

The Need to Limit U.S. Presidential Emergency Powers: The Case of Trump's Tariffs on Canada

D O N M A Y E R *

INTRODUCTION

President Donald J. Trump has often stated that his favorite foreign policy tool is tariffs,¹ taxes applied to imported goods.² As announced early in his second term, his tariffs were applied to imports from almost every nation.³ But his tariff proposals have often seemed arbitrary, erratic, and irrational.⁴ In the first nine months of his second term of office, he would often announce new tariffs, then alter the rates, and sometimes even withdrew them entirely, and always unilaterally, without any consultations with members of Congress.⁵ He has claimed that the

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¹ Michelle L. Price, "Tariffs are Trump's favorite foreign policy tool. The Supreme Court could change how he uses them." Associated Press (2 Nov. 2025).

² Anshu Siripurapu & Noah Berman, "What Are Tariffs?" (1 April 2025), online (website): <cfr.org/background/what-are-tariffs> [perma.cc/HFB6-KDY6].

³ Aimee Picchi, "See the full list of reciprocal tariffs by country from Trump's 'Liberation Day' chart", *CBS News* (9 April 2025), online: <[cbsnews.com/news/trump-reciprocal-tariffs-liberation-day-list/](https://www.cbsnews.com/news/trump-reciprocal-tariffs-liberation-day-list/)> [perma.cc/H36C-A5VC].

⁴ See *infra* notes 24-64 and accompanying text.

⁵ Talya Minsburg, "A Timeline of Trump's On-Again, Off-Again Tariffs", *The New York Times* (14 October 2025), online:

vesting clause and other executive powers in Article II as well as delegated powers from Congress have given him the authority to do so.⁶ The Department of Justice defended that position in the

[nytimes.com/2025/03/13/business/economy/trump-tariff-timeline.html](https://www.nytimes.com/2025/03/13/business/economy/trump-tariff-timeline.html)
[perma.cc/BYM9-39LT].

- ⁶ Article II begins, “*The executive Power* shall be vested in a President of the United States of America.” It also notes that “The President shall be Commander in Chief of the Army and Navy of the United States. . . He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls...” US Const art. II, § 1 and §2. (italics added). In his second term, President Trump has been claiming greatly expanded executive powers, relying on some generous interpretations of the “executive Power.” See Steven G. Calabresi & Saikrishna B. Prakash, “The President’s Power to Execute the Laws” (1994) 104:3 Yale L.J. 541 at 561 (“the executive Power...is probably not so much a type of power as it is a grab bag of many specifically enumerated powers, all of which we think of as belonging to the Executive”). Steven G. Calabresi & Christopher S. Yoo, *The Unitary Executive: Presidential Power from Washington to Bush*, 1st ed (New Haven: Yale University Press, 2008); See also Steven G. Calabresi & Christopher S. Yoo, “The Unitary Executive During the Second Half-Century” (2003) 26:3 Harvard J of Law and Public Policy 667. Cf. Julian Davis Mortenson, “Article II Vests the Executive Power, Not the Royal Prerogative” (2019) 119:5 Columbia L Rev 1169. See also Saikrishna Prakash & Michael D. Ramsey, “The Executive Power Over Foreign Affairs” (2001) 111 Yale L J 231 (“[w]e argue that the constitutional text, properly interpreted, provides a sound guide for resolving these matters. We derive four basic principles from the textual treatment of foreign affairs. First, the President has a ‘residual’ foreign affairs power from Article II, Section 1’s grant of ‘the executive Power.’ The executive power, as described by political theorists consulted by the framers - such as Locke, Montesquieu and Blackstone - included foreign affairs power. By using a common phrase infused with that meaning, the Constitution establishes a presumption that the President has the foreign affairs powers traditionally part of the executive power. Second, the framers thought the traditional executive had too great a power over foreign affairs, so they specifically allocated many key powers, in whole or in part, to other branches: war, commerce, treaty-making, etc. These are allocations away from the President, and thus, despite having the ‘executive Power, the President cannot claim independent authority in these areas: the executive power over foreign affairs is only residual, extending to matters not otherwise covered in the text” at 234-235). As Prakash is considered one of the legal scholars advocating for “the unitary executive” theory of Presidential power, these caveats suggest strongly that the tariff power is not Constitutionally part of the President’s “executive Power” with regard to foreign affairs. The claimed delegated powers are based on the

U.S. Supreme Court, but the U.S. Supreme Court ruled otherwise.⁷ But the ruling itself did not challenge the President's authority to declare emergencies without effective Congressional oversight; thus, the history of Presidential use of emergency powers to manage foreign policy and economic relations is worth careful examination, especially given President Trump's clear inclination to make consequential decisions without consulting Congress.⁸

Prior to 2017, U.S. presidents tended to exercise Congressionally delegated powers on tariffs and economic sanctions with some degree of caution and rationality. But the tariffs that President Trump announced early in his term have alarmed financial markets,⁹ created tensions with many historical allies¹⁰ and have diminished trade volumes both in the U.S. and in those nations facing new tariff barriers.¹¹ The International Emergency Economic Powers Act (IEEPA)¹² does allow for Presidential declarations of emergency in response to "an unusual and extraordinary threat" to U.S. national security, foreign policy, or the U.S. economy, a threat that originates outside the United

International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act (NEA). See *infra* notes 197-216 and accompanying text.

⁷ *Learning Resources Inc v Trump*, 784 F. Supp 3d 209 and *V.O.S Selections Inc v Trump*, 149 F. 4th 1312. These cases were consolidated for review, and both challenge the President's use of IEEPA to impose reciprocal and trafficking tariffs on China, Canada, and Mexico.

⁸ Herb Scribner, "5 times Trump pushed Congress aside to take control", *Axios* (2 March 2026), online: <[axios.com/2026/03/02/trump-congress-iran-strikes-authority](https://www.axios.com/2026/03/02/trump-congress-iran-strikes-authority)> [perma.cc/D4CL-H2MF].

⁹ Richard Partington, "Global markets in turmoil as Trump tariffs wipe \$2.5tn off Wall Street", *The Guardian* (4 April 2025), online: <theguardian.com/business/2025/apr/03/global-markets-turmoil-trump-tariffs-wall-street-downturn> [perma.cc/7HMC-JZWQ].

¹⁰ Edward Alden et al, "Geopolitics of Trump Tariffs: How U.S. Trade Policy Has Shaken Allies" (10 September 2025), online (website): <cfr.org/articles/geopolitics-trump-tariffs-how-us-trade-policy-has-shaken-allies> [perma.cc/E8SG-L7AY].

¹¹ Ana Swanson, "Trump's Global Tariffs Curtailed Trade, Data Shows", *The New York Times* (19 November 2025), online: <nytimes.com/2025/11/19/us/politics/trumps-tariffs-trade-data.html> [perma.cc/6647-RN3V].

¹² *International Emergency Economic Powers Act*, Pub. L. No. 95-223, 91 Stat. 1626 (1977) (codified as amended at 50 U.S.C. §§ 1701 et seq.).

States.¹³ But for most people living in the U.S., the notion that Canada's policies or behavior poses an "unusual and extraordinary threat" appears impulsive and irrational, given the long-standing, friendly relations between the U.S. and Canada.¹⁴

The second term Trump IEEPA tariffs on goods from Canada and nearly a hundred other nations¹⁵ should motivate Congress to reform its legislation on U.S. presidential emergency economic powers.¹⁶ Part I of this article argues that these tariffs are both erratic and irrational,¹⁷ and Part II describes the effects of those tariffs both on Canada and on the U.S.¹⁸ Part III examines the legal

¹³ Note: The Harvard Law Review Association, "The International Emergency Economic Powers Act: A Congressional Attempt to Control Presidential Emergency Power" (1983) 96:5 Harvard L. Rev 1102 at 1106 ("[t]he rhetoric surrounding the passage of IEEPA suggests that Congress intended to halt, if not to reverse, the slippage of power from its hands"). See also Aditya Bamzai, "Sanctions and the Emergency Constitution" (2025) 172:7 University of Pennsylvania L. Rev 1917.

¹⁴ Diana Roy, "U.S. - Canada Relations, 1908-2025" (last modified 13 February 2026), online (website): <cftr.org/timeline/us-canada-relations> [https://perma.cc/CQ46-RZAV]. See also Laura Gatz et al, "Canada: Background and U.S. Relations" (10 January 2025), online: <congress.gov/crs-product/R47620> [perma.cc/7S9S-6Y7R] ("[t]he United States and Canada are close partners, bound together by a 5,525-mile border as well as by shared history and values. The countries maintain long-standing mutual security commitments under NATO and the binational North American Aerospace Defense Command (NORAD). The United States and Canada also have one of the largest bilateral commercial relationships in the world, with an average of more than \$2.5 billion of goods and services crossing the border each day in 2023. Other areas of U.S.-Canada cooperation include cross-border law enforcement and the management of transboundary natural resources."). Greg Valliere, "Why Does Trump Hate Canada?" (20 March 2025), online (website): <perspectives.agf.com/why-does-trump-hate-canada/> [perma.cc/B35F-UHCM]. See also Alan Rappeport & Ian Austen, "What's Behind Trump's Love-Hate Relationship With Canada", *The New York Times* (3 March 2025), online: <nytimes.com/2025/03/03/us/politics/trump-canada-trade-tariffs.html> [perma.cc/4EBY-K6KG].

¹⁵ Lazaro Gamino & Tony Romm, "Here Are the Countries and Products Subject to Tariffs Now", *The New York Times* (last updated 28 April 2026), online: <nytimes.com/interactive/2026/business/economy/trump-tariff-tracker.html> [perma.cc/B6WH-EGU7].

¹⁶ See *infra*, notes 191-209 and accompanying text.

¹⁷ See *infra*, notes 24 - 64.

¹⁸ See *infra*, notes 65-116.

authority that President Trump has claimed for his emergency tariffs.¹⁹ Part IV examines how Congressional powers over tariffs and foreign affairs have been waning in recent years.²⁰ In Part V, some legislative proposals to reclaim Congressional those powers are described.²¹ Part VI details some of the litigation over President Trump's IEEPA tariffs and the U.S. Supreme Court's landmark decision rejecting his use of IEEPA to impose tariffs on Canada and many other nations.²² Despite that rejection, the U.S. President's emergency powers remain largely intact, and the final part discusses the decades-long trend expansion of U.S. Presidential emergency powers, emphasizing the need for Congress to reclaim its oversight over executive branch actions on tariffs and foreign relations generally.²³

I. THE ERRATIC AND IRRATIONAL TRUMP TARIFFS

Through the first year of his second term, President Trump's tariff announcements have been both erratic and irrational.

A. Trump's Tariff Erraticism

In the first few months of his second term, President Trump made frequent and sweeping announcements, rapid reversals, and sudden suspensions of tariffs. His approach created considerable uncertainty among economic actors of all sizes, domestically and globally, creating a volatile environment for global trade and financial markets.²⁴ Even without the many erratic announcements,

¹⁹ See *infra*, notes 117-157.

²⁰ See *infra*, notes 158 - 248.

²¹ See *infra*, notes 249-263.

²² See *infra*, notes 244-304.

²³ See *infra*, notes 305-320.

²⁴ Talya Minsberg, "A Timeline of Trump's On-Again, Off-Again Tariffs", *The New York Times*, (13 March 2025), online: <nytimes.com/2025/03/13/business/economy/trump-tariff-timeline.html> [perma.cc/NW7R-CZUT]. See also Alberto Miranda, "Ruin Day: President Trump's mindless tariffs will cause economic havoc", *The Economist* (3 April 2025), online: <economist.com/leaders/2025/04/03/president-trumps-mindless-tariffs-will-cause-economic-havoc> [perma.cc/N3BZ-4C6N]; Paul Wiseman, Anne D'Innocenzio, & Mae Anderson, "Trump's erratic trade policies are baffling businesses, threatening investment and economic

suspensions, and reversals, the tariff system announced by Trump on “Liberation Day,” April 2, 2025 was described by at least one analyst as “illogical and absurd.”²⁵

In the first 50 days of his second term, Trump announced major tariffs—such as a 25% tariff on all imports from Canada and Mexico, and a 25% (rising to 50%) tariff on Colombia—only to suspend or withdraw them soon after, sometimes within hours or days. His pattern of imposing, then pausing or even reversing tariffs has unsettled trading partners and markets in the U.S. and elsewhere.²⁶ Tariffs and exemptions have been applied and lifted unpredictably. Tariffs have been threatened or imposed in response to specific political disputes or perceived slights, such as the sudden announcement of tariffs on Colombia after a diplomatic incident, followed by their quick withdrawal when conditions were met.²⁷ Finally, Trump has publicly floated extreme tariff rates—up to 200% on certain products—and threatened secondary tariffs on countries

growth”, *Associated Press News* (last modified 6 March 2025), online: <apnews.com/article/trump-tariffs-business-uncertainty-canada-mexico-china-2b01e586faf99bae3438d289f48a1add> [perma.cc/RS7V-B9JG].

