principles and criteria used in order to recognize a standard as an international standard. The United Kingdom and the United States will further commit to discuss respective applicable standards for mutually agreed sectors of interest and, within those specified sectors, to agree which of the other's relevant domiciled standards development organizations (SDOs) currently meet recognized international principles.

3. Increasing Digital Trade

(a) Both countries confirm that they will negotiate an ambitious set of digital trade provisions that will include within its scope services, including financial services.

(b) Both countries confirm that they will negotiate provisions on paperless trade, pre-arrival processing, and digitalized procedures for the movement of goods between our countries.

4. Strengthening Alignment and Collaboration on Economic Security

(a) Both countries intend to strengthen cooperation on economic security, including by coordinating to address non-market policies of third countries.

(b) Both countries intend to cooperate on the effective use of investment security measures, export controls, and ICT vendor security, building on the current levels of close alignment on trade and investment security measures.

(c) In order to ensure more competitive, reciprocal, and secure access to our procurement markets, both countries reaffirm their procurement commitments under the Agreement on Government Procurement (GPA) and their respective free trade agreements, and intend to discuss the implementation of our respective procurement commitments, including through the United Kingdom's new National Security Unit for Procurement and the United Kingdom's new powers under the Procurement Act 2023, which provides that non-"treaty states" are not guaranteed non-discriminatory treatment in procurement.

(d) Both countries confirm that they will negotiate as part of the EPD provisions on duty evasion customs cooperation to combat evasion schemes and the illegal transshipment of goods from countries subject to antidumping, countervailing duties, safeguards, etc., which undermine economic security.

5. Commercial Considerations and Opportunities

Both countries commit to continuing to identify mutually beneficial goods, services, investment opportunities and commercial transactions that serve to increase economic integration in critical industries and defense preparedness, leveraging government policies, licenses, and programs and private-sector participation to facilitate such transactions.

6. Other Matters

(a) Both countries confirm that they intend to discuss high-standard commitments related to intellectual property rights protection and enforcement, labor practices (including addressing forced labor in supply chains), and environmental policies and practices.

(b) The United Kingdom will consider the interests of those UK territories for whose international relations it is responsible.

(c) The United Kingdom and the United States recognize that the purpose of this arrangement is to deepen our trade relationship based on mutual trust and a shared commitment to fair and reciprocal trade. On request of either country, the United Kingdom and the United States will consult with a view to considering any changes that may need to be made to this arrangement to ensure that it remains mutually beneficial.

(d) The United States or the United Kingdom may terminate this arrangement by giving written notice to the other. The United Kingdom and the United States further plan to discuss procedures for review and termination as part of the negotiations of the EPD.

* * *

3-4 IMPLEMENTING THE GENERAL TERMS OF THE U.S.-UK ECONOMIC PROSPERITY DEAL

Fact Sheet, 17 June 2025

IMPLEMENTING A HISTORIC TRADE DEAL: Yesterday, President Donald J. Trump signed an Executive Order implementing American commitments under the General Terms of the United States-United Kingdom Economic Prosperity Deal.

- This historic trade deal provides American companies unprecedented access to British markets while bolstering U.S. national security.
- The deal will include billions of dollars of increased market access for American exports, especially for beef, ethanol, and certain other American agricultural exports.
- The UK will reduce or eliminate numerous non-tariff barriers that unfairly discriminate against American products, hurt the U.S. manufacturing base, and threaten our national security.
- The U.S. and UK will negotiate preferential treatment outcomes for UK pharmaceuticals and pharmaceutical ingredients contingent on the findings of a Section 232 investigation.
- The U.S. and UK have also committed to adopting a structured, negotiated approach to addressing U.S. national security concerns regarding sectors that may be subject to future Section 232 investigations and UK compliance with certain supply chain security standards.
- This Executive Order addresses automobiles, aerospace, and steel and aluminum.
- For automobiles, the Order provides that the first 100,000 vehicles imported into the U.S. by UK car manufacturers each year will be subject to a total tariff rate of 10% (7.5% plus 2.5% most-favored-nation rate) and any additional imported vehicles each year will be subject to the automobile Section 232 tariff rate of 25%.
    - Additionally, automotive parts that are products of the UK and are for use in UK vehicles will be subject to a total tariff rate of 10%.
- For aerospace, the Order provides that certain UK products will no longer be subject to tariffs, thus strengthening aerospace and aircraft manufacturing supply chains.
- For steel and aluminum articles and their derivatives, the Order provides that the Secretary of Commerce, in consultation with the U.S. Trade Representative, will establish tariff-rate quotas for UK products consistent with the General Terms of the Economic Prosperity Deal and pursuant to certain principles outlined in the Order. Products outside those quotas or that do not meet certain requirements will remain subject to existing Section 232 tariffs.
- Today's action strengthens our bilateral relationship with the UK and sets the tone for other trading partners to promote reciprocal trade with the United States.

ADVANCING RECIPROCAL TRADE: This U.S.-UK trade deal will usher in a golden age of new opportunity for U.S. exporters and level the playing field for American producers.

- On April 2, 2025, Liberation Day, President Trump imposed a 10% tariff on all countries to address unfair trade practices that have contributed to America's trade deficit in order to better protect American workers, manufacturers, and our national security.
    - In 2024, the U.S. total goods trade with the UK was an estimated $148 billion.
    - The UK average applied agricultural tariff was 9.2%, while the U.S. average applied agricultural tariff (prior to April 2) was 5%.

- On April 18, President Trump had a call with Prime Minister Starmer to discuss our bilateral trade relationship.
- On May 8, President Trump and Prime Minister Keir Starmer announced this historic Economic Prosperity Deal.

USHERING IN A NEW ERA OF PROSPERITY: Since Day One, President Trump has challenged the assumption that American workers and businesses must tolerate unfair trade practices that disadvantage our workers and businesses and contribute to our historic trade deficit.

- President Trump continues to advance the interests of the American people, enhancing market access for American exporters and lowering tariff and non-tariff barriers to protect our economic and national security.
- The Economic Prosperity Deal with the United Kingdom is a critical step toward promoting reciprocal trade with a key ally and partner.
- President Trump: "The deal includes billions of dollars of increased market access for American exports, especially in agriculture, dramatically increasing access for American beef, ethanol, and virtually all of the products produced by our great farmers."
    - "The UK will reduce or eliminate numerous non-tariff barriers that unfairly discriminated against American products."
    - "This is now turning out to be, really, a great deal for both countries."
- Prime Minister Starmer: "This is going to boost trade between and across our countries. It's going to not only protect jobs, but create jobs, opening market access."

* * *

3-5 AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND MALAYSIA ON RECIPROCAL TRADE, 26 OCTOBER 2025

Preamble

The Government of the United States of America ("United States") and the Government of Malaysia ("Malaysia") (hereinafter referred to individually as "a Party" and collectively as "the Parties"),

EMPHASIZING their shared values, including their shared commitment to sovereignty, economic prosperity, and resilient supply chains;

RECOGNIZING the bonds of friendship and cooperation between them, in particular in their trade and investment relations, as reflected in the *Trade and Investment Framework Agreement between the Government of the United States and the Government of Malaysia*;

INTENDING to enhance reciprocity in their bilateral trade relationship by addressing tariff and non-tariff barriers; and

SEEKING to strengthen their commercial relationship through increased alignment on national and regional economic security matters,

HAVE AGREED as follows:

Section 1. Tariffs and Quotas

Article 1.1: Tariffs

1. Malaysia shall apply a rate of customs duty[1] on originating goods of the United States as set out in Schedule 1 to Annex I.

2. The United States shall apply a revised reciprocal tariff rate on originating goods of Malaysia as set out in Schedule 2 of Annex I.

Article 1.2: Quantitative Restrictions

Malaysia shall not impose quantitative restrictions on imports of originating goods of the United States except in accordance with the *General Agreement on Tariffs and Trade* 1994 (GATT 1994).

Section 2. Non-Tariff Barriers and Related Matters

Article 2.1: Import Licensing

Malaysia shall not apply import licensing[2] to U.S. originating goods in a manner that restricts the importation of such goods. Malaysia shall ensure that any non-automatic import licensing that it applies is applied only to administer an underlying measure, and in a manner that is transparent, nondiscriminatory, and not unduly burdensome, and that does not reduce the competitiveness of U.S. exports.

Article 2.2: Technical Regulations, Standards, and Conformity Assessment

1. The Parties recognize their existing rights and obligations with respect to each other under the World Trade Organization (WTO) *Agreement on Technical Barriers to Trade*. Malaysia shall allow U.S. originating goods that comply with applicable U.S. or international standards, U.S. technical regulations, or U.S. or international conformity assessment procedures to enter its territory without additional conformity assessment requirements. In doing so—

(a) Malaysia shall accord to the conformity assessment bodies of the United States treatment no less favorable than that it accords to its own bodies; and

(b) Malaysia shall facilitate the acceptance of U.S. compliance procedures for goods that are not subject to third-party conformity assessment in the U.S. regulatory framework.

2. Malaysia shall ensure that technical regulations, standards, and conformity assessment procedures are applied in a non-discriminatory manner and do not operate as disguised restrictions on bilateral trade, and shall remove existing technical barriers to trade in areas that undermine reciprocity, including requirements for duplicative or unnecessary testing or conformity assessment.

Article 2.3: Agriculture

Malaysia shall provide non-discriminatory or preferential market access for U.S. agricultural goods as set forth in this Agreement. In doing so—

(a) Malaysia shall ensure that its sanitary and phytosanitary (SPS) measures are science- and risk-based and do not operate as disguised restrictions on bilateral trade, and shall remove unjustified SPS barriers in areas that undermine reciprocity.

(b) Malaysia shall not enter into agreements or understandings with third countries that include non-scientific, discriminatory, or preferential technical standards or third-country SPS measures that are incompatible with U.S. or international standards; or otherwise disadvantage U.S. exports.

Article 2.4: Geographical Indications

Malaysia shall ensure transparency and fairness with respect to the protection or recognition[3] of geographical indications, including pursuant to an international agreement to which Malaysia is a party. Malaysia shall only protect or recognize a term that identifies a good as a geographical indication where there is a given quality, reputation, or other characteristic of the good that is essentially attributable to its geographical origin.

Article 2.5: Cheese and Meat Terms

Malaysia shall not restrict U.S. market access due to the mere use of the individual cheese and meat terms listed in Annex II.

Article 2.6: Intellectual Property

Malaysia shall provide a robust standard of protection for intellectual property.[4] Malaysia shall provide effective systems for civil, criminal, and border enforcement of intellectual property rights and shall ensure that such systems combat and deter the infringement or misappropriation of intellectual property, including in the online environment. Malaysia shall prioritize and shall take effective criminal and border enforcement actions against copyright and trademark infringements.

Article 2.7: Services

This Agreement incorporates, *mutatis mutandis*, any commitment concerning trade in services that Malaysia has made or hereafter makes in a trade agreement to any third country, jurisdiction, or economy. This Article shall not apply to any commitment to the Association of Southeast Asian Nations (ASEAN) under any ASEAN trade or investment agreement.

Article 2.8: Good Regulatory Practices

Malaysia shall adopt and implement good regulatory practices as set out in Article 2.21 of Annex III that ensure greater transparency, predictability, and participation throughout the regulatory lifecycle.

Article 2.9: Labor

1. Malaysia shall adopt and implement a prohibition on the importation of goods mined, produced, or manufactured wholly or in part by forced or compulsory labor. Malaysia may acknowledge U.S. government determinations on entities under Section 307 of the Tariff Act of 1930 and shall take appropriate action to prohibit importation of goods from those companies. The Parties shall cooperate by sharing best practices on the development and enforcement of forced labor import prohibitions, as appropriate. Malaysia shall implement the obligations in this paragraph within two years of the date of entry into force of this Agreement.

2. Malaysia shall protect internationally recognized labor rights.[5] This includes by adopting or maintaining such rights in its domestic law and practice, and effectively enforcing its labor laws, including by creating or maintaining necessary institutions to protect labor rights. Malaysia shall establish and effectively apply appropriate legal sanctions for violations of those laws. Malaysia shall not weaken or reduce the protections in its labor laws and shall address any such weakening or reduction that has been made to encourage trade or investment to date.[6] In addition, Malaysia shall address issues related to labor rights that contribute to non-reciprocal trade.

Article 2.10: Environment

Malaysia shall adopt and maintain environmental protections, effectively enforce its environmental laws, uphold or institute, as necessary, strong environmental governance structures, and address environment-related issues that contribute to non-reciprocal trade.

Article 2.11: Customs and Trade Facilitation

Malaysia shall facilitate technology solutions that allow for full pre-arrival processing, paperless trade, and digitalized procedures for the cross-border movement of goods.

Article 2.12: Border Measures and Taxes

1. Malaysia shall coordinate and endeavor to align its border measures applicable to third-country imports with relevant border measures that the United States may adopt in the future, such as border-adjusted tax measures or other border measures, to combat regulatory arbitrage that would disadvantage U.S. workers and businesses.

2. No Party shall contest at the WTO a measure adopted by the other Party to rebate or to refrain from imposing direct taxes in relation to exports from that Party.

3. Malaysia shall not impose value-added taxes that discriminate against U.S. companies in law or in fact.

Section 3. Digital Trade and Technology

Article 3.1: Digital Services Tax

Malaysia shall not impose digital services taxes, or similar taxes, that discriminate against U.S. companies in law or in fact.

Article 3.2: Facilitation of Digital Trade

Malaysiashall facilitate digital trade with the United States, including by—

(a) refraining from measures that discriminate against U.S. digital services or U.S. products distributed digitally;[7]

(b) ensuring the cross-border transfer of data by electronic means across trusted borders, with appropriate protections, for the conduct of business; and

(c) endeavoring to collaborate with the United States to address cybersecurity challenges and matters of mutual interest, which may include exchanging information on threats and best practices, promoting the use of relevant international standards, and understanding capacity-building activities.

Article 3.3: Digital Trade Agreements

Malaysia shall consult with the United States before entering into a new digital trade agreement with another country that jeopardizes essential U.S. interests.

Article 3.4: Market Entry Conditions

1. Malaysia shall not impose any condition or enforce any undertaking requiring U.S. persons to transfer or provide access to a particular technology, production process, source code, or other proprietary knowledge, or to purchase, utilize, or accord a preference to a particular technology, as a condition for doing business in its territory.

