



Tariffs on Trial: Can Courts Stop the President's Trade War?

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The IEEPA-based reciprocal tariff

In recent years, President Trump's aggressive tariff strategy under the Make America Great Again (MAGA) banner has provoked intense legal and political scrutiny. At the center of this approach was President Trump's announcement of the so-called reciprocal tariff on April 2, 2025, claiming authority under the International Emergency Economic Powers Act (IEEPA), a 1977 statute empowering the executive branch to address extraordinary threats to the United States by regulating or restricting trade.

On April 2, 2025, President Trump declared that the United States faced a complex web of foreign practices that undercut fair competition and eroded the country's industrial base. The subsequently announced 10-50% reciprocal tariff, applied to nearly all U.S. trading partners and goods, was presented as a strategic instrument designed to compel concessions, adjust incentives, and spur reinvestment in

manufacturing and research and development in the U.S.. By presenting tariffs as leverage for reciprocal concessions, the administration framed the action as proactive statecraft, aiming to restore balance in an asymmetrical trading environment and revitalize domestic manufacturing and R&D.

While proponents endorsed the President's use of emergency power under the IEEPA, critics have cautioned that the breadth of the measure risks blurring the line between legitimate emergency powers and a broad, unilateral instrument capable of disrupting consumer prices, straining trade relations with allies, and provoking countermeasures from trading partners. The debate extends beyond economic policy and centers on the constitutionality of these measures—specifically, whether the executive's use of IEEPA aligns with congressional intent and remains within constitutional boundaries.

Legal challenges in courts

Following President Trump's declaration of a national emergency on April 2, 2025, the administration imposed sweeping tariffs on imports from nearly every U.S. trading partner. These tariffs became central to a legal challenge brought by affected businesses and states. In particular, *V.O.S. Selections v. Trump* directly challenged the IEEPA-based reciprocal tariff. The issue was whether the president exceeded his statutory authority under IEEPA by imposing tariffs without explicit congressional authorization.

The initial loss: Court of International Trade finds the IEEPA-based tariff illegal

On May 28, 2025, in a 3-0 unanimous decision, the Court of International Trade (CIT) struck down the administration's tariff regime.

The court decision primarily rests on three aspects: the IEEPA's statutory limitations, the application of the non-delegation doctrine, and the Major Question Doctrine. Based on a detailed statutory interpretation, the CIT found that IEEPA was designed to empower the President to act in response to specific emergencies. While IEEPA does not expressly confer the authority to impose tariffs, duties, or taxes, as do other statutory provisions, such as Section 301 of the Trade Act of 1974, this authority cannot be interpreted as delegated to the President.

In the CIT's reading, when Congress enacted IEEPA, it intended to limit, rather than expand, the executive branch's powers during emergencies. The tariffs issued by the administration, however, had an unbounded scope, amount, and duration, thereby deviating from the intended statutory limits.

The CIT's decision also rests on constitutional principles, including the application of the non-delegation Doctrine and the Major Question Doctrine. Noting that Article I of the U.S.

Constitution vests Congress with the exclusive power to lay and collect taxes, duties, imposts, and excises and to regulate commerce with foreign nations, this clause underscores that tariff imposition is a prerogative of the legislative branch. Even if Congress delegates such authority to the executive, such a delegation must incorporate clear limits. Without clear limits, such delegation would violate the Constitution's division of powers. By invoking the non-delegation doctrine, the CIT held that granting the executive broad, undefined powers without explicit congressional guidance violates the separation of powers. Because the IEEPA lacks clear guidance for executive action, the CIT concluded that allowing the President to impose tariffs without congressional input would undermine the constitutional balance.

An additional pillar that the CIT relied on to strike down the reciprocal tariff was the application of the Major Questions Doctrine. This principle requires clear and explicit congressional authorization when an executive action implicates significant economic or political issues. The Major Questions Doctrine has emerged in recent jurisprudence, such as in *West Virginia v. EPA* (2022) and *Biden v. Nebraska* (2023), to ensure that the executive branch does not exercise powers of vast economic and political significance unless Congress has spoken unambiguously on the matter. Under this doctrine, statutory language must be read narrowly when it comes to delegating broad policy decisions that affect the core responsibilities of Congress. In the case of the reciprocal tariff, the CIT found that the President's use of the IEEPA authority to impose tariffs on such a broad scale, without explicit congressional authorization, raised a significant constitutional question, which the administration failed to address.

In the case at hand, the CIT determined that allowing the tariffs imposed on nearly all imports would have enormous economic ramifications. Given the breadth of the

tariffs, not only would American livelihoods face significant financial impacts, but these measures would also disrupt international trade relations. Because IEEPA lacked clear authorization for tariffs on such a scale, the CIT found the Trump administration's measures unlawful, as they unreasonably expanded presidential authority beyond congressional intent and raised serious concerns about economic fallout.

The loss in the Court of Appeals and the still-pending Supreme Court decision

After the CIT struck down the reciprocal tariff, the President appealed. However, on August 29, 2025, in a 7-4 decision, the U.S. Court of Appeals for the Federal Circuit again declared President Trump's use of the IEEPA authority illegal. The majority emphasizes that even grave national-security concerns do not license an open-ended delegation of taxing power to the President. The court stressed that the imposition of tariffs requires explicit congressional authorization and a narrowly tailored emergency rationale. The dissenting opinions, however, argue that IEEPA's broad drafting was intended to cover unforeseen foreign coercion, and that rigid adherence to a formalistic model can impede timely action in the face of evolving threats. This decision, if upheld by the Supreme Court, could significantly limit the President's ability to impose tariffs without explicit congressional authorization, thereby shaping the future of U.S. economic policy and international trade relations. It could also set a precedent for future trade policy, clarifying the limits of executive authority under the IEEPA.