²⁵ Marco Quiroz-Gutierrez, “Analysts unanimously denounce Trump’s liberation day tariffs: ‘Worse than the worst case’”, *Fortune* (4 April 2025), online: <fortune.com/2025/04/04/analysts-denounce-trump-liberation-day-tariffs-worse-than-worst-case/L> [perma.cc/QA5Q-6VUZ] (“Quiroz-Gutierrez reports that Dan Ives’ team at Wedbush Securities “...took a shot at the Trump administration’s calculations for the tariffs, calling them ‘illogical and absurd’”). See also Peter Thal Larsen, “Trump tariff liberation means endless complication”, *Reuters* (1 April 2025), online: <reuters.com/breakingviews/trump-tariff-liberation-means-endless-complication-2025-04-01/> [perma.cc/NH8X-FNJT] (“Trump’s devotion to using tariffs to attack a vast array of American woes and foes means trade uncertainty is here to stay.”)

²⁶ *Ibid.*

²⁷ Stephen Castle, “Richard Branson Criticizes Trump’s ‘Erratic’ Tariff Policies”, *The New York Times* (23 April 2025), online: <nytimes.com/2025/04/23/us/politics/richard-branson-trump-tariff-policies.html> [perma.cc/KUZ8-VLQS]; Filip Timotija, “Most say Trump too erratic in economic moves: Survey”, *The Hill* (13 March 2025), online: <thehill.com/homenews/administration/5192484-trump-economy-tariffs-trade-survey/> [perma.cc/62CR-HF62]; Deutsche Welle, “Trump suspends Colombia tariffs after agreement”, *Deutsche Welle* (27 January 2025), online: <dw.com/en/colombia-tariffs-trump-deportation-deal/a-71417696> [perma.cc/V8RP-4R6A].

trading with adversaries like Venezuela, Russia, or Iran, often with little warning or actual follow-through.²⁸

B. Trumpian Tariff Irrationalism

Most economists, many business leaders, and more than a few political analysts have characterized the Trump tariffs as highly irrational, both in their design and expected outcomes.²⁹ The formula for his “Liberation Day” tariffs made no sense in terms of unfair tariffs imposed by other nations, nor did it make sense in furthering his professed economic goals for the United States, particularly the goal of the re-industrialization of the United States.³⁰

1. Rational Goals for Tariff and Trade Policies

International trade experts agree that tariffs can be part of a rational foreign policy toward other nations where they are well-rooted in established economic theories. The goal of a rational tariff policy for any nation would be to balance the national welfare

²⁸ Wyatt Grantham-Philips, “A timeline of Trump’s tariff actions so far”, *PBS News* (3 April 2025), online: <pbs.org/newshour/economy/a-timeline-of-trumps-tariff-actions-so-far> [perma.cc/VYN5-EAWT].

²⁹ Llewellyn H. Rockwell, Jr., “Trump’s Insane Tariff Policy” (17 April 2025), online (website): <mises.org/mises-wire/trumps-insane-tariff-policy> [perma.cc/YQ9V-XW2L]; Yurika Yoneda, “Uniqlo founder Yanai says Trump tariff ‘irrational’ and ‘won’t last’”, *Nikkei Asia* (7 April 2025), online: <asia.nikkei.com/business/retail/uniqlo-founder-yanai-says-trump-tariff-irrational-and-won-t-last> [perma.cc/E2LK-YZZA]; J.J. McCorvey, “‘A critical crossroads’: Business leaders speak out against Trump’s trade war with the world”, *NBC News* (7 April 2025), online: <nbcnews.com/business/business-news/trump-tariffs-business-leaders-criticize-trump-admin-trade-war-rcna199997?> [perma.cc/666A-TE5G].

³⁰ Rebecca Schneid, “Why Economists Are Horrified by Trump’s Tariff Math”, *Time Magazine* (3 April 2025), online: <time.com/7274651/why-economists-are-horrified-by-trump-tariff-math/> [perma.cc/A4F9-BVUQ]; Erin Doherty, “Economists take issue with Trump’s tariff formula, arguing rate is inflated”, *CNBC* (5 April 2025), online: <cnbc.com/2025/04/05/economists-take-issue-with-trumps-tariff-formula-arguing-rate-is-inflated.html> [perma.cc/C3YZ-WGMJ]. As to bringing back factory jobs, many economists sound notes of caution; Michelle Fox, “Trump says tariffs will accelerate reshoring, but experts say it’s not that easy”, *CNBC* (5 April 2025), online: <cnbc.com/2025/04/05/trump-says-tariffs-will-accelerate-reshoring-but-experts-say-its-not-that-easy.html> [perma.cc/S7QE-HHJ4].

against risks of retaliation from trading partners.³¹ The national welfare, broadly considered, would include the potential for a rise in the cost of goods, as tariffs are essentially paid by the importers and often passed on to consumers. Although the United States does have considerable “market power” because of the size of its market for global goods,³² that power must be used rationally to account for the many likely consequences of tariffs that are too “protectionist” and result in “trade wars.”³³ Contrary to President Trump’s assertions during his first term, trade wars can be quite complicated, and are not all that easy to “win.”³⁴

Classical and neoclassical economists have long advocated for low, or zero tariffs based on the theory of comparative advantage often attributed to David Ricardo.³⁵ Exceptions are made when key industries in their infancy need temporary protection; exceptions are also made in response to unfair practices by trading partners, or clear national security threats. The World Trade Organization’s rules on tariffs for member nations were aimed at reducing both tariff and non-tariff barriers to trade.³⁶ Given the WTO’s declining

³¹ Thomas A. Lubik, “When Are Tariffs Optimal?” (May 2025), online (website): <richmond.fed.org/publications/research/economic_brief/2025/e_b_25-21> [perma.cc/NK4J-E27S].

³² Enrique Martínez García & Michael Spasi, “A history of U.S. tariffs: Quantifying strategic trade-offs in tariff policy design” (2026) 7:1 *Latin American J of Central Banking* 100187 at 100187.

³³ Enrique Martínez García & Michael Spasi, “U.S. tariff outcomes dependent on trading partner responses” (13 May 2025), online (website): <dallasfed.org/research/economics/2025/0513> [perma.cc/P96F-8BPY].

³⁴ Ana Swanson, “Trump Calls trade Wars ‘Good’ and ‘Easy to Win’”, *The New York Times* (2 March 2018), online: <nytimes.com/2018/03/02/business/trump-calls-trade-wars-good-and-easy-to-win.html> [perma.cc/2LS2-KSNH].

³⁵ Murray N. Rothbard, “The Ricardian Law of Comparative Advantage” (26 April 2012), online (website): <mises.org/mises-daily/ricardian-law-comparative-advantage> [perma.cc/XY97-DWUH].

³⁶ World Trade Organization, “Tariffs: more bindings and closer to zero” (last visited 15 May 2026), online (website): <wto.org/english/thewto_e/whatis_e/tif_e/agrm2_e.htm> [perma.cc/D8RA-JZ3J] (“[t]he bulkiest results of Uruguay Round are the 22,500 pages listing individual countries’ commitments on specific categories of goods and services. These include commitments to cut and ‘bind’ their customs duty rates on imports of goods. In some cases, tariffs are being cut to zero. There is also a significant increase in the number of ‘bound’ tariffs – duty rates that are committed in the WTO and are difficult to raise.”)

influence,³⁷ imposing tariffs unilaterally as a bargaining tool may achieve some short-term policy objectives but should be targeted to avoid retaliatory tariffs and include mutual concessions to maximize gain for both trading nations.

Geopolitical goals for the U.S. and other nations may well influence tariff policy, as tariffs can be used as strategic levers for national security, alliance management, and great power rivalry. An established industry sector (silicon chips, for example) may need protection or further development – advanced technologies, energy, and critical minerals – and national security needs may include diversifying supply chains away from potentially hostile nations, preventing vulnerabilities that could be exploited in a conflict with a national rival. For the U.S., preserving U.S. technology leadership by constraining China’s technological progress could be a rational goal of tariff policy: semi-conductors, critical minerals, clean energy technology, basic metals (steel, aluminum, and basic metals) as well as ensuring autonomous U.S. production capacity for military and dual-use applications.³⁸

2. Stated Justifications for the New Tariffs, Questioned

Some of President Trump’s stated reasons for his second term tariffs are consistent with accepted economic thinking and geopolitical strategies for the United States, but many are clearly not. First, raising government revenue is a reason President Trump

³⁷ Mathias Döpfner, “The downfall of the World Trade Organization”, *Politico* (15 February 2025), online: <politico.eu/article/trade-war-donald-trump-downfall-of-the-world-trade-organization-wto/> [perma.cc/6Q8U-6D2J] (“[t]he World Trade Organization (WTO) had barely made it through U.S. President Donald Trump’s first term unscathed. Now, amid a looming wave of ‘reciprocal’ tariffs and threats of retaliation, the world is once again confronted with grave geopolitical uncertainty and a faltering multilateral trading system.”)

³⁸ Michael McDowell, “The U.S.-China Trade War Is the Return of Geoeconomics” (29 April 2025), online (website): <gsb.stanford.edu/insights/us-china-trade-war-return-geoeconomics> [perma.cc/68NC-XQ83]. And yet President Trump’s negotiations with China in October 2025 seemingly failed to leverage his new tariffs to meet U.S. national security and geopolitical goals. See also Ana Swanson, “With China Truce, U.S. National Security Controls Now Appear Up for Negotiation”, *The New York Times* (30 October 2025), online: <nytimes.com/2025/10/30/us/politics/china-trump-trade-security-chips-minerals.html> [perma.cc/E5TH-4WGS].

cites often, especially to make up for revenue lost from tax cuts.³⁹ But classical economics see tariffs as a distortion that harms efficiency, not as an effective fiscal tool in a well-wrought tax-based revenue system.

President Trump may believe that tariffs are a great way to enhance federal revenue and a way to effectively deal with the federal deficit, but the goal of enhancing federal revenue is undercut by drastic reductions in the I.R.S.⁴⁰ and by giving tax-cuts to his rich donors.⁴¹ Moreover, there is little to no empirical evidence that Trump's tariffs will appreciably increase federal revenues, and while it may be rational for politicians to lie to the people (e.g., "China will pay the tariffs, not you"), it appears that Trump may actually believe that other nations will have to pay the tariffs.⁴² That is alarming on its own, as it implies that he rejects the

³⁹ Elisabeth Buchwald, "Trump's tariffs are bringing in tens of billions of dollars a month. What's the government doing with all that money?", *CNN Business News* (last modified 8 August 2025), online: <cn.com/2025/08/06/economy/government-tariff-revenue> [perma.cc/6WU8-KVZ3] ("[h]ardly a day goes by without President Donald Trump boasting about the record tariff revenue the U.S. government has been collecting since he ratcheted up taxes on almost every imported good.")

⁴⁰ Andy Kroll, "How DOGE's Cuts to the IRS Threaten to Cost More Than DOGE Will Ever Save", (5 March 2025), online (website): <propublica.org/article/how-doge-irs-cuts-will-cost-more-than-savings-trump-musk-deficit> [perma.cc/6F3D-GPU8].