2. Nothing in this Article shall─

(a) preclude the inclusion or implementation of terms and conditions related to the provision of source code in commercially negotiated contracts;

(b) preclude a Party from requiring that access be provided to software used for critical infrastructure, to the extent required to ensure the effective functioning of critical infrastructure, subject to safeguards against unauthorized disclosure;

(c) preclude a Party from requiring the modification of source code of software necessary for that software to comply with laws or regulations which are not inconsistent with this Agreement;

(d) apply to government procurement;

(e) preclude a regulatory body or judicial authority of a Party from requiring a person of another Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination, enforcement action, or judicial proceeding, subject to safeguards against unauthorized disclosure; or

(f) apply to a Party's measures adopted or maintained for prudential reasons.[8]

Article 3.5: Customs Duties on Electronic Transmissions

Each Partyshall not impose customs duties on electronic transmissions, including content transmitted electronically, and shall support multilateral adoption of a permanent moratorium on customs duties on electronic transmissions at the WTO. For greater certainty, this Article does not preclude a Party from imposing internal taxes, fees, or other charges on electronic transmissions, including content transmitted electronically, provided that those taxes, fees, or charges are imposed in a manner consistent with Articles I and III of the GATT 1994 or Articles II and XVII of the WTO *General Agreement on Trade in Services* (GATS).

Section 4. Rules of Origin

Article 4.1: General Provision

The Parties intend for the benefits of this Agreement to accrue substantially to them and their nationals. If benefits of this Agreement are accruing substantially to third countries or third-country nationals, a Party may establish rules of origin necessary to achieve the Parties' intention for this Agreement.

Section 5. Economic and National Security

Article 5.1: Complementary Actions

1. If the United States imposes a customs duty, quota, prohibition, fee, charge, or other import restriction on a good or service of a third country and considers that such measure is relevant to protecting the economic or national security of the United States, the United States intends to notify such measure to Malaysia for the purpose of economic and national security alignment. Upon receiving such notification from the United States, Malaysia shall adopt or maintain a measure with equivalent restrictive effect as the measure adopted by the United States or agree to a timeline for implementation that is acceptable to both Parties, to address a shared economic or national security concern, guided by principles of goodwill and a shared commitment to enhancing bilateral relations between the United States and Malaysia.

2. Malaysia shalladopt and implement measures, in accordance with its domestic laws and regulations, to address unfair practices of companies owned or controlled by third countries operating in Malaysia's jurisdiction that result in—

(a) the export of below-market price goods to the United States;

(b) increased exports of such goods to the United States;

(c) a reduction in U.S. exports to Malaysia; or

(d) a reduction in U.S. exports to third-country markets.

3. Malaysia shall adopt, through its domestic regulatory process, similar measures of equivalent restrictive effect as those adopted by the United States to encourage shipbuilding and shipping by market economy countries. The Parties shall discuss the structure and effect of such measures, recognizing the Parties' commitment to address shared economic or national security concerns in the shipbuilding and shipping sector.

Article 5.2: Export Controls, Sanctions, Investment Security, and Related Matters

1. Malaysia shall, through its domestic regulatory process, cooperate with the United States to regulate the trade in national security-sensitive technologies and goods through existing multilateral export control regimes, align with all unilateral export controls in force by the United States, and ensure that its companies do not backfill or undermine these controls.

2. Malaysia shall cooperate with the United States, in a manner consistent with applicable requirements of domestic laws and regulations, with a view to restricting transactions of its nationals with individuals and entities included in the U.S. Department of Commerce Bureau of Industry and Security Entity List (Supplement 4 of Part 744 of the Export Administration Regulations), as well as the U.S. Department of the Treasury Office of Foreign Assets Control Lists of Specially Designated Nationals and Blocked Persons List (SDN List) and the Non-SDN Consolidated Sanctions List.

3. Malaysia shall explore the establishment of a mechanism to review inbound investment for national security risks, including in connection with critical minerals and critical infrastructure, consistent with widely accepted international best practices, and shall cooperate with the United States on matters related to investment security.

4. If the United States determines that Malaysia is cooperating to address shared national and economic security issues, the United States may take such cooperation into account in administering its domestic laws and regulations pertaining to export controls, investment reviews, and other measures.

Article 5.3: Other Measures

1. The United States shall work with Malaysia to streamline and enhance defense trade.

2. Malaysia shall, in accordance with its domestic laws and regulations,adopt and effectively enforce measures to combat transshipment and other practices to evade or circumvent duties applied by the United States. Malaysia shall enter into a duty evasion cooperation agreement with the United States.

3. If Malaysia enters into a new bilateral free trade agreement or preferential economic agreement with a country that jeopardizes essential U.S. interests, the United States may, if consultations with Malaysia fail to resolve its concerns, terminate this Agreement and reimpose the applicable reciprocal tariff rate set forth in Executive Order 14257 of April 2, 2025.

4. Malaysia shall not purchase any nuclear reactors, fuel rods, or enriched uranium from certain countries, except where there are no alternative suppliers on comparable terms and conditions.

Section 6. Commercial Considerations and Opportunities

Article 6.1: Investment

1. With respect to the central level of government, Malaysia shall, in accordance with its laws and regulations, facilitate and promote investment by the United States in sectors including critical minerals, energy resources, power generation, telecommunications, transportation, and infrastructure services.

2. The United States shall work through U.S. institutions such as the Export-Import Bank of the United States (EXIM Bank) and the U.S. International Development Finance Corporation (DFC), if eligible, to consider supporting investment financing in critical sectors in Malaysia in collaboration with U.S. private sector partners, consistent with applicable law.

3. Malaysia shall facilitate, to the extent practicable, approximately USD70 billion in job-creating investment, including greenfield investment, in the United States over the next 10 years.

Article 6.2: Commercial Considerations

1. Malaysia shall ensure that its State-Owned or -Controlled Enterprises (SOEs) operating in its market, when engaging in commercial activities─

(a) act in accordance with commercial considerations in their purchase or sale of goods or services; and

(b) refrain from discriminating against U.S. goods or services.

Malaysia shall refrain from providing non-commercial assistance or otherwise subsidizing its goods-producing SOEs, except for the achievement of their public service obligations. Malaysia shall ensure a level playing field for U.S. companies in Malaysia's market with respect to SOEs of third countries.

2. Upon the written request of the United States, Malaysia shall provide non-confidential[9] information regarding all forms of non-commercial assistance or subsidies that it provides to a manufacturing enterprise in its territory, and shall take action to address the distortive impacts of those subsidies and support mechanisms that may materially affect bilateral trade and investment with the United States.

Article 6.3: Purchases

Malaysia intends to purchase, or to facilitate the purchase by Malaysian companies, of originating goods of United States, as set out in Annex IV.

Section 7. Implementation, Enforcement, and Final Provisions

Article 7.1: Recognition of Existing Rights and Obligations

The Parties recognize their rights and obligations under the WTO agreements, including provisions of those agreements that reflect a WTO member's sovereign rights to protect essential security, address unfair trade practices, and pursue other public policy objectives.

Article 7.2: Entry into Force

This Agreement shall enter into force 60 days after the date on which the Parties have exchanged written notifications certifying completion of their applicable legal procedures or on such other date as the Parties may agree.

Article 7.3: Modifications and Amendments

Either Party may request reasonable modifications to any provision of this Agreement. The other Party shall consider such modifications in good faith. The Parties may agree, in writing, to amend this Agreement. An amendment to this Agreement shall enter into force 60 days after the date on which the Parties exchange written notification of the completion of their respective applicable legal procedures or on such other date as the Parties may agree. An amendment shall not affect the rights and obligations of the Parties provided for under this Agreement until the amendment enters into force.

Article 7.4: Enforcement

1. Nothing in this Agreement shall constrain, or otherwise prevent, a Party from imposing additional tariffs to remedy unfair trade practices, to address import surges, to protect its economic or national security, or for other similar reasons consistent with its domestic law.

2. If a Party considers that the other Party has not complied with a provision of this Agreement, the Party may review the terms of this Agreement and take action in accordance with applicable domestic law. A Party shall, when practicable, with a view to finding a mutually satisfactory solution, notify and seek consultations in good faith with the other Party prior to taking any action.

Article 7.5: Termination

Either Party may terminate this Agreement by written notification to the other Party. Termination shall take effect 180 days after the date of the notification.

Article 7.6: Annexes, Appendices, and Footnotes

The annexes, appendices, and footnotes to this Agreement constitute an integral part of this Agreement.

[1] **Customs duty** includes any duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any—

(a) charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994;

(b) fee or other charge in connection with the importation commensurate with the cost of services rendered; or

(c) antidumping or countervailing duty applied pursuant to a Party's law.

[2] For greater certainty, "import licensing", "automatic import licensing", and "non-automatic import licensing" have the same meanings as provided in the WTO *Agreement on Import Licensing Procedures*.

[3] For greater certainty, Malaysia shall not protect or recognize a predetermined list of geographical indications.

[4] For purposes of this Agreement, "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights*. Further, for purposes of this Agreement, the protection of intellectual property includes matters related to technological protection measures and rights management information.

[5] For purposes of this paragraph, internationally recognized labor rights include those in the International Labor Organization (ILO) *Declaration on Fundamental Principles and Rights at*

Work and its Follow-Up (1998), as amended in 2022; a prohibition on the worst forms of child labor; and acceptable conditions of work with respect to minimum wages and hours of work.

[6] For greater certainty, the scope of this paragraph includes special economic zones, including export processing zones, or sector-specific laws or regulations that have lesser labor protections than the overall economy.

[7] For greater certainty, Malaysia has the right to regulate in the public interest. [1] The Parties understand that the term "prudential reasons" includes the maintenance of the safety, soundness, and integrity or financial responsibility of individual financial service suppliers as well as the safety and financial and operational integrity of payment and clearing systems.

[8] For purposes of this paragraph, "non-confidential information" means information other than confidential information, and "confidential information" means information that relates to a specific enterprise and is protected under the laws and regulations of Malaysia.

[9] For purposes of this paragraph, "non-confidential information" means information other than confidential information, and "confidential information" means information that relates to a specific enterprise and is protected under the laws and regulations of Malaysia.

4. Case Law

4-1 LEARNING RESOURCES V. DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, SUPREME COURT OF THE UNITED STATES, 20 FEBRUARY 2026

4-1(a) Roberts, CJ, Judgment of the Court and Opinion of the Court

CHIEF JUSTICE ROBERTS announced the judgment of the Court and delivered the opinion of the Court, except as to Parts II–A–2 and III.[1]

We decide whether the International Emergency Economic Powers Act (IEEPA) authorizes the President to impose tariffs.

I

A

Shortly after taking office, President Trump sought to address two foreign threats. The first was the influx of illegal drugs from Canada, Mexico, and China. Presidential Proclamation No. 10886, 90 Fed. Reg. 8327 (2025); Exec. Order No. 14193, 90 Fed. Reg. 9113 (2025); Exec. Order No. 14194, 90 Fed. Reg. 9117 (2025); Exec. Order No. 14195, 90 Fed. Reg. 9121 (2025). The second was "large and persistent" trade deficits. Exec. Order No. 14257, 90 Fed. Reg. 15041 (2025). The President determined that the first threat had "created a public health crisis," 90 Fed. Reg. 9113, and that the second had "led to the hollowing out" of the American manufacturing base and "undermined critical supply chains," id., at 15041. He invoked his authority under IEEPA to respond.

Enacted in 1977, IEEPA gives the President economic tools to address significant foreign threats. 91 Stat. 1626. When acting under IEEPA, the President must identify an "unusual and extraordinary threat" to American national security, foreign policy, or the economy, originating primarily "outside the United States." 50 U. S. C. §1701(a). And he must "declare[] a national emergency" under the National Emergencies Act. *Ibid*.; see 90 Stat. 1255. He may then, "by means of instructions, licenses, or otherwise," take the following actions to "deal with" the threat: "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest." §§1701(a), 1702(a)(1)(B).

President Trump declared a national emergency as to both the drug trafficking and the trade deficits, which he deemed "unusual and extraordinary" threats. He then imposed tariffs to deal with each threat. As to the drug trafficking tariffs, the President imposed a 25% duty on most Canadian and Mexican imports and a 10% duty on most Chinese imports. 90 Fed. Reg. 9114, 9118, 9122–9123. As to the trade deficit (or "reciprocal") tariffs, the President imposed a duty "on all imports from all trading partners" of at least 10%. *Id*., at 15045. Dozens of nations faced higher rates. *Id*., at 15049. And these tariffs applied notwithstanding any extant trade agreements. *Id*., at 15045.

[1] JUSTICE SOTOMAYOR, JUSTICE KAGAN, and JUSTICE JACKSON join only Parts I, II–A–1, and II–B of this opinion.

Since imposing each set of tariffs, the President has issued several increases, reductions, and other modifications. One month after imposing the 10% drug trafficking tariffs on Chinese goods, he increased the rate to 20%. See Exec. Order No. 14228, 90 Fed. Reg. 11463 (2025). One month later, he removed a statutory exemption for Chinese goods under $800. Exec. Order No. 14256, 90 Fed. Reg. 14899 (2025). Less than a week after imposing the reciprocal tariffs, the President increased the rate on Chinese goods from 34% to 84%. Exec. Order No. 14259, 90 Fed. Reg. 15509 (2025). The very next day, he increased the rate further still, to 125%. Exec. Order No. 14266, 90 Fed. Reg. 15625, 15626 (2025). This brought the total effective tariff rate on most Chinese goods to 145%. The President has also shifted sets of goods into and out of the reciprocal tariff framework. See, *e.g*., Exec. Order No. 14360, 90 Fed. Reg. 54091 (2025) (exempting from reciprocal tariffs beef, fruits, coffee, tea, spices, and some fertilizers); Exec. Order No. 14346, 90 Fed. Reg. 43737 (2025). And he has issued a variety of other adjustments. See, *e.g*., Exec. Order No. 14358, 90 Fed. Reg. 50729, 50730 (2025) (extending "the suspension of heightened reciprocal tariffs" on Chinese imports).

B

Petitioners in *Learning Resources* and respondents in *V.O.S. Selections* filed suit, alleging that IEEPA does not authorize the reciprocal or drug trafficking tariffs. The *Learning Resources* plaintiffs—two small businesses—sued in the United States District Court for the District of Columbia. The *V.O.S. Selections* plaintiffs—five small businesses and 12 States—sued in the United States Court of International Trade (CIT).

The Government moved to transfer the *Learning Resources* case to the CIT. It argued that the District Court lacked jurisdiction under 28 U. S. C. §1581(i)(1), which 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." The District Court denied that motion and granted the plaintiffs' motion for a preliminary injunction, concluding that IEEPA did not grant the President the power to impose tariffs. 784 F. Supp. 3d 209 (DC 2025).