As President Trump has petitioned the Supreme Court for an expedited review of the case, the conundrum is now in the hands of the nine Justices. While some believe that the Supreme Court would side with the lower courts and also strike down the IEEPA-based tariff, others argue that the justices may

uphold the tariff by recognizing the President's authority in responding to national threats and emergencies. The current Supreme Court's conservative majority with six of nine Justices appointed by Republicans, including three by Trump himself, has bolstered optimism among tariff supporters.

More legal paths to presidential tariffs

The fate of the IEEPA-based reciprocal tariffs is now in the hands of the Supreme Court, with oral argument proceedings scheduled to begin this early November. However, even if the Supreme Court rules the reciprocal tariff illegal, it would be overly optimistic to expect the Trump administration to abandon tariffs as its preferred policy tool. In addition to IEEPA, there are numerous tools left in the U.S. legislation that may support the administration's imposition of tariffs on foreign products.

Under Section 301 of the Trade Act of 1974, the law authorizes the United States Trade Representative to investigate unfair or discriminatory foreign practices that burden U.S. commerce and may respond through imposition of tariffs or other remedies. This pathway has been repeatedly utilized and remains a foundational enforcement tool for the U.S. agency, also known worldwide for its notorious unilateral nature.

Section 232 of the Trade Expansion Act of 1962 also provides an alternative legal basis for the President's use of tariffs. Under Section 232, Congress authorizes the President to address threats to national security by imposing tariffs or quotas upon foreign products identified through a Commerce Department-led investigation and a presidential determination. Similar to the Section 301 procedure, the administration is required to conduct a formal investigation, with a finding of a national-security risk tied to specific imports, before imposing tariffs, and further reporting

obligations that follow.

An additional historical anchor to consider is Section 338 of the 1930 Tariff Act, which authorizes the President to impose retaliatory tariffs against countries that have acted unreasonably or discriminately against the U.S. and have caused adverse effects. Although no formal investigation is required before the administration acts under Section 338, the President only has discretion to impose up to 50% of a tariff. Suppose the target country continues with its unreasonable or discriminatory actions, the President may further ban all imports from that country.

Although the statutes above provide the Trump administration with the explicit authorization it needs to impose tariffs, the procedural requirements and other statutory limits still make these statutes less favorable options compared to the IEEPA. For example, the imposition of Section 301 tariffs requires a formal investigation and can only be imposed on a country-by-country basis. Such statutory limitations would basically prevent the administration from imposing worldwide tariffs as it may prefer. Similarly, statutory limitations also restrict the scale on which Section 232 tariffs can be used. While Section 232 is designed to respond to harms caused by the importation of a specific product, the administration can only impose tariffs on a product-by-product basis.

The required formal investigation before imposing a tariff also adds a layer of burden to the administration, limiting the flexibility and arbitrariness of its use. Although Section 338 tariffs require no formal investigation and involve minimal bureaucracy, the administration may find the statute's explicit 50% cap too restrictive. The unilateral and retaliatory nature of Section 338 tariffs is also considered more likely to contradict WTO rules, thereby inviting international litigation. The two other often-referred-to options for imposing tariffs, Sections 122 and 201 of

the Trade Act of 1974, are also less likely to be utilized due to their inherent statutory limitations. However, we will not address them in detail in this article.

The tariff-based industrial policy is likely to persist

Whether or not the courts rein in IEEPA tariffs, the impulse toward tariff-based industrial policy is unlikely to fade away. The reason is simple. The IEEPA tariffs have achieved unexpected success. After the announcement of the IEEPA tariffs, trading partners rushed to negotiate with the U.S., fearing the negative trade impact of the measure. In the agreements that countries later concluded with the U.S., foreign governments not only agree that the tariffs shall be preserved, only at a lower rate, but also commit to investing in the U.S. in trillions of dollars. It is also estimated that the Trump administration's tariff regime will generate \$350 billion in annual revenue, helping to offset the impact of tax cuts and spending in the federal budget, and also maintaining the U.S. debt's credit rating. More than a revenue tool, the tariff advances core MAGA priorities by resetting investment incentives, prioritizing domestic production, accelerating reshoring, and strengthening supply chain resilience.

Even though the current IEEPA-based tariffs face constitutional challenges and may be declared illegal, the fact that there are numerous other legal instruments for the Trump administration to rely on, albeit perhaps less convenient, suggests that legal challenges will not deter the administration's keenness towards tariffs.

Recent Section 232 investigations by the Trump administration—targeting imports of pharmaceuticals, medical devices, semiconductors and related equipment, timber, processed minerals, wind turbines, vehicles, commercial aircraft, jet engines, and unmanned aircraft—suggest the administration

is preparing a dual-track approach and establishing alternative bases for tariffs should the IEEPA-based regime be found illegal.

In short, the tariff-based industrial policy will likely remain a central and contested instrument in the U.S. policy toolbox for the foreseeable future.

While ongoing legal challenges may delay the administration's tariff agenda, they are unlikely to reverse the broader trend toward tariff-based industrial policy. The mere expectation that the judiciary could end the Trump administration's tariff regime seems nothing more than wishful thinking.



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