⁴¹ Michael Rainey, "Trump Woos Wealthy Donors With Promises of Huge Tax Cuts" (28 May 2024), online (website): <finance.yahoo.com/news/trump-woos-wealthy-donors-promises-223504701.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAKr3kN0ThMQZu7_8g2a5VUV7OUOCBqHW8zucll6a-T1ZcY4JtfwDwkADPVyKgCri752Pp-iXNoF7GdWiQzO3AXZyxoOJwTX-EJmM66L5bPRDcfFbYhqmSjuk-rSmYaWGumwBm2m4HyP]cdXK0C6AO4FRtjNj0TP9T8LgESeuh9a> [perma.cc/K9FW-F96S]; Americans for Tax Fairness, "Billionaires Are \$2.2 Trillion Richer Since 2017 Trump-GOP Tax Law" (28 September 2023), online (website): <americansfortaxfairness.org/billionaires-2-2-trillion-richer-since-2017-trump-gop-tax-law/> [perma.cc/ZJX8-HCVL].

⁴² Benn Stell, "Who Pays Trump's Tariffs?" (4 November 2025), online (website): <cfr.org/articles/who-pays-trumps-tariffs> [perma.cc/WE2G-BMXL] ("President Trump routinely claims that foreigners pay his tariffs, which is false—U.S. importers pay them. Over time, however, foreign exporters can be expected to bear a small but rising burden of the tariffs through price cuts, while most of the cost will be borne by U.S. consumers in the form of higher prices.")

advice of qualified economic experts, even as to basic things like who actually winds up paying these import taxes. While U.S. importers will pay the tariffs at the border to get their goods from abroad, most of them will have to pass on these additional costs to consumers.⁴³

Second, using tariffs to “balance the trade deficit” is another reason that President Trump has stated repeatedly.⁴⁴ Trump has often said that nation with a trade surplus with the U.S. are unfairly taking advantage, but this reflects a mercantilist perspective, a zero-sum view of trade relations.⁴⁵ Such views are wholly inconsistent with neoclassical economic theory, which sees trade deficits as the outcome of macroeconomic savings and investment balances rather than unfair trade practices. Reducing the balance of trade with other nations may be a rational goal of tariff policy, but President Trump’s irrationality is also evident when he confuses trade deficits with tariff disparities. Trade deficits that the U.S. has with other trading nations are not directly related to higher tariffs those other nations impose. But he uses trade deficit figures as evidence of foreign protectionism—even when no such tariffs exist. For

⁴³ Elisabeth Buchwald, “What is a tariff and who pays it?”, *CNN Business* (5 March 2025), online: <[cnn.com/2025/03/05/business/what-is-tariff-who-pays-imports](https://www.cnn.com/2025/03/05/business/what-is-tariff-who-pays-imports)> [perma.cc/YBB7-XMW4]; Alex Durante, “Who Pays Tariffs? Americans Will Bear the Costs of the Next Trade War” (19 February 2025), online (website): <taxfoundation.org/blog/who-pays-tariffs/> [perma.cc/2FLS-SF7G].

⁴⁴ David Goldman, “Tariffs, explained: What Trump wants from all these trade deals”, *WRAL News* (7 July 2025), online: <[wral.com/story/tariffs-explained-what-trump-wants-from-all-these-trade-deals/22077406/](https://www.wral.com/story/tariffs-explained-what-trump-wants-from-all-these-trade-deals/22077406/)> [perma.cc/XH6H-RTBK] (“Trump has often spoken about tariffs in terms of “fairness,” saying other countries are “ripping off” Americans with high trade barriers. He has repeatedly said he envisions America as a highly desirable department store and views tariffs as a “cost of doing business in America.”)

⁴⁵ Amanda Taub, “The Trump Doctrine: The World Is a Zero-Sum Game”, *The New York Times* (7 March 2025), online: <[nytimes.com/2025/03/07/world/trump-doctrine-zero-sum-game.html](https://www.nytimes.com/2025/03/07/world/trump-doctrine-zero-sum-game.html)> [perma.cc/4UGE-8PTN] (“[s]ince the 1980s, his words and actions have suggested that he places little value on positive-sum dynamics. Where others see positive-sum games generating gains for all, he seems to see only zero-sum winners and losers. And now, in his second term, that worldview appears to be a primary driver of his foreign policy. That is already upending norms, alliances, markets and economies. It is threatening many of the United States’ longstanding relationships, transforming friends into adversaries and strengths into weaknesses.”)

example, he claimed that countries like Switzerland and Vietnam imposed exorbitant tariffs on U.S. goods, but these figures were taken from trade deficit data, not actual tariff rates. This led to absurdities such as proposing tariffs on places like Norfolk Island.⁴⁶

Even the goal of lowering trade deficits may not be a rational goal if that goal is undermined by other Presidential policies.⁴⁷ But Trump sees the world as national leaders in a much earlier era did; in the age of mercantilism and imperialism, nations assumed that their gains could only come at the expense of other, competing

⁴⁶ Norfolk Island, a tiny Australian external territory with just over 2,000 residents, has an economy based almost entirely on tourism and does not have a significant manufacturing or export industry. Multiple local officials and business owners confirmed that the island exports virtually nothing to the United States, making the imposition of a 29% tariff seemingly pointless. See Byron Kaye & Christine Chen, “Tiny Australian outposts, including some with no people, targeted by Trump tariffs”, *Reuters* (4 April 2025), online: <reuters.com/markets/asia/tiny-australian-outpost-gets-steep-trump-tariff-despite-few-exports-2025-04-03/> [perma.cc/49E3-UEQX] (“Richard Cottle, owner of a concrete-mixing business on Norfolk Island, said on Thursday there was only one explanation when Trump unveiled a hefty 29% tariff on the tiny territory about 600 miles off eastern Australia: ‘it was just a mistake.’ Though the rugged volcanic island in the southern Pacific does ship a modest amount of Kentia palm seeds abroad, typically worth less than \$1 million a year, mostly to Europe, news of the unusually steep tariff passed through its 2,188 residents on Thursday with a mixture of amusement and confusion. ‘Norfolk Island is a little dot in the world,’ said Cottle by phone. ‘We don’t export anything.’ Norfolk Island was among dozens of tiny territories which appeared on the same list as China and the European Union as recipients of Trump’s highly anticipated tariff regime, even though they do not have a real manufacturing or export industry.”)

⁴⁷ Lowering the U.S. trade deficit can be a rational public policy goal if the aim is to bolster domestic industry, reduce dependence on foreign creditors, secure critical supply chains, and address unfair trade practices. However, most economists caution that the deficit is fundamentally a reflection of broader macroeconomic factors—especially low national savings and high fiscal deficits. But much of President Trump’s agenda will greatly increase fiscal deficits, especially the “big, beautiful bill.” See Committee for a Responsible Federal Budget, “House Bill Would Put 3% Deficit Far Out of Reach” (20 May 2025), online (website): <crfb.org/blogs/house-bill-would-put-3-deficit-far-out-reach> [perma.cc/72SX-REKA]. It is irrational to expect that the significant tax cuts Trump seeks can be offset by tariff revenues. See Simon Evenett & Marc-Andreas Muendler, “Tariffs cannot fund the government: Evidence from tariff Laffer curves” (28 April 2025), online (website): <cepr.org/voxeu/columns/tariffs-cannot-fund-government-evidence-tariff-laffer-curves> [perma.cc/VS85-S937].

nations.⁴⁸ This is thoroughly consistent with Trump's well-documented views on all personal and business transactions, *viz.*, that any gains by one person or nation must come at the expense of others, and that only "losers" and "suckers" allow themselves to be used. Trump neither sees nor believes that there could be trade deals that work in a win-win way; he believes that for every winner there must be a loser.⁴⁹ Unlike our federal deficit, trade deficits are not inherently harmful, especially where the U.S. imports goods that cannot be produced domestically at a price consumers are willing to pay.⁵⁰ Trump's zero sum thinking ignores David Ricardo's theory of comparative advantage,⁵¹ and does not allow for the possibility of mutually beneficial, win-win trade deals.

⁴⁸ Robert J. Barro, "Trump's Mercantilist Mess" (5 September 2019), online (website): <project-syndicate.org/commentary/trump-trade-policy-mercantilism-by-robert-j-barro-2019-09> [perma.cc/AXX9-WHCU]. See also Dani Rodrik, "Mercantilism Isn't All Bad, but Trump's Version Is the Worst" (7 May 2025), online (website): <project-syndicate.org/commentary/trump-mercantilism-worst-features-with-none-of-the-benefits-by-dani-rodrik-2025-05> [perma.cc/TM8B-ETYC]. See also Kate Andrews, "Trump is all in on a bad economic policy from centuries ago", *The Washington Post* (6 May 2025), online: <washingtonpost.com/opinions/2025/05/06/trump-modern-mercantilism-tariffs/>.

⁴⁹ Taub, *supra* note 45.

⁵⁰ U.S. consumers may prefer U.S. made goods, but they also buy a lot of electronics (phones, laptops), toys and low-cost consumer goods, apparel, and footwear. Most of these goods are made outside of the U.S. because corporations have found cheaper labor overseas, components or expertise that are concentrated overseas, and because consumers are price-sensitive and will buy "non-American" to save money. See John Keilman, "Why Making an All-American Product Is So Hard", *The Wall Street Journal* (28 April 2025), online <[wsj.com/business/made-in-america-products-supply-chain-tariffs-06c83cea](https://www.wsj.com/business/made-in-america-products-supply-chain-tariffs-06c83cea)> [perma.cc/WKJ6-8K2H]. See also Steven Capozzola, "18 Iconic Products That America Doesn't Make Anymore" (8 November 2010), online (website): <americanmanufacturing.org/blog/18-iconic-products-that-america-doesnt-make-anymore/> [perma.cc/LZK4-6SDC].

⁵¹ Sam Rainsy, "Donald Trump Should Remember Ricardo's Law of Comparative Advantage: Even When Others Produce Faster and Cheaper, Trade Still Makes America Stronger", *The Geopolitics* (7 April 2025), online: <thegeopolitics.com/donald-trump-should-remember-ricardos-law-of-comparative-advantage-even-when-others-produce-faster-and-cheaper-trade-still-makes-america-stronger/> [perma.cc/6Q7A-335P].

Third, Trump has sought to use tariffs to “bring back manufacturing in the U.S.”⁵² This is part of a potent, populist appeal to Make America Great Again (MAGA), with the promise of good-paying job for the non-professionals who are not part of the U.S. “elite” that he repeatedly rails against. But tariffs would have to be very high and remain high for many years to incentivize manufacturers to build factories in the United States. But President Trump’s on-again, off-again approach to tariffs, and the four-year Presidential election cycle in the U.S. informs many business investors that any federal industrial policies are very short-lived. Prudent corporate leaders have not rushed to create new factory jobs in the U.S.⁵³ One reason is the erratic nature of Trump’s

⁵² The White House, “Fact Sheet: President Donald J. Trump Declares National Emergency to Increase our Competitive Edge, Protect our Sovereignty, and Strengthen our National and Economic Security” (2 April 2025), online (government website): <whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/> [perma.cc/TX55-BXJU] (“Large and persistent annual U.S. goods trade deficits have led to the hollowing out of our manufacturing base; resulted in a lack of incentive to increase advanced domestic manufacturing capacity; undermined critical supply chains; and rendered our defense-industrial base dependent on foreign adversaries.”) (Hereafter, “The White House Fact Sheet (April 2025).”)

⁵³ Sasha Rogelberg, “Despite Trump’s best efforts to reshore manufacturing, blue-collar employment is plunging for the first time since the pandemic with 59,000 lost jobs”, *Fortune* (25 November 2025), online: <fortune.com/2025/11/25/jobs-report-manufacturing-reshoring-tariffs-factor-job-loss/> [perma.cc/RNT6-RS96]. There are some indications of CEO re-thinking of the now decades-long process of offshoring manufacturing; but there are some structural barriers to re-shoring that tariff policy alone cannot surmount. See, for example: Jason Furman, “Every President Tries It. It Never Works”, *The New York Times* (2 April 2025), online: <nytimes.com/2026/04/02/opinion/trump-manufacturing-industry-liberation-day.html> [perma.cc/KU8E-2LQF]. Furman notes that decades of effort have not reversed American’s manufacturing decline. “Manufacturing job share has been dwindling in nearly all middle- and high-income countries. By one analysis, China lost more than 30 million of those jobs from 2011 to 2020, more than twice as many as the number of jobs that exist in the entire US manufacturing sector...At the same time manufacturing output has risen, because workers now produce far more per hour using better and more sophisticated equipment. Consumers do not want three times as many cars. Even as people get richer, they increase their spending on

“TACO” tariffs (Trump Always Chickens Out).⁵⁴ His on-again off-again tariffs do not convince U.S. companies operating overseas to bring production back to the U.S., since what is subject to high tariffs today may well not be subject to them tomorrow. Announcing tariffs that are significantly higher than the Smoot-Hawley tariffs of 1930, then changing the tariff rates, pausing them, or raising and lowering them as a “negotiating strategy” is no way to create a stable investment environment for companies that want to make long-term commitments to production of their goods in the United States.