In the *V.O.S. Selections* case, the CIT granted the plaintiffs' motion for summary judgment. 772 F. Supp. 3d 1350 (2025). The Federal Circuit, sitting en banc, affirmed in relevant part. 149 F. 4th 1312 (2025). It first concluded that the CIT had exclusive jurisdiction because the plaintiffs' claims arose out of modifications to the Harmonized Tariff Schedule of the United States (HTSUS). *Id*., at 1329. On the merits, it 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." *Id*., at 1338. Judge Cunningham concurred (for four judges), reasoning that IEEPA did not authorize the President to impose *any* tariffs. *Id*., at 1340. Judge Taranto dissented (for four judges), concluding that IEEPA authorized the challenged tariffs. *Id*., at 1348.

The Government filed a motion to expedite and a petition for certiorari in *V.O.S. Selections*, and the *Learning Resources* plaintiffs filed a petition for certiorari before judgment. We granted the motion and petitions and consolidated the cases. 606 U. S. 1050 (2025).[2]

II

[2] We agree with the Federal Circuit that the *V.O.S. Selections* case falls within the exclusive jurisdiction of the CIT. The plaintiffs' challenges "arise[] out of" modifications to the HTSUS. 28 U. S. C. §1581(i)(1). Where, as here, such modifications are made under an "Act[] affecting import treatment," 19 U. S. C. §2483, they are "considered to be statutory provisions of law for all purposes," §3004(c)(1)(C). Thus, the plaintiffs' challenges "arise[] out of [a] law of the United States providing for . . . tariffs." 28 U. S. C. §1581(i)(1). For the same reasons, the United States District Court for the District of Columbia lacked jurisdiction in the *Learning Resources* case.

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.

A

1

Article I, Section 8, of the Constitution sets forth the powers of the Legislative Branch. The first Clause of that provision specifies that "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises." It is no accident that this power appears first. The power to tax was, Alexander Hamilton explained, "the most important of the authorities proposed to be conferred upon the Union." The Federalist No. 33, pp. 202–203 (C. Rossiter ed. 1961). It is both a "power to destroy," *McCulloch* v. *Maryland*, 4 Wheat. 316, 431 (1819), and a power "necessary to the existence and prosperity of a nation"—"the one great power upon which the whole national fabric is based." *Nicol* v. *Ames*, 173 U. S. 509, 515 (1899).

The power to impose tariffs is "very clear[ly] . . . a branch of the taxing power." *Gibbons* v. *Ogden*, 9 Wheat. 1, 201 (1824). "A tariff," after all, "is a tax levied on imported goods and services." Congressional Research Service (CRS), C. Casey, U. S. Tariff Policy: Overview 1 (2025). And tariffs "raise[] revenue," *West Lynn Creamery, Inc.* v. *Healy*, 512 U. S. 186, 193 (1994)—the defining feature of a tax, *United States* v. *Kahriger*, 345 U. S. 22, 28, and n. 4 (1953); *Sonzinsky* v. *United States*, 300 U. S. 506, 514 (1937). Indeed, the Framers expected that the Government would for "a long time depend . . . chiefly on" tariffs for revenue. The Federalist No. 12, at 93 (A. Hamilton). Little wonder, then, that the First Congress's first exercise of its taxing power (and its second enacted law, right after the one providing for the new officials to take an oath) was a tariff law. See Act of July 4, 1789, ch. 2, 1 Stat. 24.

Recognizing the taxing power's unique importance, and having just fought a revolution motivated in large part by "taxation without representation," the Framers gave Congress "alone . . . access to the pockets of the people." The Federalist No. 48, at 310 (J. Madison); see also Declaration of Independence ¶19. They required "All Bills for raising Revenue [to] originate in the House of Representatives." U. S. Const., Art. I, §7, cl. 1. And in doing so, they ensured that only the House could "propose the supplies requisite for the support of government," thereby reducing "all the overgrown prerogatives of the other branches." The Federalist No. 58, at 359 (J. Madison). They did not vest any part of the taxing power in the Executive Branch. See *Nicol*, 173 U. S., at 515 ("[T]he whole power of taxation rests with Congress").

The Government thus concedes, as it must, that the President enjoys no inherent authority to impose tariffs during peacetime. Tr. of Oral Arg. 70–71. And it does not defend the challenged tariffs as an exercise of the President's warmaking powers. The United States, after all, is not at war with every nation in the world. The Government instead relies exclusively on IEEPA. It reads the words "regulate" and "importation" to effect a sweeping delegation of Congress's power to set tariff policy—authorizing the President to impose tariffs of unlimited amount and duration, on any product from any country. 50 U. S. C. §1702(a)(1)(B).

2

We have long expressed "reluctan[ce] to read into ambiguous statutory text" extraordinary delegations of Congress's powers. *West Virginia* v. *EPA*, 597 U. S. 697, 723 (2022) (quoting *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 324 (2014)). In *Biden* v. *Nebraska*, 600 U. S. 477 (2023), for example, we declined to read authorization to "waive or modify" statutory or regulatory provisions applicable to financial assistance programs as a delegation of power to cancel $430 billion in student loan debt. *Id*., at 494 (quoting 20 U. S. C. §1098bb(a)(1)). In *West*

Virginia v. *EPA*, we declined to read authorization to determine the "best system of emission reduction" as a delegation of power to force a nationwide transition away from the use of coal. 597 U. S., at 732 (quoting 42 U. S. C. §7411(a)(1)). And in *National Federation of Independent Business* v. *OSHA*, 595 U. S. 109 (2022) (*per curiam*), we declined to read authorization to ensure "safe and healthful working conditions" as a delegation of power to impose a vaccine mandate on 84 million Americans. *Id*., at 114, 117 (quoting 29 U. S. C. §651(b)); see also, *e.g.*, *Alabama Assn. of Realtors* v. *Department of Health and Human Servs.*, 594 U. S. 758, 764–765 (2021) (*per curiam*); *King* v. *Burwell*, 576 U. S. 473, 485– 486 (2015); *Utility Air*, 573 U. S., at 324.

We have described several of these cases as "major questions" cases. *Nebraska*, 600 U. S., at 505; *West Virginia*, 597 U. S., at 732; see also *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U. S. 120, 159 (2000) (citing S. Breyer, Judicial Review of Questions of Law and Policy, 38 Admin. L. Rev. 363, 370 (1986)). In each, the Government claimed broad, expansive power on an uncertain statutory basis. And in each, the statutory text might "[a]s a matter of definitional possibilities" have been read to delegate the asserted power. *West Virginia*, 597 U. S., at 732 (internal quotation marks omitted). But "context" counseled "skepticism." *Id*., at 721, 732. That context included not just other language within the statute, but "constitutional structure" and "common sense." *Nebraska*, 600 U. S., at 512, 515 (BARRETT, J., concurring). "[B]oth separation of powers principles and a practical understanding of legislative intent" suggested Congress would not have delegated "highly consequential power" through ambiguous language. *West Virginia*, 597 U. S., at 723–724.

These considerations apply with particular force where, as here, the purported delegation involves the core congressional power of the purse. "Congress would likely . . . in- tend[] for itself" the "basic and consequential tradeoffs," *id*., at 730, inherent in uses of this "most complete and effectual weapon," The Federalist No. 58, at 359. And if Congress were to relinquish that weapon to another branch, a "reasonable interpreter" would expect it to do so "'clearly.'" *Nebraska*, 600 U. S., at 514–515 (BARRETT, J., concurring) (quoting *Utility Air*, 573 U. S., at 324).

What common sense suggests, congressional practice confirms. When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits. Congress has consistently used words like "duty" in statutes delegating authority to impose tariffs. (A customs "duty" is simply "the federal tax levied on goods shipped into the United States." Black's Law Dictionary 638 (12th ed. 2024).) See, *e.g*., 19 U. S. C. §1338(d) ("rates of duty"); §2132(a) ("temporary import surcharge . . . in the form of duties"); §2253(a)(3)(A) ("duty on the imported article"); §2411(c)(1)(B) ("duties or other import restrictions"). It has capped the amount and duration of tariffs. See, *e.g*., §1338(d) (50% cap); §2132(a) (15% cap, 150-day time limit); §2253(e) (50% cap, phasedown requirement after one year). And it has conditioned exercise of the tariff power on demanding procedural prerequisites. See, *e.g.*, §2252 (investigation by the United States International Trade Commission, public hearings, report of findings and recommendation); §§2411–2414 (investigation by the United States Trade Representative, consultation with relevant country and interested parties, publication of findings).[3]

Against this backdrop of clear and limited delegations, the Government reads IEEPA to give the President power to unilaterally impose unbounded tariffs. On this reading, moreover, the

[3] The same is true of Section 232 of the Trade Expansion Act of 1962, 76 Stat. 877, which we have held authorizes sector-specific import "license fee[s]." *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548, 571 (1976). Section 232(a) expressly references "duties." 19 U. S. C. §1862(a); see *infra*, at 19. And Section 232(c) authorizes the President to "adjust the imports" of an "article," §1862(c), but only after the Secretary of Commerce, in consultation with the Secretary of Defense, conducts an investigation and prepares a report finding that the "article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," §1862(b).

President is unconstrained by the significant procedural limitations in other tariff statutes and free to issue a dizzying array of modifications at will. See *supra*, at 3. All it takes to unlock that extraordinary power is a Presidential declaration of emergency, which the Government asserts is unreviewable. Brief for Federal Parties 42. And the only way of restraining the exercise of that power is a veto-proof majority in Congress. See 50 U. S. C. §1622(a)(1) (requiring a "joint resolution" "enacted into law" to terminate a national emergency). That view, if credited, would "represent[] a 'transformative expansion'" of the President's authority over tariff policy, *West Virginia*, 597 U. S., at 724 (quoting *Utility Air*, 573 U. S., at 324), and in- deed—as demonstrated by the exercise of that authority in this case—over the broader economy as well. See Congressional Budget Office, CBO's Current View of the Economy From 2025 to 2028, p. 5 (Sept. 2025); Brief for Federal Parties 2–3. It would replace the longstanding executive-legislative collaboration over trade policy with unchecked Presidential policymaking. See CRS, Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy (2015). Congress seldom effects such sea changes through "vague language." *West Virginia*, 597 U. S., at 724.

It is also telling that in IEEPA's "half century of existence," no President has invoked the statute to impose *any* tariffs—let alone tariffs of this magnitude and scope. *National Federation of Independent Business*, 595 U. S., at 119.[4]

Presidents have, by contrast, regularly invoked IEEPA for other purposes. CRS, C. Casey, J. Elsea, & L. Rosen, The International Emergency Economic Powers Act: Origins, Evolution, and Use 18–21 (2025). At the same time, they have invoked other statutes—but never IEEPA—to impose tariffs, on products ranging from car tires to washing machines. See, *e.g*., Presidential Proclamation No. 8414, 3 CFR 115 (2009 Comp.); Presidential Proclamation No. 9694, 83 Fed. Reg. 3553 (2018). And those tariffs did not "even beg[in] to approach the size or scope" of the IEEPA tariffs at issue here. *Nebraska*, 600 U. S., at 502 (quoting *Alabama Assn*., 594 U. S., at 765). The "'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." *National Federation of Independent Business*, 595 U. S., at 119 (quoting *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd*., 561 U. S. 477, 505 (2010)).

The "'economic and political significance'" of the authority the President has asserted likewise "provide[s] a 'reason to hesitate before concluding that Congress' meant to confer such authority." *West Virginia*, 597 U. S., at 721 (quoting *Brown & Williamson*, 529 U. S., at 159–160). The President's assertion here of broad "statutory power over the national economy" is "extravagant" by any measure. *Utility Air*, 573 U. S., at 324. And as the Government admits—indeed, boasts—the economic and political consequences of the IEEPA tariffs are astonishing. The Government points to projections that the tariffs will reduce the national deficit by $4 trillion, and that international agreements reached in reliance on the tariffs could be worth $15 trillion. Brief for Federal Parties 3, 11. In the President's view, whether "we are a rich nation" or a "poor" one hangs in the balance. *Id*., at 2. These stakes dwarf those of other major questions cases. See, *e.g.*, *Nebraska*, 600 U. S., at 483 ($430 billion); *Alabama Assn.*, 594 U. S., at 764 (nearly $50 billion); *West Virginia*, 597 U. S., at 714 ("billions of dollars in compliance costs"). As in those

[4] Indeed, even before IEEPA was enacted, only one President relied on its predecessor, the Trading with the Enemy Act (TWEA), ch. 106, 40 Stat. 411, to impose tariffs—and then only as a *post hoc* defense to a legal challenge. See Presidential Proclamation No. 4074, 36 Fed. Reg. 15724 (1971) (initially invoking the Tariff Act of 1930 and Trade Expansion Act of 1962); *United States* v. *Yoshida Int'l, Inc.*, 526 F. 2d 560, 572 (CCPA 1975). Those tariffs were also of limited amount, duration, and scope. See *id*., at 568–569, 577–578 (noting that the 10-percent surcharge was described by President Nixon as " 'a temporary measure,' " was in effect less than five months, applied only to "articles which had been the subject of prior tariff concessions," and was capped at congressionally authorized rates); Economic Report of the President 70 (1972) ("When all exceptions to the 10-percent rule were taken into account, the effective rate of surcharge came down to 4.8 percent").

cases, “a reasonable interpreter would [not] expect” Congress to “pawn[]” such a “big-time policy call[] . . . off to another branch.” *Nebraska*, 600 U. S., at 515 (BARRETT, J., concurring).

The Government and the principal dissent attempt to avoid application of the major questions doctrine on several grounds. None is convincing.

The Government argues first that the doctrine should not apply to emergency statutes. Brief for Federal Parties 35– 36. But this argument is nearly identical to one it already advanced in *Nebraska*. There, the Government contended that a different emergency statute should be interpreted broadly because its “whole point” was to provide “substantial discretion to . . . respond to unforeseen emergencies.” 600 U. S., at 500 (internal quotation marks omitted). We rejected that argument in *Nebraska*, and we reject it here as well. “Emergency powers,” after all, “tend to kindle emergencies.” *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 650 (1952) (Jackson, J., concurring). Dozens of IEEPA emergencies remain ongoing today, including the first—declared over four decades ago in response to the Iranian hostage crisis. CRS, Casey, International Emergency Economic Powers Act, at 20. And as the Framers understood, emergencies can “afford a ready pretext for usurpation” of congressional power. *Youngstown*, 343 U. S., at 650 (Jackson, J., concurring). Where Congress has reason to be worried about its powers “slipping through its fingers,” *id*., at 654, we in turn have every reason to expect Congress to use clear language to effectuate unbounded delegations— particularly of its “one great power,” *Nicol*, 173 U. S., at 515.