Despite its difficulties, setting federal policies to help bring back manufacturing in key industries to the United States can seem like a rational goal; national security for any nation is aided by stable and high employment, which is important for supporting economic stability and social cohesion.⁵⁵ Stable incomes and job opportunities can strengthen a nation’s ability to fund defense, maintain military readiness, and foster innovation. But small and medium sized businesses, which have been an important area of job growth for the U.S., have been especially impacted by the tariffs on

manufactured goods only modestly preferring instead to spend more on services like travel healthcare and dining out.” In addition, the barriers of high U.S. labor costs, the complexity of unwinding deeply integrated global supply chains, and ongoing trade policy uncertainty have CEOs and Board hesitating to commit to re-shoring manufacturing in the U.S.

⁵⁴ Gideon Rachman, “Trump always chickens out on foreign policy too”, *Financial Times* (2 June 2025), online: <[ft.com/content/714c1096-eb17-40b0-a570-8a051406bc75?syn-25a6b1a6=1](https://www.ft.com/content/714c1096-eb17-40b0-a570-8a051406bc75?syn-25a6b1a6=1)> [perma.cc/H3Y5-YHJR] (“[t]he pattern is that the US president will promise to impose massive tariffs on a chosen target. But he will then later cut or delay the tariffs, often in response to an adverse reaction from the markets. So far this has happened with Canada and Mexico, then with the ‘reciprocal tariffs’ imposed on most of humanity (and some penguins), then with the 145 per cent rate on China. A threat to raise tariffs on the EU to 50 per cent lasted all of a weekend. Hence — Taco.”)

⁵⁵ Zoe Baird, “Equitable Economic Recovery Is a National Security Imperative” in Aspen Strategy Group, *Domestic & International (Dis)Order: A Strategic Response* (Washington: The Aspen Institute, 2020) 89 (“[a] strong and inclusive economy is essential for American national security and global leadership. As the nation seeks to return from a historic economic crisis, the national security community should support an equitable recovery that helps every worker adapt to the seismic shifts underway in our economy”).

Canada and in 2025 have been slow to hire.⁵⁶ There are significantly increased costs leading to higher production expenses, and small or medium sized businesses have tighter profit margins and are less able to absorb higher tariffs and thus more likely to have to pass those costs to consumers, potentially losing business to larger competitors. The U.S. and Canada have had tightly integrated cross-border supply chains, making the new tariffs especially disruptive.⁵⁷ Finally, to the extent that higher prices of goods are combined with stagnant wages relative to inflation,⁵⁸ small and medium size businesses will have difficulties growing, hiring, or even staying viable in the market; with at least a quarter of U.S. consumers are living paycheck to paycheck,⁵⁹ consumer

⁵⁶ Tariffs are a likely culprit. See U.S. Chamber of Commerce, “‘A Matter of Survival’: Small Businesses Speak Out on Tariffs” (last updated 3 March 2026), online (website): <uschamber.com/small-business/american-workers-businesses-consumers-trade-tariffs> [perma.cc/EQ84-NAVB]. See also Bureau of Labor Statistics, “Small businesses continue to outpace large businesses in job creation” (8 May 2025), online (government website): <bls.gov/opub/ted/2025/small-businesses-continue-to-outpace-large-businesses-in-job-creation.htm> [perma.cc/23UJ-4PB] (“[b]etween the first quarter of 2021 and the second quarter of 2024, small businesses (firms with 249 or fewer employees) made up 52.8 percent of the total net job creation in the United States.” However, that growth may be slowing dramatically now. See Hardika Singh, “Opinion: The small-business hiring engine is sputtering. Why that’s a red flag for the economy”, *MarketWatch* (last updated 27 September 2025), online: <marketwatch.com/story/the-small-business-hiring-engine-is-sputtering-thats-a-red-flag-for-the-economy-12428cce> [perma.cc/RF5H-2T3E].

⁵⁷ Jacob Jensen, “The Impact of Tariffs on Small Businesses” (21 October 2025), online (website): <americanactionforum.org/research/the-impact-of-tariffs-on-small-businesses/> [perma.cc/P7X7-Z3ZC].

⁵⁸ Drew DeSilver, “For most U.S. workers, real wages have barely budged in decades” (7 August 2018), online: <pewresearch.org/short-reads/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/> [perma.cc/NKQ6-XHCK]. See also Aimee Picchi, “Wages aren’t keeping up with inflation, with some jobs falling further behind than others”, *CBS News* (18 August 2025), online: <cbsnews.com/news/wages-income-falling-behind-inflation-jobs-profession-education-manufacturing/> [perma.cc/W52M-FTQ9].

⁵⁹ Matt Egan, “‘Things are pretty crappy.’ 1 in 4 US households are living paycheck to paycheck”, *CNN Business* (13 November 2025), online: <cnn.com/2025/11/13/economy/job-prices-debt-economy> [perma.cc/7SK9-F8HJ]. Some estimates are considerably higher. See, for example: PNC Bank, “2025 Financial Wellness in the Workplace Report:

spending toward the end of 2025 was tightening among most income groups.⁶⁰

Fourth, in raising tariffs for leverage on issues of immigration, intellectual property, or drug trafficking, Trump is not consistently pursuing economic ends; he uses tariffs to reactively punish nations whose policies he dislikes. For example, Trump imposed punitive tariffs on Brazil for prosecuting Jair Bolsonaro's coup attempt⁶¹ in the election that brought Luis da Silva back to the Presidency; he also raised tariffs under IEEPA to pressure Brazil not to enforce its social media laws, and complained that those laws violated free speech standards.⁶² Ironically, he then raised tariffs on Canada for

What today's workers value most, across generations" (last visited 25 May 2026), online (pdf): <pnc.com/content/dam/pnc-com/pdf/corporateandinstitutional/organizational-financial-wellness/organizational-financial-wellness-workplace-report.pdf?msocid=208776d0f21b6d2c295163d5f3826c0b> [perma.cc/VQ6A-9FMF] at 6. The report finds that 67% of Americans are living paycheck to paycheck in 2025, up from 63% in 2024. Rising costs, inflation, and an uncertain job market are squeezing households across the country.

⁶⁰ Joanne Hsu, "Preliminary results from the December 2025 survey" (5 December 2025), online (pdf): <data.sca.isr.umich.edu/fetchdoc.php?docid=80182> [perma.cc/H755-V8JN] (the exception to this are those households in the top third of stock ownership, whose consumer confidence has gone up in 2025).

⁶¹ Donald J. Trump, President of the United States, Letter to Luiz Inácio Lula da Silva, President of the Federative Republic of Brazil (July 9, 2025), online (pdf): <static.poder360.com.br/2025/07/carta-trump-brasil.pdf> [perma.cc/Y8CJ-F9D8] (hereafter, "the Brazil Letter"). The letter begins, "Dear Mr. President: I knew and dealt with former President Jair Bolsonaro, and respected him greatly, as did most other Leaders of Countries. The way that Brazil has treated former President Bolsonaro, a Highly Respected Leader throughout the World during his Tenn, including by the United States, is an international disgrace. This Trial should not be taking place. It is a Witch Hunt that should end IMMEDIATELY!...Due in part to Brazil's insidious attacks on Free Elections. and the fundamental Free Speech Rights of Americans (as lately illustrated by the Brazilian Supreme Court, which has issued hundreds of SECRET and UNLAWFUL Censorship Orders to U.S. Social Media platforms, threatening them with Millions of Dollars in Fines and Eviction from the Brazilian Social Media market), starting on August 1, 2025, we will charge Brazil a Tariff of 50% on any and all Brazilian products sent into the United States, separate from all Sectoral Tariffs. Goods transshipped to evade this 50% Tariff will be subject to that higher Tariff."

⁶² The White House, "Fact Sheet: President Donald J. Trump Addresses

an Ontario television ad that essentially repeated President Reagan's anti-tariff rhetoric.⁶³ Such executive actions, proclaimed as matter of economic or national security emergency, are not rationally related to either U.S. fiscal or security needs. Nonetheless, at least four U.S. appellate judges believe that Trump's use of IEEPA to impose tariffs for "leverage" on other nations in the exercise of the U.S. President's foreign affairs authority is permissible even if unwise.⁶⁴ Before turning to the legal questions around Trump's IEEPA tariffs in Part III, we will examine the actual effects of these IEEPA tariffs on both Canada and the United States in Part II.

II. TRUMP'S SECOND TERM TARIFFS: EFFECTS ON CANADA AND THE UNITED STATES

President Trump has announced several tariffs on Canadian imports since the start of his second term in January 2025, often claiming emergency authority under IEEPA. These tariffs were widely predicted⁶⁵ to harm both the U.S. and Canadian economies

Threats to the United States from the Government of Brazil" (30 July 2025), online (government website): < [whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-addresses-threats-to-the-united-states-from-the-government-of-brazil/](https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-addresses-threats-to-the-united-states-from-the-government-of-brazil/) > [perma.cc/NWT5-BFFF]. The fact sheet describes the "threats to the United States" from Brazil's "unusual and extraordinary policies and actions harming U.S. companies, the free speech rights of U.S. persons, U.S. foreign policy, and the U.S. economy. The fact sheet claims that the government of Brazil's politically motivated persecution, intimidation, harassment, censorship, and prosecution of former Brazilian president Jair Bolsonaro and thousands of his supporters are serious human rights abuses that have undermined the rule of law in Brazil.

⁶³ Cameron Peters, "Trump's pettiest tariff, briefly explained", *Vox* (27 October 2025), online: < [vox.com/the-logoff-newsletter-trump/466281/donald-trump-tariffs-canada-ontario-ad-reagan](https://www.vox.com/the-logoff-newsletter-trump/466281/donald-trump-tariffs-canada-ontario-ad-reagan) > [perma.cc/J93A-D9TA].

⁶⁴ See *infra*, notes 242-43 and accompanying text. When the U.S. Supreme Court decided *Learning Resources* and *V.O.S. Selections*, the majority did not agree that using IEEPA as "leverage" for non-economic or national security goals was appropriate.

⁶⁵ Warwick J. McKibbin and Marcus Noland, "US tariffs on Canada and Mexico would hurt all three economies; retaliation would worsen the damage" (4 February 2025), online (website): < [piie.com/blogs/realtime-economics/2025/us-tariffs-canada-and-mexico-would-hurt-all-three-economies](https://www.piie.com/blogs/realtime-economics/2025/us-tariffs-canada-and-mexico-would-hurt-all-three-economies) > [perma.cc/LH5P-CCDA] ([t]he US tariffs alone result in lower

and did. The harms were not confined to economic impacts but also included negative impacts on relations between the two nations, and a sharp decline in the trust that other nations have had in U.S. leadership on the global stage.

A. Economic Impacts on Canada and the U.S.

Economically, both countries will be negatively affected. Canada has long been one of the top two trading partners for the United States. According to the U.S. Trade Representative, the U.S. and Canada “... share a long history of supply chain integration, including especially in the automotive and textile industries and the energy sector. In 2024 Canada was the top destination for U.S. exports and the third-largest source of U.S. imports. Canada exported over three-quarters of its goods to the United States and imported almost half of its goods from the United States.”⁶⁶

Significant supply chain disruptions were predicted when the tariffs were announced; the 25% tariffs on steel, aluminum, and other goods directly undermine North American supply chain resilience, particularly in critical minerals and metals, where no immediate substitutes exist.⁶⁷ Cross-border industries like automotive manufacturing were expected to face heightened risks of plant closures.⁶⁸ One saving grace for companies that depend on

real GDP and higher inflation in all three countries than otherwise, or compared with their baseline forecasts.”)

⁶⁶ TD Economics, “Setting the Record Straight on Canada-U.S. Trade” (21 January 2025), online (website): <economics.td.com/ca-canada-us-trade-balance> [perma.cc/JPF4-Z4LF].

⁶⁷ Hassan Wafai, Juan Navarro, & Kimberly Tholl, “Canadian supply chains are at the epicentre of Trump’s potential trade war”, *The Conversation* (6 February 2025), online: <theconversation.com/canadian-supply-chains-are-at-the-epicentre-of-trumps-potential-trade-war-248987> [perma.cc/9SG7-9JWK]. See also TD Economics, *Ibid* (“[t]rade between the U.S. and Canada is highly integrated. Most Canadian exports are inputs used by American businesses in their own production – more so than with other trading partners. Thus, a disproportionate share of the negative tariff impacts on imports from Canada would be through the channel of business supply chains and productivity that would drive higher costs and inflationary pressures at the retail level.”)

⁶⁸ Keith Nuthall, “Trump Tariffs Warning: U.S., Canadian Auto Plants at Risk of Closure” (5 March 2025), online (website): <wardsauto.com/news/trump-tariffs-warning-u-s-canadian-auto-plants-at-risk-of-closure/798850/> [perma.cc/NCQ6-DLX7].

cross-border trade is that the successor agreement to the North American Free Trade Agreement (NAFTA),⁶⁹ the Canadian-US-Mexico trade agreement (CUSMA),⁷⁰ exempts well over 80% of Canadian exports to the United States.⁷¹

But non-exempt export losses in early 2025 hit the Canadian economy through weaker exports, softer business investment, and a deterioration in jobs in trade-sensitive industries. Tariffs on non-USMCA Canadian goods rose to 35% on August 1, 2025, with 40% for transshipped items.⁷² On October 14, new tariffs hit softwood lumber (10%, rising to higher rates in 2026), upholstered furniture (25%-30%), and cabinets/vanities (25%-50%).⁷³ On October 25, 2025, President Trump did order a 10% increase in tariffs on various Canadian goods in retaliation for the Canadian ad campaign that featured President Reagan's anti-tariff language.⁷⁴

⁶⁹ *North American Free Trade Agreement (NAFTA)*, Dec. 17, 1992, 32 I.L.M. 289.

⁷⁰ Office of the United States Trade Representative, "United States-Mexico-Canada Agreement" (last visited 15 June 2026), online: <ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement> [perma.cc/DX9F-NN6R].

⁷¹ Miriam Waldvogel, "Trump's Canada tariff carve-out spares most products – for now", *The Hill* (8 August 2025), online: <thehill.com/business/5442006-canada-imports-trump-tariffs/> [perma.cc/5CX2-F7PE] ("President Trump's topline tariffs of 35 percent on Canada are among the highest in the world. However, most imports from America's northern neighbor could be spared thanks to sweeping exemptions under the U.S.-Mexico-Canada Agreement (USMCA) negotiated during Trump's first term...The USMCA allows products to be traded duty-free if they significantly originate from North America – a carve-out that currently applies to some 90 percent of products coming down over the northern border, and could potentially apply to more.")

⁷² The White House, "Fact Sheet: President Donald J. Trump Amends Duties to Address the Flow of Illicit Drugs Across our Northern Border" (31 July 2025), online (government website): <whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-amends-duties-to-address-the-flow-of-illicit-drugs-across-our-northern-border/> [perma.cc/9PB6-LK2K].

⁷³ David Lawder & David Shepardson, "Trump sets 10% tariff on lumber imports, 25% on cabinets and furniture", *Reuters* (last updated 30 September 2025), online: <reuters.com/world/trump-sets-10-tariff-lumber-imports-higher-rates-wooden-products-2025-09-30/> [perma.cc/VVH2-VLUV].

⁷⁴ Faris Tanyos, "Trump hikes tariffs on Canada by another 10% in response to Ontario's anti-tariff ad", *CBS News* (last updated 26 October 2025), online:

In June of 2025, the Bank of Canada said that some two million Canadian jobs relied on goods exports to the United States, and that manufacturing employment was down 55,000 since the start of the year. It also reported that business investment fell sharply as firms delayed hiring and spending because of tariff uncertainty. Canada's overall growth slowed materially in 2025. One Bloomberg summary said real GDP grew just 1.7% in 2025, the weakest annual pace since the 2020 contraction, and linked that weakness to the hit from exports under Trump's tariffs.⁷⁵ Not surprisingly, Canada's labor market is also static since the inception of the Trump IEEPA tariffs.⁷⁶

The Canadian industries hardest hit included the steel, aluminum, automobile, softwood lumber, and energy industries.⁷⁷ The United States continues to impose a 25% tariff on Canadian automobiles. This measure is one of the most politically

<cbsnews.com/news/trump-hiking-tariffs-canada-10-percent-ontario-ad/> [perma.cc/K956-PY3B]. See also Reuters, "Trump sets 10% hike in tariffs on Canada after ad airs during World Series", *Reuters* (25 October 2025), online: <reuters.com/business/trump-announces-10-increase-tariffs-canada-2025-10-25/> [perma.cc/5HRQ-4NU7].

⁷⁵ Nojoud Al Mallees, Mario Baker Ramirez & Erik Hertzberg, "Eight Charts Show 'Rupture' With Canada Under Trump's Tariffs", *Bloomberg News* (5 March 2026), online: <bloomberg.com/news/articles/2026-03-05/eight-charts-show-rupture-with-canada-under-trump-s-tariffs> [perma.cc/FF3Q-SL65 ("US protectionism immediately took a bite out of the Canadian economy. Exports to the US tumbled by 5.8% last year as Canada recorded its widest trade deficit in data going back to 1988, outside of one year during the Covid-19 pandemic. The decline was driven by lower volumes of vehicles, steel, aluminum and forestry products, all of which are subject to US sectoral tariffs.")

⁷⁶ Craig Lord, "Canada's labour market is 'static' after a year of U.S. tariffs, demographic shifts", *The Globe and Mail* (2 April 2026), online: <theglobeandmail.com/business/economy/jobs/article-canada-labour-market-us-tariffs-demographics-population-industries/> [perma.cc/S95C-MF6X].

⁷⁷ David L. Nevins, "The Facts on U.S.-Canada Tariffs Nearly One Year Into Trump's Plan", *The Fulcrum* (11 February 2026), online: <thefulcrum.us/economy/u-s-canada-tariffs-2026> [perma.cc/5WN8-ATLV]. See also Claire Fan & Annie Zheng, "Tracking the impact of U.S. tariffs on five targeted Canadian industries" (4 December 2025), online (website): <rbc.com/en/economics/canadian-analysis/featured-analysis/insights/tracking-the-impact-of-u-s-tariffs-on-five-targeted-canadian-industries/> [perma.cc/AHR7-E695].

contentious aspects of the dispute due to the highly integrated North American automotive supply chain.

As of spring 2026, the U.S. and Canada were in renegotiations of the CUSMA/USMCA trade agreement. The Trump administration is openly floating the option of either letting the current deal lapse starting in 2036 or splitting it into two separate bilateral agreements with Canada and Mexico; this has created some uncertainty, but no final decision has been taken yet.⁷⁸ Ongoing CUSMA and USMCA reviews and negotiations continue amid these tensions.⁷⁹

For U.S. companies, the impact of the Trump IEEPA tariffs has also been significant.

Tariffs paid by midsize U.S. businesses tripled over the course of past year.⁸⁰ Rising costs associated with President Trump's tariffs have resulted in increased layoffs and less capital for investments, according to supply chain professionals surveyed by Association for Supply Chain Management and CNBC. Most respondents (65%) reported at least a 10-15% increase in costs, which according to ASCM, can be a "major shock" reshaping budgets, strategy, and the viability of some businesses. Thirty-four percent of those respondents cited an increase in costs greater than 15%.⁸¹

⁷⁸ Mark Rendell, "U.S. expects USMCA to remain in place, with 'separate protocols' for Canada and Mexico", *The Globe and Mail* (last updated 8 April 2026), online: <theglobeandmail.com/business/article-usmca-talks-separate-protocols-jamieson-greer/> [perma.cc/M6VG-855F] ([t]he agreement lays out three possible paths forward. On July 1, the partners can agree to renew the deal for 16 years. If they don't, they begin a process of annual reviews that continue for 10 years, after which the agreement ends. Any of the three partners can also withdraw from the agreement with six months' notice.)

⁷⁹ Ana Swanson, "As Trump Threatens to Leave North American Deal, Supporters Urge Him to 'Do No Harm'" *The New York Times* (4 December 2025), online: <nytimes.com/2025/12/04/business/economy/trump-north-american-trade-deal.html> [perma.cc/T5C7-G86N].

⁸⁰ Josh Boak, "Tariffs paid by midsize US companies tripled last year, a JPMorganChase Institute study shows", *Associated Press* (last updated 19 February 2026), online: <apnews.com/article/trump-tariffs-mid-sized-companies-costs-consumers-2a25158ff1d06bd7f72d909a8ec64f25> [perma.cc/92YP-ZCGW].

⁸¹ Diego Marroquín Bitar, Christopher Hernandez-Roy & Earl Anthony Wayne, "USMCA Review 2026. Pathways, Risks, and Strategic Considerations for North America's Economic Future" (18 August 2025), online (website): <csis.org/analysis/usmca-review-2026> [perma.cc/5GZ7-UBGS].

U.S. automaker GM's estimates of annual tariff costs fluctuated throughout 2025. In a first quarter SEC filing, GM projected an annual tariff impact of up to \$5 billion; a third quarter filing revised that projection down to \$4.5 billion. Caterpillar, which produces heavy transport equipment for construction and manufacturing firms, had initially projected annual tariff costs of up to \$1.5 billion before upwardly revising that estimate to \$1.75 billion in the third quarter. John Deere provided regular updates on tariff costs as they were incurred during the year, citing impacts of \$30 million and \$600 million, respectively.⁸² All these firms, and many others, discussed tariff costs in qualitative terms in their SEC filings, describing the trade policy environment as "highly dynamic," "fluid," and "difficult to predict."⁸³ This has had an impact on hiring, which as of April 2026 was often described as blue-collar job losses in nearly every state while failing to boost manufacturing or close the trade deficit in goods.⁸⁴ While clearly not the President's intent, the effect of the tariffs has been to reduce manufacturing employment in the U.S. rather than increase it.

In sum, Trump's IEEPA tariffs have disrupted established supply chains, making it harder and more expensive for small businesses in the U.S. to source materials and products. Delays, shortages, and the need to find new suppliers can further increase costs and operational complexity. The uncertainty around which products will be tariffed and for how long makes planning and

⁸² Christopher Bangert-Drowns, "U.S. businesses report that tariff policies will likely lead to price increases and labor market impacts in 2026" (15 January 2026), online (website): <equitablegrowth.org/u-s-businesses-report-that-tariff-policies-will-likely-lead-to-price-increases-and-labor-market-impacts-in-2026/> [perma.cc/SJ38-KX3P].