The Government’s and the principal dissent’s proposed foreign affairs exception fares no better. Brief for Federal Parties 34–35; *post*, at 45–57 (opinion of KAVANAUGH, J.). As a general matter, the President of course enjoys some “independent constitutional power[s]” over foreign affairs “even without congressional authorization.” *FCC* v. *Consumers’ Research*, 606 U. S. 656, 707 (2025) (KAVANAUGH, J., concurring). And Congress certainly may intend to “give the President substantial authority and flexibility” in many foreign affairs or national security contexts. *Post*, at 48 (opinion of KAVANAUGH, J.) (quoting *Consumers’ Research*, 606 U. S., at 706 (KAVANAUGH, J., concurring)). But “flip[ping]” the “presumption” under the major questions doctrine, Brief for Federal Parties 34, makes little sense when it comes to tariffs. As the Government admits, the President and Congress *do not* “enjoy concurrent constitutional authority” to impose tariffs during peacetime. *Ibid*.; Tr. of Oral Arg. 70–71. The Framers gave that power to “Congress alone”—notwithstanding the obvious foreign affairs implications of tariffs. *Merritt* v. *Welsh*, 104 U. S. 694, 700 (1882). And whatever may be said of other powers that implicate foreign affairs, we would not expect Congress to relinquish its tariff power through vague language, or without careful limits.

The central thrust of the Government’s and the principal dissent’s proposed exceptions appears to be that ambiguous delegations in statutes addressing “the most major of major questions” should necessarily be construed broadly. Brief for Federal Parties 35. But it simply does not follow from the fact that a statute deals with major problems that it should be read to delegate all major powers for which there may be a “colorable textual basis.” *West Virginia*, 597 U. S., at 722. It 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.” *Id*., at 723 (internal quotation marks omitted). There is no major questions exception to the major questions doctrine.

Accordingly, the President must “point to clear congressional authorization” to justify his extraordinary assertion of the power to impose tariffs. *Nebraska*, 600 U. S., at 506 (internal quotation marks omitted). He cannot.

B

To begin, IEEPA authorizes the President to "investigate, block during the pendency of an investigation, regulate, direct and compel, nullify, void, prevent or prohibit . . . importation or exportation." 50 U. S. C. §1702(a)(1)(B). Absent from this lengthy list of powers is any mention of tariffs or duties. That omission is notable in light of the significant but specific powers Congress *did* go to the trouble of naming. It 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. See *supra*, at 8; accord, *post*, at 11, 26– 27 (opinion of KAVANAUGH, J.).

The power to "regulate . . . importation" does not fill that void. "Regulate," as that term is ordinarily used, means to "fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles or laws." Black's Law Dictionary 1156 (5th ed. 1979); see also *Ysleta del Sur Pueblo* v. *Texas*, 596 U. S. 685, 697 (2022). This definition captures much of what a government does on a day-to-day basis. Indeed, if "regulate" is as broad as the principal dissent suggests, *post*, at 10–11, then the other eight verbs in §1702(a)(1)(B) are simply wasted ink. But the facial breadth of "regulate" places in stark relief what the term is not usually thought to include: taxation. The U. S. Code is replete with statutes granting the Executive the authority to "regulate" someone or something. Yet the Government cannot identify any statute in which the power to regulate includes the power to tax. The Government concedes, for example, that the Securities and Exchange Commission cannot tax the trading of securities, even though it is expressly authorized to "regulate the trading of . . . securities." 15 U. S. C. §78i(h)(1); see Brief for Federal Parties 31–32. We are therefore skeptical that in IEEPA—and IEEPA alone—Congress hid a delegation of its birth-right power to tax within the quotidian power to "regulate."

Taxes, to be sure, may accomplish regulatory ends. See *Sonzinsky*, 300 U. S., at 513; *Gibbons*, 9 Wheat., at 201– 202. But it does not follow that the power to regulate something includes the power to tax it as a means of regulation. Congressional practice suggests as much. When Congress addresses both the power to regulate and the power to tax, it does so separately and expressly. See, *e.g*., 16 U. S. C. §460bbb–9(a) (distinguishing between the power to "tax persons, franchise, or private property" on lands and the power "to regulate the private lands"); 2 U. S. C. §622(8)(B)(i) ("government-sponsored enterprise" does not have the "power to tax or to regulate interstate commerce"). That is unsurprising, as the "power to regulate commerce" is "entirely distinct from the right to levy taxes." *Gibbons*, 9 Wheat., at 201. That Congress did not grant those authorities separately here is strong evidence that "regulate" in IEEPA does not include taxation.

A contrary reading would render IEEPA partly unconstitutional. IEEPA authorizes the President to "regulate . . . importation *or exportation*." 50 U. S. C. §1702(a)(1)(B) (emphasis added). Taxing exports, however, is expressly forbidden by the Constitution. Art. I, §9, cl. 5.

The "neighboring words" with which "regulate" "is associated" also suggest that Congress did not intend for "regulate" to include the revenue-raising power. *United States* v. *Williams*, 553 U. S. 285, 294 (2008). "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. Presidential practice under IEEPA demonstrates as much. See CRS, Casey, International Emergency Economic Powers Act, at 79–106 (Table A–3); see, *e.g*., Exec. Order No. 13194, 3 CFR 741 (2001 Comp.) (blocking importation of diamonds from insurgent regime in Sierra Leone); Exec. Order No. 12947, 3 CFR 319 (1995 Comp.) (prohibiting transactions with those "who threaten to disrupt the Middle East peace process"). None of IEEPA's authorities includes the distinct and extraordinary power to raise revenue. And the fact that no President has ever found such power in IEEPA is strong evidence that it does not exist. See *supra,* at 10; *FTC* v. *Bunte Brothers, Inc.*, 312 U. S. 349, 351–352 (1941).

We do not attempt to set forth the metes and bounds of the President's authority to "regulate . . . importation" under IEEPA. That "interpretive question" is "not at issue" in this case, and any answer would be "plain dicta." *West Virginia*, 597 U. S., at 734–735, and n. 5. Our task today 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.[5]

The Government, echoed point-for-point by the principal dissent, marshals several arguments in response. First, it contends that IEEPA confers the power to impose tariffs because early commentators and this Court's cases discuss tariffs in the context of the Constitution's Commerce Clause. See Brief for Federal Parties 24–25; *post*, at 12–13 (opinion of KAVANAUGH, J.). But that answers the wrong question. The question is not, as the Government would have it, whether tariffs can ever be a means of regulating commerce. It is instead whether *Congress*, when conferring the power to "regulate . . . importation," gave the President the power to impose tariffs at his sole discretion. And Congress's pattern of usage is most relevant to answering that question. That pattern is plain: When Congress grants the power to impose tariffs, it does so clearly and with careful constraints. It did neither here.

The Government raises another contextual argument. Because "regulate" "lies between" two "poles" in IEEPA— "compel" on the affirmative end and "prohibit" on the negative end—the term naturally includes the "less extreme, more flexible" tool of tariffs. Reply Brief 9 (internal quotation marks omitted); see *post*, at 29–30 (opinion of KAVANAUGH, J.) (making a greater-includes-the-lesser argument). But tariffs, as discussed above, are different in kind, not degree, from the other authorities in IEEPA. Unlike those authorities, tariffs operate directly on domestic importers to raise revenue for the Treasury. See 19 U. S. C. §1505(a); 19 CFR §141.1(b) (2025). Even though a tariff is, in some sense, "less extreme" than an outright compulsion or prohibition, it does not follow that tariffs lie on the spectrum between those poles. They are instead "very clear[ly] . . . a branch of the taxing power," *Gibbons*, 9 Wheat., at 201, and fall outside the spectrum entirely.

Finding no support in the statute the President invoked, the Government turns to one he did not: IEEPA's predecessor, TWEA. Ch. 106, 40 Stat. 411. In 1975, the Court of Customs and Patent Appeals held that the authority to "regulate . . . importation" in TWEA authorized President Nixon to impose limited tariffs. *United States* v. *Yoshida Int'l, Inc.*, 526 F. 2d 560, 572, 577–578. When Congress enacted IEEPA two years later, the Government contends, it conveyed that same authority (except without the limits). See also *post*, at 14–17 (opinion of KAVANAUGH, J.).

This argument cannot bear the weight the Government places on it. While this Court sometimes assumes that Congress incorporates judicial definitions into legislation, we do so "only when [the] term's meaning was 'well-settled'" before the adoption. *Kemp* v. *United States*, 596 U. S. 528, 539 (2022) (quoting *Neder* v. *United States*, 527 U. S. 1, 22 (1999)); see also *United States* v. *Kwai Fun Wong*, 575 U. S. 402, 412–415 (2015). A single, expressly limited opinion from a specialized intermediate appellate court does not clear that hurdle.[6] See *BP p.l.c.*

---

[5] The principal dissent surmises that the President could impose "most if not all" of the tariffs at issue under statutes other than IEEPA. *Post*, at 62 (opinion of KAVANAUGH, J.). The cited statutes contain various combinations of procedural prerequisites, required agency determinations, and limits on the duration, amount, and scope of the tariffs they authorize. See *supra*, at 8–9; *post*, at 62–63. We do not speculate on hypothetical cases not before us.

[6] The Government, citing the IEEPA House Committee Report, contends that Congress "indisputably knew of " *Yoshida*'s interpretation of TWEA. Brief for Federal Parties 26; see also *post*, at 15–16, and n. 11 (opinion of KAVANAUGH, J.). But even taking the Report at face value, it hardly helps the Government. The Report explains that "[s]uccessive Presidents have seized upon the open-endedness of [TWEA] section 5(b) to turn that section, through usage, into something quite different from what was envisioned in 1917." H. R. Rep. No. 95–459, pp. 8–9 (1977); accord, S. Cohen, R. Blecker, & P. Whitney, Fundamentals of U. S. Foreign Trade Policy 178–179 (2d ed. 2003). That is not exactly a stamp of approval on the action *Yoshida* guardedly endorsed. And in any event, the Government's "knew of " standard falls well short of the "broad and unquestioned" "judicial consensus" we have required to conclude

v. *Mayor and City Council of Baltimore*, 593 U. S. 230, 244 (2021). The tariff authority asserted by President Nixon, moreover, was "far removed" from TWEA's "original purposes" of sanctioning foreign belligerents. Cohen, Fundamentals of U. S. Foreign Trade Policy, at 178–179. We are therefore skeptical that Congress enacted IEEPA with an eye toward granting that novel power.

The Government has another historical argument based on this Court's wartime precedents. See generally Brief for Professor Aditya Bamzai as *Amicus Curiae*; Reply Brief 9– 11, 18. According to the Government, those precedents acknowledge an inherent Presidential power to impose tariffs during armed conflict. And, the argument goes, Congress in TWEA, and then in IEEPA, codified those precedents. But this argument fails at both steps. Insofar as the Government relies on our wartime cases themselves, they are facially inapposite. Regardless of what they might mean for the President's inherent *wartime* authority, all agree that the President has no inherent peacetime authority to impose tariffs.

Nor are we persuaded that the dots connect from our wartime precedents, through multiple iterations of TWEA, to IEEPA, such that IEEPA should be interpreted to grant the President an expansive peacetime tariff power. This argument relies extensively on a series of inferences drawn from scant legislative history. Such an attenuated chain cannot support—much less "clearly" support—a reading of IEEPA that includes the distinct power to impose tariffs. *Alabama Assn.*, 594 U. S., at 764.

Turning to this Court's precedents, the Government first relies on *Federal Energy Administration* v. *Algonquin SNG, Inc.*, 426 U. S. 548 (1976). There, we held that Section 232(b) of the Trade Expansion Act of 1962, which allows the President to "adjust the imports" of particular goods to protect national security, includes the power to impose "license fees." *Id*., at 561. But that holding bears little on the meaning of IEEPA. As a textual matter, Section 232(b) authorizes the President not only to "adjust . . . imports," but (as the Government emphasized in *Algonquin*) to "*take such action . . . as he deems necessary*" to adjust the imports of a good. Brief for Petitioners 26 (emphasis in original) and Tr. of Oral Arg. 6–7, in *Federal Energy Administration* v. *Algonquin SNG, Inc.*, O. T. 1975, No. 75–382. IEEPA does not contain such sweeping, discretion-conferring language. As for context, Section 232(a) states 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. 19 U. S. C. §1862(a) (1970 ed.). This explicit reference to duties preceding Section 232(b) renders it natural for Section 232(b) itself to authorize duties. Thus, we decline to extend *Algonquin*'s expressly "limited" holding any further. 426 U. S., at 571.

Finally, the Government invokes *Dames & Moore* v. *Regan*, 453 U. S. 654 (1981), but that case offers no support. *Dames & Moore* was exceedingly narrow,[6] did not address the President's power to "regulate," and did not involve tariffs at all. If anything, that case highlights the importance of close attention to IEEPA's text. "The terms of . . . IEEPA," we held, "do not authorize" the suspension of claims. *Id*., at 675. So too here; the terms of IEEPA do not authorize tariffs.

III

---

that Congress incorporated a judicial definition into a statutory term. *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 349 (2005).

[6] See, *e.g*., 453 U. S., at 660 ("We are confined to a resolution of the dispute presented to us"); *ibid*. (We are "acutely aware of the necessity to rest decision on the narrowest possible ground capable of deciding the case"); *id*., at 661 ("We attempt to lay down no general 'guidelines' covering other situations not involved here, and attempt to confine the opinion only to the very questions necessary to decision of the case"); *ibid*. ("[T]he decisions of the Court in this area have been rare, episodic, and afford little precedential value for subsequent cases"); *id*., at 688 ("[W]e re-emphasize the narrowness of our decision"). This is not quite "no, no, a thousand times no," but should have sufficed to dissuade the principal dissent from invoking the case, see *post*, at 55–56, with respect to the quite distinct legal and factual issues present here.

The President asserts the extraordinary power to unilaterally impose tariffs of unlimited amount, duration, and scope. In light of the breadth, history, and constitutional context of that asserted authority, he must identify clear congressional authorization to exercise it.

IEEPA's grant of authority to "regulate . . . importation" falls short. IEEPA contains no reference to tariffs or duties. The Government points to no statute in which Congress used the word "regulate" to authorize taxation. And until now no President has read IEEPA to confer such power.