⁸³ *Ibid.*

⁸⁴ Ryan Mulholland & Kennedy Andara, "One Year After 'Liberation Day,' American Workers Are Feeling the Negative Effects of the Trump Administration's Tariffs" (17 March 2026), online (website): <americanprogress.org/article/one-year-after-liberation-day-american-workers-are-feeling-the-negative-effects-of-the-trump-administrations-tariffs/> [perma.cc/8H8X-S8JX] (as of April 2026, Trump's tariffs have generally negatively impacted U.S. hiring, contributing to a decline in manufacturing employment rather than the promised boom. Rising supply chain costs from tariffs have triggered increased layoffs and hiring freezes, with 45 states experiencing lower blue-collar job creation in early 2026).

budgeting extremely difficult for startups and small businesses.⁸⁵ Many small businesses operate with limited cash reserves. The sudden imposition of tariffs can create surprise bills—sometimes in the hundreds of thousands of dollars—that threaten their ability to pay suppliers, employees, or invest in growth.⁸⁶

B. Impact on U.S.–Canada Relations

The Trump tariffs have strained U.S.–Canada relations not just economically but also politically. Historically, the two nations have been among the closest of allies, with the world’s longest undefended border,⁸⁷ mutual defense and security arrangements,⁸⁸ and with highly integrated economies. The daily cross-border trade

⁸⁵ Michael Negron, Mimla Wardak & Kennedy Andara, “In the First Year, President Trump’s Tariffs Have Cost Small-Business Importers \$306,000 on Average” (26 March 2026), online (website): <americanprogress.org/article/in-the-first-year-president-trumps-tariffs-have-cost-small-business-importers-306000-on-average/> [perma.cc/E98Y-XP5C]. (“[d]espite cost increases for small businesses, the president touted his tariff agenda during his State of Union address in February as beneficial for Main Street America, saying that tariffs are paid by foreign countries. However, in survey after survey, small businesses are telling a different story. According to the Federal Reserve’s Small Business Credit Survey, rising costs remain the most frequently cited financial challenge for firms. More than 4 in 10 report that tariff-related price increases are affecting their operations, often forcing businesses to either absorb higher input costs or pass them on to customers, consistent with research showing that roughly 90 percent of the tariff costs in 2025 were ultimately borne by U.S. importers and consumers rather than foreign exporters.”)

⁸⁶ Gabrielle Fonrouge, “Small businesses are being crushed by Trump’s tariffs, and economists say it’s a warning for the economy”, CNBC (17 October 2025), online: <cnbc.com/2025/10/17/how-much-trump-tariffs-are-costing-small-businesses.html> [perma.cc/Z7RU-M5VB].

⁸⁷ Stuart Wachowicz, “The Longest Undefended Border” (May-June 2012), online (website): <tomorrowworld.org/magazines/2012/may-june/the-longest-undefended-border> [perma.cc/45Z5-NXPP].

⁸⁸ Government of Canada, “The Canada-U.S. Defence Relationship” (last modified 14 December 2014), online (government website): <canada.ca/en/news/archive/2014/04/canada-defence-relationship.html> [perma.cc/DE4T-L6EX]; See also Kenneth Holland, “The Canada–United States defence relationship: a partnership for the twenty-first century” (2014) 20:3 Canadian Foreign Policy J 241.

is valued in the billions of dollars.⁸⁹ The tariffs announced by President Trump in February of 2025 dramatically changed that.

In response to the announced tariffs and President Trump's frequent mention of Canada becoming "the 51st state,"⁹⁰ Canadian leaders and citizens have reacted with defiance, boycotting U.S.-made goods and offering a chorus of "boos" when the U.S. national anthem is played in Canadian sports arenas.⁹¹ Canada is also seeking trade deals with other nations, sensing that Trump is showing neither loyalty nor respect for its neighbor to the north.⁹² Canada's announced counter-tariffs on U.S. goods include targeted measures against politically sensitive industries in Republican-led states.⁹³ Prime Minister Trudeau accused Trump of seeking a "collapse of the Canadian economy" to facilitate annexation by the

⁸⁹ Free trade agreements like the *Canada-U.S. Free Trade Agreement* (1989), *NAFTA* (1994), and *CUSMA* (2020) have been central to the volume of cross-border trade.

⁹⁰ Matina Stevis-Gridneff, "Even on Canada's Election Day, Trump Again Insists Country Should Join U.S.", *The New York Times* (28 April 2025), online: <nytimes.com/2025/04/28/world/canada/trump-51-state.html> [perma.cc/TS68-42DZ].

⁹¹ *Ibid.* See also Eric Koreen, "'Bigger than basketball:' Canadian fans boo U.S. anthem ahead of Raptors-Clippers", *The New York Times* (last updated 3 February 2025), online: <nytimes.com/athletic/6107484/2025/02/02/raptors-fans-boo-us-national-anthem-clippers-toronto/> [perma.cc/6MGR-WZE8].

⁹² Kyle Duggan, "Canada seeks new trade deals amid Trump tariff threats, inks Ecuador pact", *Global News* (last updated 5 February 2025), online: <globalnews.ca/news/11002590/canada-ecuador-trade-deal-free-trade-trump-tariffs/> [perma.cc/E4J2-CA56].

⁹³ Matina Stevis-Gridneff, "Canada's Plan for a Trade War: Pain for Red States and Trump Allies", *The New York Times* (last updated 20 January 2025), online: <nytimes.com/2025/01/17/world/canada/canada-trump-tariffs.html> [perma.cc/3PH6-BS53]. Some of Canada's tariffs announced by then Prime Minister Justin Trudeau on politically sensitive products from "red states" that favored Trump included oranges and fruit from Florida (Trump's home state and a key swing state), household appliances from South Carolina and Ohio (linked to prominent Republican politicians), motorcycles from southern Pennsylvania (another pivotal state in recent elections), dairy and poultry from Wisconsin and Georgia, and bourbon from Kentucky. See Mickey Djuric, "Canada's tariff list targets Republican states, Trump allies", *Politico* (3 February 2025), online: <politico.com/news/2025/02/03/canada-tariff-targets-00202005> [perma.cc/F5Q5-9ZRJ].

U.S.⁹⁴ Trump's threats to revise border treaties, challenge NORAD cooperation, and remove Canada from the Five Eyes alliance introduced substantial geopolitical friction between the two nations.⁹⁵

In brief, Trump's "emergency" tariffs have destabilized economic interdependence, politicized trade policy, and risk long-term alienation between the two nations, with cascading effects on regional security and global trade dynamics. Prime Minister Mark Carney has proceeded cautiously and may well have softened the blow of U.S. tariffs through a mix of targeted retaliation, tariff-relief deals, domestic economic support, and trade-diversification measures.

Now that the U.S. Supreme Court has ruled against Trump's use of IEEPA to impose new tariffs, some stability has been restored to the trade relationship, although many obstacles for Canada remain.⁹⁶ Carney has traveled to the Pacific Rim and to Europe to further export markets for Canadian goods.⁹⁷

Unlike some national leaders, Carney did not rush to negotiate with the U.S. from a position of weakness and has sought out new markets for Canadian goods.⁹⁸ Carney has also shown that he is a realist when it comes to Trump's foreign policies: when he spoke at Davos in February, he was clear (and correct) that the U.S. had

⁹⁴ John Paul Tasker, "Trudeau says Trump's 'dumb' trade war is designed to collapse the Canadian economy", *CBC News* (last updated 4 March 2025), online: <[cbc.ca/news/politics/trudeau-canada-response-tariffs-1.7473965](https://www.cbc.ca/news/politics/trudeau-canada-response-tariffs-1.7473965)> [perma.cc/L6LN-8ZV4].

⁹⁵ Demetri Sevastopulo & Ilya Gridneff, "White House official pushes to axe Canada from Five Eyes intelligence group", *Financial Times* (last updated 25 February 2025), online: <[ft.com/content/2dfa3c11-64a7-49f6-83df-939b8d1cfb8e?syn-25a6b1a6=1](https://www.ft.com/content/2dfa3c11-64a7-49f6-83df-939b8d1cfb8e?syn-25a6b1a6=1)> [perma.cc/Z5EE-9YT9].

⁹⁶ Andrew DiCapua, "Why Trump's Tariffs Didn't Break Canada", *Maclean's* (15 January 2026), online: <[macleans.ca/economy/why-trumps-tariffs-didnt-break-canada/](https://www.macleans.ca/economy/why-trumps-tariffs-didnt-break-canada/)> [perma.cc/5VNE-CA53].

⁹⁷ Ian Austen, "With Canada No Longer Able to Rely on U.S., Carney Pushes New Markets", *The New York Times* (5 August 2025), online: <[nytimes.com/2025/08/05/world/canada/canada-carney-tariffs-response.html](https://www.nytimes.com/2025/08/05/world/canada/canada-carney-tariffs-response.html)> [perma.cc/Z3BU-PEE6].

⁹⁸ Janyce McGregor, "Canada signing agreement with EU to enhance free trade deal", *CBC News* (last updated 5 March 2026), online: <[cbc.ca/news/politics/ceta-eu-canada-trade-9.7116223](https://www.cbc.ca/news/politics/ceta-eu-canada-trade-9.7116223)> [perma.cc/EVF2-GB8U].

largely abandoned the post-World War II order, using the term “rupture.”⁹⁹

That “rupture” is largely the product of President Trump’s aggressive and zero-sum approach to other nations on issues of trade and the acquisition of power and resources. As he continues to demand submission through aggression, Carney is taking the opposite approach, showing the world of global trade how treating each other as equals, and with respect will be to everyone’s benefit. He looks to unite those countries who are “rules-restoring” democracies that share his diagnosis of a fractured global order, and a vision of the future united in their global leverage.¹⁰⁰

C. Declining Trust in U.S. Global Leadership

The “rupture” Carney spoke of at Davos may not be permanent, but any repairs in that rupture will take considerable

⁹⁹ World Economic Forum, “Davos 2026: Special address by Mark Carney, Prime Minister of Canada” (20 January 2026), online (website): <weforum.org/stories/2026/01/davos-2026-special-address-by-mark-carney-prime-minister-of-canada/> [perma.cc/YW3J-J6NH] ([s]peaking of the ‘old order’ with the U.S. as an economic hegemon, he said; “[t]his bargain no longer works. Let me be direct. We are in the midst of a rupture, not a transition. Over the past two decades, a series of crises in finance, health, energy and geopolitics have laid bare the risks of extreme global integration. But more recently, great powers have begun using economic integration as weapons, tariffs as leverage, financial infrastructure as coercion, supply chains as vulnerabilities to be exploited.”)

¹⁰⁰ Bob Brewer, “Goodbye USA – Canadian Prime Minister Mark Carney’s Middle-Powers Playbook Is Officially In Play, Part 2” (last visited 25 May 2025), online (website): <braumillerlaw.com/goodbye-usa-canadian-prime-minister-mark-carneys-middlepowers-playbook-is-officially-in-play-part-2/> [perma.cc/QHR7-M65W] (“Carney’s grand plan with this MPEP alliance is to create a “bridge” between the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the European Union, aiming to establish a massive, rules-based trading bloc of approximately 1. Billion people, with an economic impact of \$3 trillion dollars. Canada is the only country who is a member of both groups, and a co-founder of the CPTPP, which is the foundation of a very opportunistic position to be shaping the alliance globally. The purpose of the coalition is intended to counter the impact of global tariffs, particularly those imposed by President Trump, and to diversify supply chains away from the United States. This new potential union of countries includes . . . Japan, South Korea, Australia, New Zealand, Singapore, Vietnam, Malaysia, Mexico, Chile, Peru, Colombia, United Kingdom, Germany, France, Netherlands, Sweden, Finland, Norway and Denmark.”).

time. Trump's tariffs have generated genuine distrust of the U.S. by many former political allies around the world, as well as making the U.S. appear less of a safe haven for foreign investment.¹⁰¹ By imposing tariffs on traditional partners such as the European Union and Japan, Trump and his administration have weakened collaborative efforts to counter China's market distortions and pushed traditional trading partners into bilateral and regional agreements that exclude the United States.¹⁰² Also, the unilateral approach violates long-standing trade norms, eroding trust in U.S. leadership and creating vacuums that rivals like China may exploit.¹⁰³ A zero-sum, mercantilist approach to international economic and political relations abandons the post-World War II international order, with nothing to replace it but zero-sum politics. That approach did not turn out well in the 1930s and will not turn out well now.¹⁰⁴

¹⁰¹ Justin Ho, "Tariffs and uncertainty are prompting foreign investors to re-think U.S. investment", *Market Place* (25 March 2025), online: <marketplace.org/story/2025/03/25/tariffs-and-uncertainty-are-prompting-foreign-investors-to-re-think-u-s-investment> [perma.cc/Z8DY-V5BY]. See also Viral Acharya & Toomas Laarits, "How the tariff war shock affected the 'safe asset' privilege of US Treasuries" (28 January 2026), online (website): <cepr.org/voxeu/columns/how-tariff-war-shock-affected-safe-asset-privilege-us-treasuries> [perma.cc/DT8C-PS34].