We claim no special competence in matters of economics or foreign affairs. We claim only, as we must, the limited role assigned to us by Article III of the Constitution. Fulfilling that role, we hold that IEEPA does not authorize the President to impose tariffs.

The judgment of the United States Court of Appeals for the Federal Circuit in case No. 25–250 is affirmed. The judgment of the United States District Court for the District of Columbia in case No. 24–1287 is vacated, and the case is remanded with instructions to dismiss for lack of jurisdiction.

4-1(b) Dissenting Opinion of Kavanaugh, J, joined by Thomas, J, and Alito, J

(…)

The plaintiffs argue and the Court concludes that the President lacks authority under IEEPA to impose tariffs. I disagree. In accord with Judge Taranto's careful and persuasive opinion in the Federal Circuit, I would conclude that the President's power under IEEPA to "regulate . . . importation" encompasses tariffs. As a matter of ordinary meaning, including dictionary definitions and historical usage, the broad power to "regulate . . . importation" includes the traditional and common means to do so—in particular, quotas, embargoes, and tariffs.

History and precedent confirm that conclusion. In 1971, President Nixon imposed 10 percent tariffs on almost all foreign imports. He levied the tariffs under IEEPA's predecessor statute, the Trading with the Enemy Act, which similarly authorized the President to "regulate . . . importation." The Nixon tariffs were upheld in court.

Moreover, in 1976, a year before IEEPA was enacted, this Court unanimously ruled that a similarly worded statute authorizing the President to "adjust the imports" permitted President Ford to impose monetary exactions on foreign oil imports. See Federal Energy Administration Algonquin SNG, Inc., 426 U. S. 548 (1976) (Algonquin).

For both the Nixon tariffs and the Ford tariffs upheld by this Court in Algonquin, the relevant statutory provisions did not specifically refer to "tariffs" or "duties," but instead more broadly authorized the President to "regulate . . . importation" or to "adjust the imports." Therefore, when IEEPA was enacted in 1977 in the wake of the Nixon and Ford tariffs and the Algonquin decision, Congress and the public plainly would have understood that the power to "regulate . . . importation" included tariffs. If Congress wanted to exclude tariffs from IEEPA, it surely would not have enacted the same broad "regulate . . . importation" language that had just been used to justify major American tariffs on foreign imports.

Importantly, IEEPA's authorization for the President to impose tariffs did not grant the President any new substantive power. Since the Founding, numerous statutes have authorized—and still do authorize—the President to impose tariffs and other foreign import restrictions. IEEPA merely allows the President to impose tariffs somewhat more efficiently to deal with foreign threats during national emergencies.

Context and common sense buttress that interpretation of IEEPA. The plaintiffs and the Court acknowledge that IEEPA authorizes the President to impose quotas or embargoes on foreign imports—meaning that a President could completely block some or all imports. But they say that IEEPA does not authorize the President to employ the lesser power of tariffs, which simply condition imports on a payment. As they interpret the statute, the President could, for example, block all imports from China but cannot order even a $1 tariff on goods imported from China.

That approach does not make much sense. Properly read, IEEPA does not draw such an odd distinction between quotas and embargoes on the one hand and tariffs on the other. Rather, it empowers the President to regulate imports during national emergencies with the tools Presidents have traditionally and commonly used, including quotas, embargoes, and tariffs.

The Court today nonetheless concludes otherwise and holds that IEEPA does not authorize the President to impose tariffs to deal with the declared drug trafficking and trade deficit emergencies. But the Court's decision is splintered. In today's six-Justice majority, three Justices (JUSTICE SOTOMAYOR, JUSTICE KAGAN, and JUSTICE JACKSON) interpret IEEPA not to authorize tariffs as a matter of ordinary statutory interpretation. I disagree for the reasons noted above and elaborated on at length in this opinion.

(…)

* * *

4-2 OREGON ET AL. V. UNITED STATES ET AL., U.S. COURT OF INTERNATIONAL TRADE, OPINION AND ORDER, 7 MAY 2026

BARNETT, CHIEF JUDGE, & KELLY, JUDGE: Plaintiffs in these companion cases contest the imposition of duties pursuant to Proclamation No. 11012, Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems (Feb. 20, 2026) …

For the reasons discussed herein, the court grants summary judgment for Private Plaintiffs and The State of Washington and enters a permanent injunction for those importer Plaintiffs. The court dismisses without prejudice the claims of the remaining non-importer Plaintiffs. The court denies as moot Plaintiffs' motions for a preliminary injunction.

BACKGROUND

I. Section 122 of the Trade Act of 1974

Article I, Section 8 of the U.S. Constitution vests Congress with the "Power To lay and collect Taxes, Duties, Imposts and Excises." U.S. Const. art. I, § 8, cl. 1. Section 122 of the Trade Act of 1974 constitutes a congressional delegation of some of that authority to the President. Titled "Balance-of-Payments Authority," Section 122 empowers the President of the United States to impose temporary surcharges up to 15 percent ad valorem when fundamental international payment problems exist. Section 122 of the Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978, 1987–89 (1974) (codified at 19 U.S.C. § 2132)). The statute provides (with bold emphasis on the provisions relevant to Proclamation No. 11012):

> **(a) Whenever fundamental international payments problems require special import measures to restrict imports—**
>
> > **(1) to deal with large and serious United States balance-of- payments deficits**[,]
> >
> > (2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or
> >
> > (3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,
>
> **the President shall proclaim, for a period not exceeding 150 days** (unless such period is extended by Act of Congress)—
>
> > **(A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States**;
> >
> > (B) temporary limitations through the use of quotas on the importation of articles into the United States; or
> >
> > (C)both a temporary import surcharge described in subparagraph (A) and temporary limitations described in subparagraph (B)
>
> (b) If the President determines that the imposition of import restrictions under subsection (a) will be contrary to the national interest of the United States, then he may refrain from proclaiming such restrictions and he shall—
>
> > (1) immediately inform Congress of his determination, and
> >
> > (2) immediately convene the group of congressional official advisers designated under section 2211(a) of this title [section 161(a) in the Trade Act of 1974] and consult with them as to the reasons for such determination.

(c) Whenever the President determines that fundamental international payments problems require special import measures to increase imports—

(1) to deal with large and persistent United States balance-of-trade surpluses, as determined on the basis of the cost-insurance-freight value of imports, as reported by the Bureau of the Census, or

(2) to prevent significant appreciation of the dollar in foreign exchange markets,

the President is authorized to proclaim, for a period of 150 days (unless such period is extended by Act of Congress)—

(A) a temporary reduction (of not more than 5 percent ad valorem) in the rate of duty on any article; and

(B) a temporary increase in the value or quantity of articles which may be imported under any import restriction, or a temporary suspension of any import restriction …

(d) (1) Import restricting actions proclaimed pursuant to subsection (a) **shall be applied consistently with the principle of nondiscriminatory treatment**

(2) Notwithstanding paragraph (1), if the President determines that the purposes of this section will best be served by action against one or more countries having large or persistent balance-of-payments surpluses, he may exempt all other countries from such action …

(e) Import restricting actions proclaimed pursuant to subsection (a) shall be of **broad and uniform application with respect to product coverage except where the President determines, consistently with the purposes of this section, that certain articles should not be subject to import restricting actions because of the needs of the United States economy**. Such exceptions shall be limited to the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials, avoiding serious dislocations in the supply of imported goods, and other similar factors

II. Historical Background Prior to Enactment of Section 122

Congress enacted Section 122 in response to a particular set of economic circumstances. During the immediate aftermath of World War II, the United States and other nations undertook negotiations to develop the contours of a future international monetary and economic system. See The Office of the Historian, Bretton Woods-GATT, 1941-1947, U.S. Dep't of State, https://history.state.gov/milestones/1937- 1945/bretton-woods (last visited May 6, 2026). The negotiations resulted in the inauguration of the Bretton Woods international monetary system and, simultaneously, the creation of the International Monetary Fund and the World Bank. See id.; Articles of Agreement of the Int'l Monetary Fund, Dec. 27, 1945, 60 Stat. 1401, 2 U.N.T.S. 39 ("Bretton Woods Agreements"); see also Bretton Woods Agreements Act, Pub. L. No. 79-171, 59 Stat. 512 (1945) (codified as amended at 22 U.S.C. §§ 286–286x) (implementing the Bretton Woods Agreements domestically). Under the Bretton Woods system, the values of foreign currencies were fixed to the value of the U.S. dollar, the value of which was expressed in terms of gold at a rate of $35 per ounce, the so-called "gold standard." Bretton Woods Agreements, Art. IV, Sec. 1(a); Proclamation No. 2072, 48 Stat. 1730 (Jan. 31, 1934); see also Gold Reserve Act of 1934, Pub. L. No. 73-87, 48 Stat. 337 (1934) (delegating authority to the President to fix the value of the U.S. dollar in relation to gold).

The Bretton Woods system was under increasing strain by the 1960s when the volume of U.S. dollars in worldwide circulation exceeded domestic gold reserves redeemable at fixed value, leading to periodic runs on the dollar in foreign exchange markets. See The Office of the

Historian, Nixon and the End of the Bretton Woods System, 1971-1973, U.S. Dep't of State, https://history.state.gov/milestones/1969- 1976/nixon-shock (last visited May 6, 2026). In August 1971, President Richard M. Nixon directed the suspension of the dollar's international convertibility into gold, imposed a series of domestic economic measures including wage and price controls, and instituted a 10 percent "surcharge" on all imports into the United States in response to the nation's deteriorating "balance of payments position." Proclamation No. 4074, Imposition of Suppl. Duty for Balance of Payments Purposes (Aug. 15, 1971), 36 Fed. Reg. 15724 (Aug. 17, 1971). In December 1971, the Group of Ten ("G-10") countries agreed to a new set of fixed exchange rates that would devalue the dollar in the Smithsonian Agreement. See Nixon and the End of the Bretton Woods System, 19711973. But by early 1973, speculative pressures in global financial markets led to a further devaluation of the dollar, and the G-10 economies reached a new agreement whereby a group of European Community countries would jointly "float" their currencies against the dollar. See id. This marked the end of the Bretton Woods system of fixed exchange rates. See id. Later in 1973, after the outbreak of the Arab-Israeli War, members of the Organization of Petroleum Exporting States ("OPEC") imposed an oil embargo against the United States, further straining the U.S. economy and creating external financial pressures with respect to foreign oil-producing countries. See The Office of the Historian, Oil Embargo, 1973-1974, U.S. Dep't of State, https://history.state.gov/milestones/1969-1976/oil-embargo (last visited May 6, 2026).

The United States Customs Court, the predecessor to the United States Court of International Trade ("CIT"), heard a challenge to the 10 percent Nixon surcharge in 1974. See Yoshida Int'l, Inc. v. United States (Yoshida I), 73 Cust. Ct. 1, 378 F. Supp. 1155 (1974). Despite not being cited in the underlying Proclamation imposing the surcharge, the Government argued that the President's actions were lawful pursuant to the Trading with the Enemy Act ("TWEA"), a 1917 wartime powers statute. See id., 378 F. Supp. at 1157. The Customs Court disagreed, holding that the surcharge exceeded the limited emergency authority delegated to the President by TWEA. Id., 378 F. Supp. at 1172, 1175–76 ("The delegation of such an unrestrained and unbridled authority to lay duties, indeed, might well be deemed an abdication by the Congress of its constitutional power to regulate foreign commerce."). The United States Court of Customs and Patent Appeals, the predecessor to the United States Court of Appeals for the Federal Circuit, reversed the Customs Court's decision, holding that the surcharge was "within the power constitutionally delegated" to the President by TWEA and reasoning that "[t]hough such a broad grant may be considered unwise, or even dangerous, should it come into the hands of an unscrupulous, rampant President, willing to declare an emergency when none exists, the wisdom of a congressional delegation is not for us to decide." United States v. Yoshida Int'l. Inc. (Yoshida II), 63 CCPA 15, 36, 526 F. 2d 560, 583–84 (1975) (footnote omitted).

It was against this backdrop that Congress acted to explicitly delegate tariff authority to the President, to be used in response to particular and exceptional economic conditions, under Section 122 of the Trade Act of 1974. After almost two years of debate, and while the appeal of Yoshida I was pending, Congress enacted Section 122 in January 1975. See Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1979 (1975). The Yoshida II court explicitly observed that "[a] surcharge imposed after Jan. 3, 1975 must, of course, comply with the statute now governing such action," i.e., Section 122, and expressed no view "regarding the existence of authority for Proclamation 4074 in 1971, from the specific grant of the surcharge authority spelled out in the Trade Act of 1974." 63 C.C.P.A. at 34 n.33, 526 F.2d at 582 n.33.

III. Proclamation No. 11012

Pursuant to authority claimed under Section 122, on February 20, 2026, the President announced a 10 percent ad valorem duty on "all articles imported into the United States," with specified exceptions. Proclamation No. 11012, cl. 1; ¶ 14 (exceptions). The duty went into effect at 12:01 a.m. EST on February 24, 2026, and is set to remain in effect until 12:01 a.m. EST on July 24, 2026, unless "suspended, modified, or terminated on an earlier date" or "extended by an Act of Congress." Id., cl. 7. To implement the increased duty rates, Proclamation No. 11012 modified subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States ("HTSUS") to add new subheadings under HTSUS heading 9903. Id., Annex I.

The Proclamation begins by explaining that, "[s]ometimes, the United States faces fundamental international payments problems, such as large and serious balance- of-payments deficits, an imminent and significant depreciation of its currency in foreign exchange markets, or an international balance-of-payments disequilibrium." Id. ¶ 1. According to the President, "[t]hese problems can, among other things, endanger the ability of the United States to finance its spending, erode investor confidence in the economy, and distress the financial markets." Id. The President's "senior officials [informed him] that fundamental international payments problems within the meaning of section 122 exist and that special import measures to restrict imports are required to address these problems." Id. ¶ 5. That determination was made "under any reasonable understanding of the term in the context of section 122." Id. ¶ 6. The President's "advisors have studied different methods of evaluating balance-of-payments deficits, including calculations based on current-account statistics" and in their view, "under any of these methods, the United States balance-of-payments position is a large and serious deficit." Id.

The President made several findings to support the invocation of section 122. First, "the United States runs a trade deficit, does not currently make a net income from the capital and labor that it deploys abroad, and experiences more transfer payments, on net, flowing out of the country than into the country." Id. ¶ 7; see also id. ¶ 8 ("[T]he United States runs a substantial trade deficit" that "contributes to the fundamental international payments problems facing the United States."). Second, "the annual balance on the United States primary income turned negative for the first time since at least 1960 in 2024" and "in 2024, the United States maintained a current account deficit of 4.0 percent of gross domestic product (GDP)." Id. ¶ 9. Third, "the net international investment position of the United States is in an ongoing decline" and "at the end of 2024, the net international-investment position . . . , as a share of GDP, was negative 90 percent." Id. ¶ 10. According to the President, "[b]ecause the current account is one of the primary drivers of changes in the net international-investment position, the atypically large negative net international-investment position of the United States shows that the United States balance-of-payments deficit is large and serious." Id. Lastly, "the balance on secondary income of the United States has been persistently in a deficit since the 1960s." Id. ¶ 11. In sum, the President identified deficits in trade, primary income, secondary income, and the current account, and a negative net international-investment position, to support the tariff imposition. See id. ¶¶ 7–11.

The President thus concluded, on the advice of his advisors, that "an import surcharge in the form of ad valorem duties is required to address these fundamental international payments problems" and "deal with the large and serious United States balance-of-payments deficit." Id. ¶ 12. That action notwithstanding, the President listed multiple exceptions based on "the needs of the United States economy." Id. ¶ 14; see also id. ¶ 14(a)–(m) (the excepted articles). The President based the exceptions on his determinations regarding "(1) the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials, the avoidance of serious dislocations in the supply of imported goods, or other similar factors; or (2) the fact that the surcharge would be unnecessary or ineffective in carrying out the purposes of section 122." Id. ¶ 15.

(…)

V. Procedural History

Plaintiffs filed their respective complaints in March 2026. State Compl. (filed Mar. 5, 2026); Priv. Compl. (filed Mar. 9, 2026). State Plaintiffs consist of 24 sovereign states, represented by various state officials. State Compl. ¶¶ 25–48. Burlap and Barrel "is a New York-based spice company and ecommerce business," that "imports single origin spices from at least 22 countries." Priv. Compl. ¶ 10. Basic Fun is a Florida-based toy company that "imports components and finished toy products from China" and "designs, markets, and sells toys and games . . . to American consumers." Id. ¶ 11.

(…)

STANDARD OF REVIEW

We necessarily interpret the statute in question to discern the extent of the delegated authority, which is a question of law. See Marbury v. Madison, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."); Loper Bright Enters. v. Raimondo, 603 U.S. 369, 386 (2024). Beyond that, we are not empowered to review the factual determinations committed to the President's exercise of his discretion. Silfab Solar, Inc. v. United States, 892 F.3d 1340, 1349 (Fed. Cir. 2018) ("In particular, courts have repeatedly confirmed that, where the statute authorizes a Presidential 'determination,' the courts have no authority to look behind that determination to see if it is supported by the record." (citing United States v. George S. Bush & Co., 310 U.S. 371, 379 (1940)); Motion Sys., Inc. v. United States, 437 F.3d 1356, 1360 (2006) (en banc) (citing George S. Bush & Co., 310 U.S. at 379). We determine what Congress has committed to the President's discretion. Loper Bright, 603 U.S. at 386. And we "determine whether the President "clear[ly] misconstru[ed]" his statutory authority. USP Holdings, Inc. v. United States, 36 F.4th 1359, 1365–66 (Fed. Cir. 2022) (citing Corus Grp., 352 F.3d at 1356); Motions Sys., 437 F.3d at 1361 (explaining that courts may consider whether "the President has violated an explicit statutory mandate"). We do not review claims that the President exceeded statutory authority according to a standard of review set forth in the Administrative Procedure Act, 5 U.S.C. § 706 ("APA"), the President not being an agency within the meaning of the APA. Franklin v. Mass., 505 U.S. 788, 796, 801 (1992). In considering Plaintiffs' summary judgment motions, we will "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." USCIT Rule 56(a).

II. Section 122: Balance-of-Payments Deficits

A. Parties' Contentions

State Plaintiffs contend that the President lacked authority to invoke Section 122 because large and serious balance-of-payments deficits cannot occur in a floating exchange rate monetary system. State Pls.' Mem. at 6–7, 15–16, 25. They argue that the Proclamation unlawfully redefines the statutory term "balance-of-payments deficits" to mean "current account deficits" and that the tariffs are not applied consistent with the principle of nondiscrimination as required by Section 122. Id. at 25–32; State Pls.' Reply at 5–11. State Plaintiffs further argue that CBP's enforcement exceeds statutory authority. State Pls.' Mem. at 32–33. Private Plaintiffs similarly argue that balance-of- payments deficits cannot occur in a floating exchange rate system, that Section 122 does not authorize the challenged tariffs, that Congress did not clearly confer such sweeping authority, and that any contrary reading would raise a nondelegation problem. Priv. Pls.' Mem. at 16–35.

Because the Bretton Woods system had already ended by the time of Section 122's enactment, Defendants argue, Plaintiffs' interpretation would mean that Congress passed a statute that was "already useless at the time of its enactment," in contravention of the presumption against ineffectiveness that courts must apply when interpreting statutes. Defs.' Resp. at 32–33. Defendants further argue that the tariffs imposed by the President's Proclamation are lawful because Section 122 provides the President with the discretion to determine when a large and serious balance-of- payments deficit exists, and that the President has correctly made such a finding based on the U.S. current account deficit, trade deficit, primary income, and net international investment position. Id. at 38–41.

B. Analysis

In Section 122 of the Trade Act of 1974, Congress authorizes, indeed requires, that the President proclaim temporary import restrictions when certain conditions exist. 19 U.S.C. § 2132(a). This case turns on the meaning of Section 122 and whether the President asserted the existence of the conditions required by the statute in order to lawfully proclaim the import surcharges. As discussed further below, the President's Proclamation fails to assert that those required conditions have been satisfied. See generally Proclamation No. 11012.

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises." U.S. Const. art. I, § 8, cl. 1. The power to tax includes the power to impose tariffs. Learning Res., 146 S. Ct. at 638 (citing Gibbons v. Ogden, 22 U.S. 1, 201 (1824)). Congress may delegate and has delegated the power to impose tariffs to the President under several specifically conditioned statutes. See, e.g., Trade Expansion Act of 1962, § 232, 19 U.S.C. § 1862 (providing for presidential action to adjust imports when the Secretary of Commerce finds that an article is being imported under such circumstances as to threaten to impair national security); Trade Act of 1974, § 301, 19 U.S.C. § 2411 (providing for trade action when the U.S. Trade Representative determines that a foreign country's conduct is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce).

"When Congress grants the power to impose tariffs, it does so clearly and with careful constraints." Learning Res., 146 S. Ct. at 644. Separation of powers concerns thus require the court to carefully parse those constraints and give them full effect, because "the President enjoys no inherent authority to impose tariffs during peacetime." Id. at 638; see also id. at 639 ("'[B]oth separation of powers principles and a practical understanding of legislative intent' suggested Congress would not have delegated 'highly consequential power' through ambiguous language." (plurality opinion) (alteration in original) (quoting West Virginia v. EPA, 597 U.S. 697, 723–24 (2022))); see also Little v. Barreme, 2 Cranch 170, 178–79 (1804) (Executive actions are subject to the limitations set forth by Congress).

Section 122 provides, in pertinent part:

> Whenever fundamental international payments problems require special import measures to restrict imports—
>
> (1) to deal with large and serious United States balance-of-payments deficits[,]
> (2) to prevent an imminent and significant depreciation of the dollar in foreign exchange markets, or
> (3) to cooperate with other countries in correcting an international balance-of-payments disequilibrium,
>
> the President shall proclaim, for a period not exceeding 150 days (unless such period is extended by Act of Congress)—

> (A) a temporary import surcharge, not to exceed 15 percent ad valorem, in the form of duties (in addition to those already imposed, if any) on articles imported into the United States …

19 U.S.C. § 2132(a).

The court begins with the words of the statute. The parties do not dispute that in order to proclaim import surcharges pursuant to Section 122, there must be large and serious United States balance-of-payments deficits. State Pls.' Mem. at 22; Priv. Pls.' Mem. at 28; Defs.' Resp. at 16. Similarly, assuming there are balance-of-payments deficits, there is no serious dispute that whether such deficits are "large and serious" is a discretionary determination within the province of the Executive Branch, review of which by the judiciary is impermissible. See Dalton v. Specter, 511 U.S. 462, 477 (1994) ("Where a statute . . . commits decision making to the discretion of the President, judicial review of the President's decision is not available."). However, the term "balance-of-payments deficits" is indicative of a term of art, susceptible to a defined meaning, and subject to objective measure within the traditional means of judicial review.

It is clear that Congress was aware of the differences in the words it chose. Congress adopted "balance-of-payments deficits" as an issue to be addressed in Section 122(a) while it employed the phrase "balance-of-trade surpluses" in Section 122(c). 19 U.S.C. § 2312(a)(1), (c)(1) (emphases added). That distinction does not end the inquiry because neither the President in Proclamation No. 11012 nor Defendants before us conflate entirely those terms. See Proclamation No. 11012 ¶ 7; Defs.' Resp. at 37. The different terms indicate, however, that Congress intended a specific meaning through the words it chose when crafting Section 122(a) and, thus, conferred a specific authority on the President. Having concluded that "balance-of-payments deficits" is capable of definition, it is incumbent on the court to discern that definition. See Marbury, 5 U.S. at 177.

The legislative history of the Trade Act of 1974 reveals that Congress understood balance-of-payments deficits to refer, at the time, to deficits in (1) liquidity, (2) official settlements, or (3) basic balance. For over two years, Congress carefully reviewed and revised legislative proposals in the context of dynamic international economic events. As discussed above, the statute was enacted at a time of great uncertainty for the future of the international monetary system. As the bill was being debated in Congress, it was unknown whether the collapse of the Smithsonian Agreement and the end of fixed exchange rates in 1973 would mark a definitive end to the Bretton Woods system, or whether the U.S. and other countries would one day return to the gold standard. See, e.g., 119 Cong. Rec. 40,568 (1973) (statement of Rep. Henry S. Reuss) ("If the United States continues to let the dollar float in exchange markets, as we are wisely doing now, the exercise of [Section 122] authority would prevent the deterioration or appreciation of the external value of the dollar that would be necessary to eliminate a balance-of- payments deficit or surplus, as the case may be. On the other hand, if we should ever revert to a fixed exchange rate parity for the dollar, the time limit proposed of 150 days would be much too short to allow a reversal in basic economic conditions sufficient to restore a satisfactory balance-of-payments equilibrium."). Both the international economic challenges and questions about the limits of Presidential authority informed congressional consideration of this legislation.

Early versions of the legislation contained standards for measuring the balance- of-payments deficit and applying the threshold for enabling Presidential authority to take action. Specifically, H.R. 6767 would have provided that a serious balance-of-payments deficit existed when the President determined that "the balance of payments (as measured either on the official reserve transactions basis or by the balance on current account and long-term-capital) has been in substantial deficit over a period of four consecutive calendar quarters." Trade Reform Act of 1973, H.R. 6767, 93d Cong. § 401(b)(1)(A) (1973). Thus, in debating an earlier version of this legislation, Congress specifically identified settlement deficits and basic balance deficits as two possible balance-of-payments deficits.

Similarly, early analyses of balance-of-payments deficits focused on the liquidity, official settlements, and basic balance concepts:

> The overall-balance-of-payments deficit (or surplus) can be shown in different ways. The two most usual approaches, both of which are shown in the official figures of the U.S. Department of Commerce, are known as the "liquidity" concept and the "official settlements" concept.
>
> The balance, computed on the liquidity basis, is measured by changes in U.S. official reserve assets and in liquid liabilities to all foreigners. It includes as liabilities, which are a potential drain on U.S. monetary reserves, all short-term liabilities to foreigners, private as well as those payable to foreign monetary authorities, it does not include U.S. private short-term holdings as an offsetting asset entry, however, on the theory that the U.S. Government exercises no direct control over them and therefore cannot mobilize them in support of the dollar in an emergency.
>
> The balance, computed on the official settlements basis, is measured by changes in U.S. official reserve assets, together with changes in liquid and certain nonliquid liabilities to foreign official agencies. Under this concept foreign short-term capital inflows are included, as are U.S. short-term outward capital flows, as regular transactions. According to this concept, the large inflows of foreign commercial bank funds in recent years have represented predominantly market-oriented business phenomena.

See Trends in Int'l Trade of the United States: Hr'gs Before the H. Comm. on Ways & Means, 91st Cong. 2710 (1970) (statement of Dr. Howard S. Piquet); see also H.R. Rep. No. 91-1435, at 12 (1970) (discussing liquidity and official settlements deficits). Later-in-time analyses are consistent with this approach. See The Trade Reform Act of 1973, Hr'gs on H.R. 10710 Before the S. Comm. on Fin. ("H.R. 10710 Hr'gs"), 93d Cong., pt. 1, at 2, 221, 365–66; pt. 2, at 480, 661; pt. 4, at 1468–69; pt. 5, at 2080 (1974) (discussing or showing deficit in terms of "basic balance," "liquidity basis," or "official reserve transactions"); 120 Cong. Rec. 39,505, 39,521 (1974) (statements of Sen. Long and Sen. Hartke) ("In 1962, the Nation had . . . a balance of payments deficit of $2.9 billion—liquidity basis. Ten years later . . . the payments deficit had grown from a bearable $2.9 billion to an intolerable $13.9 billion."); 120 Cong. Rec. 39,506 (1974) ("Table 7 U.S. Trade and Balance of Payments, 1960–74," showing "Balance of payments" identifying possible deficits in "liquidity," "official settlements," and "basic balance").

Both the parenthetical definition of balance of payments and the measurement over four consecutive quarters proposed in H.R. 6767 were omitted from H.R. 10710. As the legislative history indicates, in lieu of the four quarters time period, Congress inserted the "large and serious" requirement to circumscribe the President's authority all while allowing for adequate flexibility to respond to a delimited set of particular economic and monetary challenges. See H.R. Rep. No. 93-571, at 28–29 (1973) ("The [House] [C]ommittee [on Ways and Means] considered various formulas for defining a serious balance-of-payments deficit, including a specific formulation based on the existence of a substantial deficit over a certain period of time, but the committee feels that it is not possible to formulate a definition with mathematical exactness. Nevertheless, the committee does not intend that a small or even a large balance-of- payments deficit of short duration would warrant the exercise of the authority under this section."); S. Rep. No. 93-1298, at 87–88 (1974) ("[C]ircumstances can change rapidly and the [Senate] Committee [on Finance] deems it necessary that the President have authority to impose surcharges and other import restrictions for balance of payments reasons even though under present circumstances such authority is not likely to be utilized."). While Congress did not replace the parenthetical definition of balance of payments, the legislative history indicates what Congress contemplated as the measure of balance of payments. Specifically, the Senate Report to the Trade Act of 1974 ("Senate Report") refers to the three types of balance-of-payments deficits, namely (1) liquidity, (2) official settlements, and (3) basic balance, discussed in other parts of the legislative history. S. Rep. 93-1298, at 8 (Table 3); see also Staff of S. Fin. Comm. Dec. 1974, Table 1.