¹⁰² Lim Hui Jie, "Trump's tariffs could push U.S. allies elsewhere - including China and India", *CNBC* (14 March 2025), online: <cnbc.com/2025/03/14/trump-tariffs-may-push-us-allies-toward-countries-like-china-india.html> [perma.cc/TU37-CHRS]. See also James Bacchus, "World Trade Without the US" (12 March 2026), online (website): <cato.org/policy-analysis/world-trade-without-us> [https://perma.cc/L2PU-B4HJ] ("[o]ther countries are lowering trade barriers with each other by concluding new bilateral and plurilateral trade agreements, and exporters are reconfiguring supply chains to route around American protectionism. Regardless of whether the United States remains indispensable to the global economy, international trade is still happening—and it is happening increasingly without the United States").

¹⁰³ Didi Tang & Zeke Miller, "As Trump alienates allies with US tariffs, China is poised to exploit the gaps", *Associated Press* (last updated 10 April 2025), online: <apnews.com/article/china-united-states-tariffs-influence-d0bd2de680a04f0e1cbbc42a8bba1c8f> [perma.cc/4M7S-D6Q6].

¹⁰⁴ Ryan Mulholland & Damian Murphy, "Trump's Attacks on Multilateralism Make America Weaker, Not Stronger" (12 November 2025), online (website): <americanprogress.org/article/trumps-attacks-on-multilateralism-make-america-weaker-not-stronger/> [perma.cc/2HF6-8D4V].

The Trump tariffs will likely bring with them diminished U.S. credibility, reduced economic competitiveness, and a fractured international order.¹⁰⁵ While aiming to boost domestic manufacturing, Trump's tariff policies are more likely to isolate the U.S. economically and diplomatically, weakening its capacity to address the many global challenges that require international cooperation.

D. Congress, the President, and the Path to a “Unitary Executive”

Under the notion of a “unitary executive” in the U.S., President Trump's unilateral imposition of tariffs reveals a tendency (if not a trend) trend toward authoritarian rule in the United States. Contrary to the standard civics lesson about checks and balances and separation of powers in the U.S. constitutional order, the Trump administration is following the authoritarian playbook.¹⁰⁶ Trump and many administration officials and supporters use a debatable legal theory to justify the constitutionality of taking strong actions on major questions without input or oversight from Congress – the “unitary executive.”¹⁰⁷

¹⁰⁵ Melanie W. Sisson et al, “Commentary: Is Trump reshaping the world order? Brookings experts weigh in” (2 February 2026), online (website): <brookings.edu/articles/is-trump-reshaping-the-world-order/> [perma.cc/3XBU-XFC8]. See also Inu Manak et al, “A Year After ‘Liberation Day,’ Experts Review the Costs of Trump’s Tariffs” (2 April 2026), online: <cfr.org/articles/a-year-after-liberation-day-experts-review-the-costs-of-trumps-tariffs/> [perma.cc/M29B-6SRU].

¹⁰⁶ Paige Sutherland & Meghna Chakrabarti, “Trump’s 2025 authoritarian playbook and what it means for democracy” (26 February 2024), online (website): <wbur.org/onpoint/2024/02/26/trumps-authoritarian-playbook-for-2025-and-what-it-means-for-democracy/> [perma.cc/GUU5-J2C7].

¹⁰⁷ Daniel D. Birk, “Interrogating the Historical Basis for a Unitary Executive” (2021) 73:1 Stanford L. Rev. 175. See also Michael C. Dorf, “The Misguided Unitary Executive Theory Gains Ground” (19 June 2023), online (website): <verdict.justia.com/2023/06/19/the-misguided-unitary-executive-theory-gains-ground> [perma.cc/3KQS-TTPZ]. (“[t]he unitary executive theory posits that the Constitution gives the President authority to control all executive action. If fully adopted, it would act as a very substantial limit on the power of Congress to assign executive authority to high-ranking personnel who do not serve at the pleasure of the President.”) The Court has yet to fully apply this theory in a decision, but many Court observers are convinced that the Roberts court majority is going to reverse a 90-year-old precedent,

President Trump's administration has seen an aggressively political approach to administrative agencies and their directors, claiming authority to fire even heads of agencies that Congress has

Humphrey's Executor, to allow President Trump to fire the head of the Federal Trade Commission without cause, other than his desire to have his own choice. In *Humphrey's Executor*, the justices said that President Franklin D. Roosevelt could not remove a member of the F.T.C. merely because of political differences. "But in the last 15 years, the court has repeatedly narrowed that decision to give the president more control over executive officials." See Ann E. Marimow, "Justices Seem Ready to Give Trump More Power to Fire Independent Government Officials", *The New York Times* (8 December 2025), online: <nytimes.com/2025/12/08/us/politics/supreme-court-trump-presidential-power.html> [perma.cc/2ARR-JC9R]. Adopting the government's position would call into question the constitutionality of job protections extended to leaders of more than two dozen other bipartisan commissions and boards. Congress intended to protect these agencies from partisan pressures and charged them with protecting consumers, workers and the environment. Marimow writes that "Justice Elena Kagan said such a ruling would "put massive, uncontrolled, unchecked power in the hands of the president." Justice Sonia Sotomayor told the administration's lawyer that "you're asking us to destroy the structure of government" and to "take away from Congress its ability to protect its idea that a — the government is better structured with some agencies that are independent." In response, D. John Sauer, the solicitor general, said that "the sky will not fall" if the justices give the president this new power. "In fact, our entire government will move toward accountability to the people"). Advocates of the unitary executive theory have focused more on the domestic operations of federal agencies, but the Commerce Department is a federal agency with an outward facing mission that includes the office of the USTR and has historically set tariffs. See also Peter M. Shane, "The Unbearable Lightness of the Unitary Executive Theory" (3 March 2025), online (website): <theregreview.org/2025/03/03/shane-the-unbearable-lightness-of-the-unitary-executive-theory/> [perma.cc/5RAF-L4AD] ("[t]he modern independent agency design, which the U.S. Congress first adopted for the Interstate Commerce Commission in 1887, is intended to foster deliberation, provide a monitoring system for each party through the capacity for dissent, reduce the prospects for agency "capture" by special interests, and promote impartiality in the administration of statutes...[i]n contrast, President Trump's campaign against agency independence is part of his undisguised effort to effectuate a radical dismantling of our checks-and-balances system without amending the U.S. Constitution. It goes hand in hand with his efforts to reshape the civil service, praetorian-ize the military, and staff the Administration from top to bottom based on personal fealty, rather than qualifications and proven character.")

sought to protect from political influence.¹⁰⁸ He has largely governed by executive order, and beyond required budget bills¹⁰⁹ and the S.A.V.E. Act,¹¹⁰ he has sent no legislative policy proposals to Congress. Trump's tariffs reflect his authoritarian tendencies; they were imposed through sweeping executive action, bypassing the traditional democratic process and constitutional checks and balances.¹¹¹ The ability of one person to enact such far-reaching economic policies highlights a broader trend of centralizing power in the executive branch. Political scientists and commentators argue that this centralization is symptomatic of democratic backsliding, where Congress has become increasingly unwilling or unable to assert its constitutional authority, effectively ceding power to the

¹⁰⁸ Laruen McFerran & Celine McNicholas, "Trump's assault on independent agencies endangers us all" (22 October 2025), online (press release): <epi.org/publication/trumps-assault-on-independent-agencies-endangers-us-all/> [perma.cc/23MB-NLAE] ("[i]ndependent agencies were carefully designed by Congress to ensure that those charged with safeguarding critically important public interests—like workers' rights, product safety, or household financial security—would act to serve the public good, not the president's political needs. However, since taking office, the Trump administration has been on a crusade to attack and undermine the effectiveness of independent agencies.")

¹⁰⁹ Taylor N. Riccard, "The Role of the President in Budget Development: In Brief" (22 May 2025), online (government website): <congress.gov/crs-product/R47092> [perma.cc/G9JQ-G4YG].

¹¹⁰ SAVE Act, H.R. 22, 119th Cong. (2025). Even this bill, not yet passed by Congress, is not so much a general policy proposal for the public good, but rather, an effort to federalize the election process in all fifty states. According to Vote.org, the SAVE Act's stated goal "is to make sure only U.S. citizens vote in federal elections. That is already the law, and it is already being enforced. Noncitizen voting has been a federal crime since 1996, carrying serious penalties including fines, imprisonment, and deportation. What the SAVE Act would do is add a new layer of documentation requirements on top of a verification system that is already in place and working." See Vote.org, "The SAVE Act: What every American Voter Needs to Know" (last visited 27 May 2026), online (website): <vote.org/save-act/> [perma.cc/6BJM-66DM].

¹¹¹ Zach Beauchamp, "The real reason Trump is destroying the economy", *Vox* (3 April 2025), online: <vox.com/politics/407053/trump-tariff-expensive-democracy-authoritarianism-breakdown> [perma.cc/ZG5N-AWWY] ("[y]et the basic design of the American system has broken down, allowing the president who usurped far more authority than is healthy. In many policy areas, the presidency functions less like a democratic chief executive who operates under constraint and more like an elected dictatorship.")

president.¹¹² Trump's administration has also been defying the courts who are ruling against some of his more obviously unconstitutional executive orders.¹¹³

President Trump has justified the tariffs by declaring a national emergency, a tactic often associated with authoritarian regimes to expand executive authority and circumvent normal legislative procedures.¹¹⁴ Not only does President Trump's bilateral "deal-making" undo regional and multi-lateral trade deals, but it also specifically targets other nations Trump seeks to reward or punish, based on what might benefit him or GOP donors.¹¹⁵ Such selective

¹¹² Norman Ornstein & Thomas E. Mann, "Commentary: The Broken Branch: How Congress is Failing America and How to get it Back on Track" (27 June 2006), online (website): <[brookings.edu/articles/the-broken-branch-how-congress-is-failing-america-and-how-to-get-it-back-on-track/](https://www.brookings.edu/articles/the-broken-branch-how-congress-is-failing-america-and-how-to-get-it-back-on-track/)> [perma.cc/AHK7-A6B9].

¹¹³ Justin Jouvenal, "Trump officials accused of defying 1 in 3 judges who ruled against him", *The Washington Post* (21 July 2025), online: <[washingtonpost.com/politics/2025/07/21/trump-court-orders-defy-noncompliance-marshals-judges/](https://www.washingtonpost.com/politics/2025/07/21/trump-court-orders-defy-noncompliance-marshals-judges/)> [perma.cc/HSB3-AZRE].

¹¹⁴ Brandon J. Johnson, "Normalizing Emergencies" (6 February 2025), online (Yale J of Regulation): <yalejreg.com/nc/normalizing-emergencies-by-brandon-j-johnson/> [perma.cc/2HKZ-UJ7E].

¹¹⁵ Damien Cave, "Why Vietnam Ignored Its Own Laws to Fast-Track a Trump Family Golf Complex", *The New York Times* (25 May 2025), online: <[nytimes.com/2025/05/25/world/asia/trump-vietnam-golf-project.html](https://www.nytimes.com/2025/05/25/world/asia/trump-vietnam-golf-project.html)> [perma.cc/P7DU-JPAE] ("[t]his \$1.5 billion golf complex outside the capital, Hanoi, as well as plans for a Trump skyscraper in Ho Chi Minh City, are the Trump family's first projects in Vietnam – part of a global moneymaking enterprise that no family of a sitting American president has ever attempted on this scale. And as that blitz makes the Trumps richer, it is distorting how countries interact with the United States. To fast-track the Trump development, Vietnam has ignored its own laws, legal experts said, granting concessions more generous than what even the most connected locals receive. Vietnamese officials, in a letter obtained by The New York Times, explicitly stated that the project required special support from the top ranks of the Vietnamese government because it was 'receiving special attention from the Trump administration and President Donald Trump personally.'") See also Sarah Grace Spurgin, "Trump Loves Tariffs, Just Not for the Rich and Well-Connected...Self-Dealing, Corruption, and Grift in Trump's First-Term Tariff Exceptions" (24 March 2025), online (report): <citizen.org/article/trump-loves-tariffs-just-not-for-the-rich-and-well-connected/> [perma.cc/M4FC-99L3] (detailing how, in his first term, President Trump used his delegated powers to benefit friends, GOP donors, and even himself).

and punitive use of economic policy is certainly “unitary” – Trump alone decides, perhaps with key supporters, but often for reasons.¹¹⁶ But this version of the “unitary executive” is not particularly accountable, and comes at the expense of economic stability and the rule of law.