The Government's own Declaration acknowledges some of these 1974 measures, stating:

> Multiple measures capture related aspects of a country's [balance- of-payments ("BOP")] deficit, and official statistics during the 1970s also reported broader measures than the current account. For example, the "official reserve transactions balance" tracked the net disposition of dollars by the federal government in order to manage the foreign exchange value of the dollar. Another common contemporaneous measure was the "basic balance" . . ., which combined the current account and long-term capital, and served as a gauge for the imbalance between "underlying" long-term demand and supply of foreign exchange …
>
> According to the CEA's review of historical records, the basic balance was a common, broader measure of BOP deficits during the 1970s. The underlying intent of the basic balance, according to BEA, was to capture "[…] long term trends in the balance of payments by segregating volatile capital flows and placing them below the line."

Decl. of Pierre Yared (Council of Economic Advisors) ("Yared Decl.") ¶¶ 25, 27, ECF No. 35-1 (third alteration in original).

Despite acknowledging differences in the 1974 measures of the balance of payments as compared to modern measures, id. ¶¶ 27, 37–40, the Government seeks to defend the Proclamation by arguing that "balance-of-payments deficits" is a malleable phrase, see Defs.' Resp. at 32 n.12 ("[W]hat qualifies as a [balance-of-payments deficit] may depend on the facts of the day." (quoting Wisconsin Cent. Ltd v. United States, 585 U.S. 274, 284 (2018) (alteration in original))). However, the Government's suggestion that what constitutes "balance-of-payments deficits" may change proves too much. See Yared Decl. ¶ 37 ("While the concept of current account has largely remained the same since the 1970s, there is no single measure of the long-term capital account (the other main component of basic balance), and BEA no longer reports all the components needed to exactly replicate the basic balance."). As previously noted, the "balance of payments" as an accounting principle always nets to zero. See State Pls.' Mem. at 26–27 n.6; Defs.' Resp. at 5, 25; Yared Decl. ¶ 10. To the extent that is the case, if the President has the ability to select among the sub-accounts to identify a balance-of- payments deficit, unless every sub-account is balanced, the President would always be able to identify a balance-of-payments deficit.

Such an expansive reading of the statute would raise a non-delegation issue, which in turn would prompt a constitutional question. See Priv. Pls.' Mem at 28. "[T]he canon of constitutional avoidance" provides that, when one of two statutory interpretations would raise a constitutional question, "the other should prevail." Clark v. Martinez, 543 U.S. 371, 380–81 (2005); see also Mistretta v. United States, 488 U.S. 361, 373 n.7 (1989) (stating that the Court employs the nondelegation principle to interpret statutory text and give "narrow constructions to statutory delegations that might otherwise be thought to be unconstitutional"); Indus. Union Dept., AFL-CIO v. Am. Petroleum Inst., 448 U.S. 607, 646 (1980) (stating that "[a] construction of the statute that avoids [an] open-ended grant" of authority that would implicate the non-delegation doctrine "should certainly be favored"); Fisherman's Harvest, Inc. v. PBS & J, 490 F. 3d 1371, 1377 (Fed. Cir. 2007) ("The canon of constitutional avoidance in statutory interpretation implies that a plausible construction of [a statute] that does not raise . . . constitutional doubts gives better effect to congressional intent."). The Government's preferred interpretation of the statute must therefore be disfavored. See N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U.S. 1, 30 (1937) ("[A]s between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same.") (emphasis added).

Further, the legislative history chronicles a series of efforts to carefully cabin Presidential discretion. See Hr'g on H.R. 10710 Before the H. Rules Comm., 93d Cong. 84 (1973) (statement of Hon. Al Ullman) ("[I]n place of unlimited authority to modify import restraints in face of large and persistent balance of payments deficits or surpluses, the bill provides temporary and limited authority for the President to take action."); Staffs of the H. Comm. on Ways and Means and the S. Comm. on Fin., 93d Cong., Summary of Senate Amendments to H.R. 10710 Trade Act of 1974 6 (Comm. Print 1974) ("[Amendments 42–43] [m]ake[] the House bill authority to deal with deficit balance-of-payments situations mandatory, rather than discretionary, unless the President determines and informs the Congress that imposing import restrictions would be contrary to the national interest."); Staffs of the S. Comm. on Fin. and H. Comm. on Ways and Means, 93d Cong., Summary of the Provisions of H.R. 10710 4 (Comm. Print 1974) (stating that "[t]he Act directs the President to proclaim . . . import surcharges . . . as may be necessary to deal with large and serious U.S. balance of payments deficits" (emphasis added)). Ultimately, the Senate Report, leading up to the enactment of Section 122, explicitly classifies three figures as measures of the "balance of payments" (liquidity, official settlements, and basic balance) while classifying two measures of the "trade balance" as distinct. S. Rep. 93-1298, at 8; see also Staff of S. Fin. Comm. Dec. 1974, Table 1.

Rather than identifying "balance-of-payments deficits" as that term was intended in 1974, the Proclamation relies upon current account deficits, and a discussion of "a large and serious trade deficit." Proclamation No. 11012 ¶ 6; see also id. ¶ 7 (referring to deficits concerning the balance of goods and services as well as the balances on primary income and secondary income, all of which are part of the current account); id. ¶ 8 (noting the trade deficit). Although the current account (and the balance of trade as a component of the current account) are relevant to balance-of-payments deficits, they are distinct, and the statute recognizes the distinction. Compare 19 U.S.C. § 2132(a)(1) ("large and serious United States balance-of-payments deficits"), with 19 U.S.C. § 2132(c)(1) ("large and persistent United States balance-of-trade surpluses"). Indeed, the Government's Declaration plainly acknowledges that the Proclamation does not rely upon the metrics used to measure balance-of-payments deficits discussed at the time of enactment:

> During the 1970s, economists leveraged multiple metrics to analyze different aspects of BOP deficits. More expansive measures than the current account typically included other components of the BOP accounting framework involving relatively durable transactions—those that were long-term and illiquid—and excluded flows of payment and other liquid, money-like instruments that are recorded in the financial account. In developing candidate alternative BOP deficit measures to the current account, CEA accounted for the evolution of financial markets since the 1970s, which have substantially increased the liquidity of many assets (e.g., equities).
>
> Figure 5 shows CEA's most expansive candidate BOP deficit measure for the purposes of Section 122: the current account plus the
> capital account plus net FDI. This measure excludes most assets in the financial account, as in modern-day financial markets they can exhibit high degrees of liquidity and volatile flows, akin to broad financial flow.
>
> However, even this measure is likely too inclusive. As acknowledged by the BEA in 1976 "[…] even some components of direct investment, can be quite volatile." This suggests that a representation of the BOP deficit more aligned to Section 122 would

> reflect only the most durable components of FDI. As illustrated by Figure 5, CEA's most expansive candidate measure is more volatile than the current account balance, but presents the same qualitative story: a prolonged period in deficit.

Yared Decl. ¶¶ 43–44 (alteration in original) (citation omitted). The Declaration explains the Proclamation's reliance on the current account deficit as a function of the United States' shift from a fixed exchange rate to a floating exchange rate in great detail. Id. ¶¶ 28–36. The narrative woven by the Declaration attempts to characterize the Senate's explicit references to (1) liquidity, (2) official settlements, and (3) the basic balance as concepts that must be reinterpreted today to take account of the fact that "BEA no longer reports all the components needed to exactly replicate the basic balance" as well as changes that have occurred in the long-term capital markets. Id. ¶¶ 37–40. Thus, the Yared Declaration asserts that, given the "context of the modern economy and financial markets, . . . the balance of the current account within the BOP accounting framework is the most appropriate measure of BOP deficits for the purposes of Section 122." Id. ¶ 13.

Both Plaintiffs and Defendants overstate the consequences of the United States' transition from a fixed exchange rate system to a floating exchange rate system. Plaintiffs argue that because the United States floats its currency, large and serious balance-of-payments deficits cannot occur. State Pls.' Mem. at 2–3; Priv. Pls.' Mem. at 21–22. Defendants argue that Plaintiffs' position means Section 122 was "a nullity since the day it was enacted." Defs.' Resp. at 40, see also id. at 35. Both Plaintiffs and Defendants miss the mark. Whether it is possible to measure balance-of-payments deficits by settlements, liquidity, or basic balance today is not our concern; rather, when interpreting the statute, we must determine the meaning of "balance-of-payments deficits" at the time Congress enacted the statute and whether the President identified balance-of-payments deficits within that meaning—regardless of how the BEA measures such deficits today. The meaning of this term is readily ascertainable when looking at how the Senate explicitly reported balance-of-payment deficits. S. Rep. 931298 at 8; Staff of S. Fin. Comm. Dec. 1974, Table 1.

Thus, what is relevant is what Congress meant by "balance-of-payments deficits" in 1974, and what Congress meant can be determined based on what it reported at the time of enactment, namely the balance-of-payments deficits as measured by liquidity, official settlements and the basic balance. Even if it is unlikely that "large and serious balance-of-payments deficits" within the meaning of Section 122 could occur today in light of the floating exchange rate system, the other provisions of Section 122 remain operative. See 19 U.S.C. § 2132(a)(2)–(h). Under those provisions, the President would be empowered to act "to prevent an imminent and significant depreciation of the dollar" or "to cooperate with other countries in correcting an international balance-of- payments disequilibrium." See id. § 2132(a)(2)–(3).

Accepting as true every factual statement in Proclamation No. 11012, the surcharge imposed by the Proclamation rests on the existence of a large trade deficit, a current account deficit, a negative net international investment position, and a deficit on the balance on primary and secondary income (which are part of the current account). Proclamation No. 11012 ¶¶ 7–11. The Proclamation asserts that "the United States runs a trade deficit, does not currently make a net income from the capital and labor that it deploys abroad, and experiences more transfer payments, on net, flowing out of the country than into the country." Id. ¶ 7. Nowhere does Proclamation No. 11012 identify balance-of-payments deficits within the meaning of Section 122 as it was enacted in 1974. See generally Proclamation No. 11012.

Because the Proclamation's use of trade and current account deficits to stand in the place of balance-of-payment deficits within the meaning of the statute renders the Proclamation ultra vires, the court need not reach the arguments of whether Section 122 requires the identification of "fundamental international payments problems" or whether the exemptions provided in the

Proclamation are lawful. See Trump v. Hawaii, 585 U.S. 667, 703 (2018) (requiring a "facially legitimate and bona fide" reason for Executive action (citation omitted)). Proclamation No. 11012 is invalid, and the tariffs imposed on Plaintiffs are unauthorized by law.

(…)

IV. Remedy

Plaintiffs seek a permanent injunction, State Pls.' Mem. at 35–41; Priv. Pls.' Mem. at 35–40, while the Government argues that Plaintiffs are not entitled to one, Defs.' Resp. at 68–72. The State of Washington (through its instrumentalities) and Private Plaintiffs, i.e., collectively, Importer Plaintiffs, have satisfied the requirements for permanent injunctive relief.

A permanent injunction does not necessarily follow from success on the merits. V.O.S. Selections, 149 F.4th at 1339. A plaintiff seeking permanent injunctive relief must demonstrate:

> (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006). The court considers whether Importer Plaintiffs have satisfied these eBay factors.

(…)

The balance of equities favors granting Importer Plaintiffs permanent injunctive relief. The court need not decide whether the CIT is authorized, post-CASA, 606 U.S. at 831, to issue universal injunctive relief because such relief is not merited here. The

court finds standing in this case only with respect to Importer Plaintiffs, and those plaintiffs may be made whole by an injunction specific to them and refunds, with interest as provided by law, for any Section 122 duties paid before the injunction takes effect. Private Plaintiffs make no specific arguments for a universal injunction. See generally Priv. Pls.' Mem. at 35–40; Priv. Pls.' Reply at 25–28. While State Plaintiffs do, State Pls.' Mem. at 41–43, their arguments appear to assume the court will find standing for all State-parties, inclusive of the non-importing, purchaser States, which is not the case. And while the one State with standing, the State of Washington, avers harm from the indirect cost of tariffs passed on by resellers, Hsu Decl. ¶ 6, the potential for increased costs to one plaintiff is not an appropriate basis for the imposition of a universal injunction. Accordingly, the court declines to enter a universal injunction.

CONCLUSION AND ORDER

In accordance with the foregoing, it is hereby

ORDERED that State Plaintiffs' motion for summary judgment (ECF No. 25, Ct. No. 26-01472) is **GRANTED** only with respect to Plaintiff The State of Washington; it is further

ORDERED that all claims by State Plaintiffs other than Plaintiff The State of Washington are **DISMISSED** for lack of standing; it is further

ORDERED that Private Plaintiffs' motion for summary judgment (ECF No. 11, Ct. No. 26-01606) is **GRANTED**; and it is further

ORDERED that Plaintiffs' alternative motions for a preliminary injunction are DENIED AS MOOT.

Judgment will be entered accordingly.

[*Dissenting Opinion of Judge Stanceu omitted.*]

* * *

5. Subsequent Executive Actions

5-1 DETERMINATIONS AND PROPOSED ACTIONS IN § 301 INVESTIGATION OF VARIOUS ECONOMIES RELATING TO FORCED LABOR (JUNE, 2026)

Notice of Determinations and Request for Comments Concerning Actions in Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Docket Nos. USTR–2026–0265, USTR–2026–0266

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of determinations, request for comments, and notice of public hearings.

SUMMARY: On March 12, 2026, the United States Trade Representative (Trade Representative) initiated 60 investigations related to the failure of various economies to impose and effectively enforce a prohibition on the importation of goods produced with forced labor. The Trade Representative has determined that 54 of the investigated economies have failed to impose and effectively enforce a forced labor import prohibition. The Trade Representative has determined that six of the investigated economies have failed to effectively enforce a forced labor import prohibition. The Trade Representative has determined that the failure of each of the investigated economies to impose and effectively enforce a force labor import prohibition is unreasonable and burdens or restricts U.S. commerce. As a result of the findings in each investigation, the Trade Representative proposes that appropriate action includes additional duties on all products of the investigated economies, except as provided in Annex A to this Notice. For economies that impose a forced labor import prohibition; have taken on commitments related to forced labor import prohibitions through an Agreement on Reciprocal Trade; or have imposed a partial regime with the effect of preventing the importation of certain forced labor goods, the Trade Representative proposes 10% as the rate of additional duties. For all other economies, the Trade Representative proposes 12.5% as the rate of additional duties. The Trade Representative also proposes a textile mechanism that would allow for a certain volume of apparel and textile imports from certain economies to enter the United States at a reduced Section 301 tariff rate. USTR seeks public comments on the proposed actions in the investigations and will hold public hearings in connection with the proposals.

(…)

I. Proceedings in the Investigations

On March 12, 2026, the Trade Representative initiated 60 investigations related to the failure of various economies to impose and effectively enforce a prohibition on the importation of goods produced wholly or in part with forced labor (forced labor import prohibition), pursuant to section 302(b)(1) of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2412(b)(1)). See 91 FR 12884 (March 17, 2026). The notice of initiation solicited written comments on, inter alia: whether any economy subject to these investigations maintains or is in the process of establishing a forced labor import prohibition, and whether any such import prohibition is being effectively enforced; the extent to which the failure of any economy to establish and effectively enforce a forced labor import prohibition is unreasonable, discriminates against U.S. goods, or constitutes a persistent pattern of conduct that permits any form of forced or compulsory labor; the extent to which the failure of any economy to establish and effectively enforce a forced labor import prohibition has negatively affected U.S. commerce, such as through lost U.S. exports or economic output, lower prices for U.S. goods, or lower wages for U.S. workers; and what action, if any, should be taken to address these issues.

Interested persons filed over 450 written comments in response to the notice, including post-hearing rebuttal comments. In addition, USTR and the Section 301 Committee convened public hearings from April 28-29, 2026, during which nearly 60 witnesses provided testimony and responded to questions. The public submissions are available at: https://comments.ustr.gov/s/ at docket numbers USTR–2026–0133 and USTR–2026–0134. Transcripts of the hearings are available on USTR's website.

On March 12, 2026, the date the investigations were initiated, the Trade Representative requested consultations with the governments of each of the economies subject to investigation, pursuant to Section 303(a) of the Trade Act (19 U.S.C. 2413(a)). USTR held consultations with the following economies:

1. Angola
2. Argentina
3. Australia
4. The Bahamas
5. Brazil
6. Cambodia
7. Canada
8. Chile
9. Costa Rica
10. Dominican Republic
11. Ecuador
12. Egypt
13. El Salvador
14. European Union
15. Guatemala
16. Honduras
17. India
18. Indonesia
19. Israel
20. Japan
21. Jordan
22. Kazakhstan
23. Kuwait
24. Malaysia
25. Mexico
26. Morocco
27. New Zealand
28. Norway
29. Oman
30. Pakistan
31. Peru
32. The Philippines
33. Qatar
34. Saudi Arabia
35. Singapore
36. South Africa
37. South Korea
38. Switzerland
39. Taiwan
40. Thailand
41. Trinidad and Tobago
42. Türkiye
43. United Arab Emirates
44. United Kingdom
45. Uruguay
46. Vietnam

The governments of the remaining economies did not accept the Trade Representative's request for consultations or were otherwise unable to participate.

Based on information obtained during the investigations, including the confidential government-to-government consultations, the public comments, testimony obtained at the public hearings, the confidential advice of the appropriate advisory committees, and the Section 301 Committee, USTR prepared a comprehensive report, Acts, Policies, and Practices of Various Economies Related to the Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor (the "Report"), regarding the acts, policies, and practices of each economy under investigation. For each investigation, the Report supports determinations that the acts, policies, and practices of each investigated economy related to the failure to impose and effectively enforce a forced labor import prohibition are unreasonable and burden or restrict U.S. commerce, and are thus actionable under Section 301 of the Trade Act. The Report is incorporated by reference into this Notice, and is available on USTR's website.

II. The Acts, Policies, and Practices of the Investigated Economies Related to the Failure to Impose and Effectively Enforce a Forced Labor Import Prohibition

Forced labor may be understood as work or service exacted from a person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. There is universal international consensus that forced labor is a practice that should not be tolerated. Numerous international instruments, such as the *United Nations Universal Declaration of Human Rights* (1948); the *International Labour Organization (ILO) Abolition of Forced Labour Convention*, 1957 (No. 105); the *International Covenant on Civil and Political Rights* (1976); and the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1998), as amended in 2022, contain provisions seeking to eliminate forced labor. Despite this clear and longstanding consensus, the use of forced labor across the world continues to persist and has even increased in recent years.

The United States has long recognized that eliminating forced labor is a moral and economic imperative and that trade is a critical means to assist in that goal. For nearly 100 years, the United States has prohibited the importation of goods produced with forced labor under Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307). Commitments to prohibit forced labor imports in the United States – Mexico – Canada Agreement, as well as in recently signed Agreements on Reciprocal Trade, reflect the increasing awareness of this issue and recognition that the adverse effects of trade in forced labor goods must be addressed.

The existence of forced labor imports in markets across the globe has nurtured an economic system that permits the use of forced labor or forced labor inputs, penalizing firms and economies that do not. By prohibiting forced labor domestically and effectively enforcing its forced labor import prohibition, the United States aims to ensure that neither domestically produced products nor imports can gain a competitive advantage in the U.S. market through the use of forced labor. This helps ensure that competition in the U.S. market is based on legitimate factors, such as quality and innovation, rather than an artificial cost advantage from the illicit use of forced labor.

Economies that fail to impose and effectively enforce a forced labor import prohibition fail to ensure that market competition in their jurisdiction occurs on a level basis with respect to labor costs. While the vast majority of economies prohibit forced labor domestically, such measures, if effectively enforced, only discipline domestic producers. However, as demonstrated in the Report, these measures fail to discipline the influx of imported forced labor goods or to prevent domestic producers from using forced labor inputs.

III. Determinations on Acts, Policies, and Practices Under Investigation

Based on the information obtained during the investigations, as reflected in the Report, and considering the advice of the appropriate advisory committees and Section 301 Committee, the Trade Representative has made the following determinations under sections 301(b) and 304(a) of the Trade Act (19 U.S.C. 2411(b) and 2414(a)): the acts, policies, and practices of each of the 60 economies covered in the investigations are unreasonable and burden or restrict U.S. commerce, and thus are actionable under section 301(b) of the Trade Act.

In particular, the Trade Representative has determined:

- The following 54 economies have failed to impose and effectively enforce a prohibition on the importation of goods produced with forced labor: Algeria; Angola; Argentina; Australia; the Bahamas; Bahrain; Bangladesh; Brazil; Cambodia; Chile; China, People's Republic of; Colombia; Costa Rica; Dominican Republic; Egypt; El Salvador; Guatemala; Guyana; Honduras; Hong Kong, China; India; Iraq; Israel; Japan; Jordan; Kazakhstan; Kuwait; Libya; Malaysia; Morocco; New Zealand; Nicaragua; Nigeria; Norway; Oman; Peru; the Philippines; Qatar; Russia; Saudi Arabia; Singapore; South Africa; South Korea; Sri Lanka; Switzerland; Taiwan; Thailand; Trinidad and Tobago; Türkiye; United Arab Emirates; United Kingdom; Uruguay; Venezuela; and Vietnam.
- The following six economies have failed to effectively enforce a prohibition on the importation of goods produced with forced labor: Canada; Ecuador; the European Union; Indonesia; Mexico; and Pakistan.
- Therefore, all of the investigated economies have failed both to impose a forced labor import prohibition and to effectively enforce such a prohibition.
- The failure of each of the investigated economies to impose and effectively enforce a forced labor import prohibition is unreasonable because it: (1) undermines the universal aim of eliminating forced labor; (2) permits firms that avail themselves of forced labor to produce goods at lower cost and thereby distort market conditions for firms that do not use forced labor; (3) undermines the profitability of firms that do not use forced labor; and (4) contributes to the circumvention of existing forced labor import prohibitions.
- The failure of each of the above-listed economies to impose and effectively enforce a forced labor import prohibition burdens or restricts U.S. commerce by subjecting U.S. producers to unfair competition from forced labor goods both in export markets and the U.S. market, and by displacing foreign goods produced without forced labor or forced labor inputs into the United States and other markets.

IV. Proposed Actions to Be Taken in the Investigations

Section 301(b) of the Trade Act provides that upon determining that the acts, policies, and practices under investigation are actionable and that action is appropriate, the Trade Representative shall take all appropriate and feasible action authorized under section 301(c), subject to the specific direction, if any, of the President regarding such action, and all other appropriate and feasible action within the power of the President, that the President may direct the Trade Representative to take under section 301(b), to obtain the elimination of that act, policy, or practice.

Section 301(c) of the Trade Act authorizes the Trade Representative to take certain actions for purposes of carrying out the provisions of Section 301(b). Among others, Section 301(c)(1)(B) authorizes the Trade Representative to "impose duties or other import restrictions" on the goods of the foreign country subject to the investigation.

Pursuant to Sections 301(b) and (c), the Trade Representative proposes to determine that action is appropriate and that appropriate action to obtain the elimination of the acts, policies, and practices would include the imposition of ad valorem duties on all products of the 60 economies subject to investigations, except as provided in Annex A to this Notice. The proposed exemptions in Annex A include all articles and parts currently subject to section 232 tariffs and raw materials that if subject to the proposed additional tariffs could lead to the unavailability of domestic supply. Annex A also includes products that could cause economy-wide disruptions if subject to the proposed additional tariffs and certain products that cannot be grown or produced in sufficient quantities in the United States or obtained from other sources. The proposed exemptions include informational materials (e.g., books), donations, and accompanied baggage. Finally, the proposed exemptions include articles for which additional tariffs may not contribute substantially to the elimination of the investigated acts, policies, and practices described above.

For economies that impose a forced labor import prohibition—Canada, Ecuador, the European Union, Indonesia, Mexico, and Pakistan; for economies that have undertaken commitments in their respective Agreements on Reciprocal Trade regarding forced labor import prohibitions—Argentina, Bangladesh, Cambodia, Ecuador, El Salvador, Guatemala, Indonesia, Malaysia, and Taiwan; and economies that have imposed a partial regime with the effect of preventing the importation of certain forced labor goods—the United Kingdom; the Trade Representative proposes additional duties of 10% for products of these economies. For all other economies that have failed to impose and effectively enforce a forced labor import prohibition, the Trade Representative proposes 12.5% as the rate of additional duties.

The Trade Representative also proposes a textile mechanism that would allow for a certain volume of apparel and textile imports to enter the United States at a reduced Section 301 tariff rate. Under such a textile mechanism, the volume of reduced-duty imports from certain trading partners would be equivalent to the quantity of exports of textiles (e.g., U.S. produced man-made and cotton fiber textile inputs) from the United States to that trading partner. A certain volume of apparel and textile imports would also be allowed to enter the United States at the reduced Section 301 rate based on the volume of U.S. cotton and cotton products a trading partner imports from the United States during a certain period of time.

V. Response to Significant Comments

USTR responds below to significant issues raised in the public comments and hearings in response to the March 17, 2026, Federal Register notice.

Response to Significant Comments Raising Legal Arguments Regarding Findings of "Unreasonableness"

Multiple comments raised threshold arguments that the Trade Representative should not find that the failure of an economy to impose and effectively enforce a prohibition on the importation of goods produced with forced labor is unreasonable where: (1) an economy has domestic laws prohibiting forced labor; (2) where no international standards exists which provide an affirmative obligation on economies to impose a forced labor import prohibition; or (3) where an economy has otherwise made commitments to the United States with respect to imposing and/or enforcing a forced labor import prohibition. This section takes each of these arguments in turn.

With respect to the first argument, and as explained in the Report and above, solely prohibiting forced labor domestically is unreasonable because it fails to discipline the influx of forced labor goods or to prevent domestic producers from using forced labor inputs. Thus, while an economy may have taken steps to ensure that the condition of forced labor is extinguished within its borders, the economy nevertheless permits market conditions where imported forced labor goods have a competitive advantage over U.S. goods imported into their economy.

In response to the second argument, USTR notes the Section 301 statute, which governs these investigations, does not require the existence of international standards disciplining specific conduct as a prerequisite to a finding of an unreasonable act, policy, or practice under Section 301(b) of the Trade Act. As explained in the Report, the definition of unreasonable acts, policies, and practices in Section 301(d) contemplates circumstances where, as here, acts, policies, and practices of a foreign country may not be inconsistent with or violate the international legal rights of the United States, but are nevertheless unfair. Thus, the statutory structure of Section 301 contemplates that the Trade Representative may find unreasonable conduct on the part of a trading partner even in the absence of international standards or obligations.

Third, some comments argued that where an economy has made commitments to the United States regarding forced labor import prohibitions, including through an Agreement on Reciprocal Trade, the Trade Representative is without basis to find that same economy's failure to impose and effectively enforce a forced labor import prohibition is unreasonable. USTR applauds Argentina, Bangladesh, Cambodia, Ecuador, El Salvador, Guatemala, Indonesia, Malaysia, and Taiwan, which have undertaken commitments regarding a forced labor import prohibition. However, commitments to take action in the future is distinct from forbidding legally the importation of forced labor goods, and effectively enforcing such prohibition. Until such time as the commitment is implemented, U.S. products will continue to compete against forced labor products that have a competitive advantage in global markets which, among other reasons explained in the Report, is unreasonable.

The Trade Representative fully expects economies that have undertaken commitments related to prohibiting the importation of forced labor goods to abide by those commitments. Accordingly, the Trade Representative proposes that the additional duty rate to be applied in the investigations take into account whether an economy has undertaken such commitments.

Response to Significant Comments Regarding Actions to be Taken in the Investigations

A number of comments responded on potential responsive action by the Trade Representative. These comments recommended that the Trade Representative engage in multilateral negotiations, including at the ILO, to encourage economies to impose a forced labor import prohibition rather than take "punitive measures," and to provide capacity building and technical assistance, especially to developing economies, to encourage effective enforcement of such a prohibition.

The Trade Representative proposes that taking an action is appropriate, and that action includes the imposition of additional duties on products of the investigated economies, in order to obtain the elimination of the investigated acts, policies, or practices. However, the Trade Representative will continue to consider these comments in conjunction with any action that might be taken with respect to the investigations.

* * *