III. U.S. PRESIDENTIAL TARIFF POWERS AND THEIR EXERCISE

President Trump claims inherent authority under the Constitution’s “executive Powers” provision as well as certain Congressionally delegated tariff powers. The Constitutionality of those claims has been litigated, and the Supreme Court’s decision in various consolidated cases challenging his claims came in February of 2026.¹¹⁷ Before discussing that decision, it will help to provide some background on Presidential authority to impose tariffs, whether Constitutional or statutory.

A. Constitutional and Statutory Authority

The United States Constitution states that tariffs are the exclusive jurisdiction of Congress, not the President. Among the enumerated powers assigned to Congress in Article I, Section 8 are the authority “to regulate Commerce with foreign Nations” and to “lay and collect Taxes, Duties, Imposts, and Excises.”¹¹⁸ While Article II, Section 2 does give the president authority to make

¹¹⁶ Pema Levy, “Trump’s Tariffs Give Him a New Way to Dole Out Reward and Punishment”, *Mother Jones* (3 April 2025), online: <motherjones.com/politics/2025/04/donald-trump-tariffs-corruption/> [perma.cc/97XJ-K9G8] (“[u]nder Trump, tariffs will be a potent and unilateral mechanism for reintroducing systematic corruption into the economy. This is a two-step process. First, Trump can raise or lower tariffs unilaterally. Second, he can grant waivers and exemptions, forcing people, corporations, localities, and even nations and foreign actors to come seeking reprieve on bended knee...Tariffs didn’t always operate this way. Until the 1930s, the United States generally had high tariffs, imposed by Congress.”)

¹¹⁷ *Learning Res., Inc. v Trump*, supra note 7.

¹¹⁸ US Const art. I, § 8; See also Christopher Zipoli, “Congressional and Presidential Authority to Impose Import Tariffs” (19 March 2026), online (government website): <congress.gov/crs-product/R48435?hl=%22Impose+Import+Tariffs%22&s=3&r=1> [perma.cc/BL2A-ETEF].

treaties, this power includes the stipulation that the president must have the “advice and consent” of the Senate, in the form of a two-thirds majority.¹¹⁹ President Trump also claims extensive powers under the vesting clause of the Constitution.¹²⁰ But without those implied “executive Power” authorities, Article II on its own provides no constitutional basis for a president to unilaterally enter into or undo a trade treaty or agreement.¹²¹ However, through multiple acts passed over various decades, Congress has gradually delegated some of its tariff power to the executive branch.¹²² Given the lack of presidential tariff authority in the constitution, these acts comprise the justification for any presidential tariff action.

The Reciprocal Trade Agreements Act of 1934 (RTAA) gave the president the authority to negotiate trade agreements with other countries, including tariff reductions of up to 50%, without congressional approval. This act was passed in response to the Smoot-Hawley Tariff Act of 1930, which raised tariffs close to the highest level they had ever been.¹²³

The Trade Expansion Act of 1962 extended to the president the authority to negotiate tariff reductions of up to 80%.¹²⁴ Section

¹¹⁹ US Const art II, § 2.

¹²⁰ Nick Bednar, “The Meaning of Article II and ‘Executive Power’ to Trump”, Law Fare (20 March 2025), online: <lawfaremedia.org/article/the-meaning-of-article-ii-and-‘executive-power’-to-trump> [perma.cc/9UFP-EXUL]; See also David French, “Opinion: One Sentence in the Constitution Is Causing America Huge Problems”, *The New York Times* (21 August 2025), online: <> [perma.cc/XS3U-GNZG] (French suggests that the scope of Article II should be explicit that the President executes the laws passed by Congress, not that he is the nation’s executive, vested with unstated but potent executive powers.)

¹²¹ Inu Manak & Helena Kopans-Johnson, “Tariffs on Trading Partners: Can the President Actually Do That?” (February 2025), online: <cfr.org/reports/tariffs-trading-partners-can-president-actually-do> [perma.cc/T7NP-KWB7]. (“[t]rade experts will be the first to point out that Article 1, Section 8 of the Constitution grants Congress the express authority ‘To lay and collect Taxes, Duties, Imposts and Excises’ and ‘To regulate Commerce with foreign Nations.’”)

¹²² *Ibid.*

¹²³ Office of the Historian, “New Deal Trade Policy: The Export-Import Bank & the Reciprocal Trade Agreements Act, 1934” (last visited 27 May 2026), online (government website): <history.state.gov/milestones/1921-1936/export-import-bank> [perma.cc/SB9K-KJWJ].

¹²⁴ *The Trade Expansion Act of 1962* (enacted 1962, codified at 19 U.S.C. ch. 7).

232 also allowed the president to institute or raise tariffs, as long as doing so was recommended by the Secretary of Commerce, and as long as the tariffs applied to products that were “being imported into the United States in such quantities or under such circumstances as to threaten or impair the national security.”¹²⁵

The Trade Act of 1974¹²⁶ afforded the president so-called “fast track authority,” allowing a president to directly handle the negotiation of trade agreements, which Congress was previously required to be involved in. While Congressional approval of agreements was still needed, the act amounted to a meaningful reduction of Congress’ role in trade policymaking. There are also three specific sections of the act with further implications on presidential tariff powers.¹²⁷ Section 122 allows the president to implement tariffs of up to 15% on countries with balance of payment surpluses with the US. The surpluses must be “large and serious,” and the tariffs can only last a maximum of 150 days.¹²⁸ Section 201 gives the president the authority to implement tariffs on specific products when there is a surge in the importation of those products. For tariffs to be authorized, the surge must cause “serious injury” to a U.S. industry.¹²⁹ Section 301 authorizes the President to implement tariffs or make other trade policy decisions in response to “unjustifiable” or “unreasonable” trade practices by a foreign power against the US. Section 301 tariffs require an investigation and consultation by the U.S. Trade Representative (USTR), which can be initiated following a petition or as an internal decision by the USTR.¹³⁰

¹²⁵ Shannon Towaga Mercer & Matthew Kahn, “America Trades Down: The Legal Consequences of Trump’s Tariffs”, *Law Fare* (13 March 2018), online: <lawfaremedia.org/article/america-trades-down-legal-consequences-president-trumps-tariffs> [perma.cc/AN5J-3AHW].

¹²⁶ *U.S. Trade Act of 1974*, § 301 (last amended March 23, 2018).

¹²⁷ Danielle M. Trachtenberg, “Section 301 of the U.S. Trade Act of 1974” (13 March 2026), online (government website): <<https://www.congress.gov/crs-product/IF11346>> [perma.cc/4HM7-XFRH].

¹²⁸ Nathaniel Bolin, “Significant Changes Likely for US Trade Policy and Enforcement” (30 January 2017), online (pdf): <skadden.com/-/media/files/publications/2017/01/significantchangeslikelyforustradepolicyandenforce.pdf> [perma.cc/Rf73-B67E] at 1.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

Finally, IEEPA authorizes the president to change trade policy in response to “unusual or extraordinary” threats to US national security, foreign policy, or economy.¹³¹ To take action based on IEEPA, the President must declare a national emergency, as outlined in the National Emergencies Act of 1976.¹³² Prior to President Trump’s second term, IEEPA had never been used to justify tariff increases, and was more frequently used to impose embargoes or asset freezes.¹³³

¹³¹ *The International Emergency Economic Powers Act* (IEEPA), enacted as Pub. L. No. 95-223, Title II, 91 Stat. 1626 (1977) (codified at 50 U.S.C. §§ 1701–1708).

In full, the relevant provision of IEEPA provides that the President may:

(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

§ 1702. IEEPA further provides that these authorities “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.” See also § 1701(b).

See also Christopher A. Casey, Jennifer K. Elsea & Liana W. Rosen, “The International Emergency Economic Powers Act: Origins, Evolution, and Use” (1 September 2025), online (government website): <congress.gov/crs-product/R45618> [perma.cc/7NMR-SYTZ].

¹³² *The International Emergency Economic Powers Act*, *Ibid.*

¹³³ Christopher A. Casey, “The International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and Tariffs: Historical Background and Key Issues” (7 April 2025), online (government website): <congress.gov/crs-product/IN11129> [perma.cc/6HDV-M7GL].

B. Presidential Tariffs, Then and Now

Prior to Donald Trump's second term, only President Nixon had imposed a blanket tariff as an emergency measure. President Richard Nixon declared a balance of payments emergency and imposed a 10 percent import surcharge in 1971. It was upheld by an appellate court in 1975 in the case of *Yoshida International, Inc. v. United States*.¹³⁴ It is generally assumed, including by the lower courts in cases challenging Trump's 2026 tariffs, that Nixon used the Trading with the Enemy Act (TWEA)—the nearly identical predecessor authority to IEEPA—for the 1971 import surcharge. But Nixon did not claim emergency authority for the measure under TWEA; rather, he claimed authority to impose sanctions under trade agreement laws for the tariffs he put into place.¹³⁵

¹³⁴ *United States v Yoshida International, Inc.*, 63 C.C.P.A. 15, 526 F.2d 560 (1975). The Trump Administration cited *Yoshida* in its brief and its oral argument to the Supreme Court in the *Learning Resources* and *V.O.S. Selections* cases challenging President Trump's IEEPA based tariffs. Brief for Respondents at 9-10, *Learning Resources v Trump et al.* No. 24-1287 (July 2025). The Court of Customs and Patent Appeals (C.C.P.A.), a specialized appellate court for customs matters, held in *Yoshida* that the Trading with the Enemy Act, a predecessor statute to IEEPA, authorized the temporary surcharge to address a balance-of-payments emergency. The C.C.P.A. emphasized Congress's broad delegation during emergencies but noted limits on presidential power. This was a blanket tariff that President Nixon imposed and was time limited. Recent arguments that rely on *Yoshida* as demonstrating Congress' willingness to delegate broad tariff powers) ignore the power that Congress still held via legislative veto before the 1983 Chadha decision. Nonetheless, some legal scholars maintain that *Yoshida* is sufficient authority for the Supreme Court to allow President Trump's IEEPA tariffs. See, for example: Chad Squitieri, "The President's Authority to Impose Tariffs" (2025) 12 Harv. J. L. & Pub. Pol'y Per Curiam (arguing that the district court judge in the *Learning Resources* case should have applied *Yoshida* to recognize an effective Congressional delegation of tariff power to the President); But, compare Tom Campbell, "Presidential Authority to Impose Tariffs" (2023) 83:2 Louisiana L Rev 595 (noting how any interpretation of TWEA and *Yoshida* should take into account the common understanding that the legislative veto was still a viable way for Congress to exercise oversight on its delegated powers at the time *Yoshida* was decided.)

¹³⁵ Alan Wm. Wolff, "How unprecedented are Trump's 'emergency tariffs'?" (28 October 2025), online (website): <piie.com/blogs/realtime-economics/2025/how-unprecedented-are-trumps-emergency-tariffs> [perma.cc/B7VV-YVBA]. Wolff and Carla Hills filed an amicus brief in the *V.O.S. Selections inc., v Trump* case. (President Nixon, like every president before him, invoked trade agreement law – specifically, the Trade Expansion

1. Trump's First Term Tariffs

During his first term as President from 2017 to 2021, Donald Trump implemented a number of tariffs, using the legislation described above to legally justify them.

In mid 2017, the U.S. washing machine and solar industries petitioned the Trump Administration to implement protectionist tariffs on competing, imported products. In early 2018, following the recommendation of the U.S. International Trade Commission (ITC), Trump implemented tariffs on both product categories. Solar cells and modules were subject to a 30% tariff on all imports past a quota, with the tariff decreasing 5% annually, and set to expire after four years. Residential washing machines and washing machine parts were subject to a 50% tariff above a quota, decreasing 5% annually, and set to expire after three years. These tariffs were justified using Section 201 of the Trade Act of 1974, based on the ITC's conclusion that the imported products were causing serious injury to the domestic industry.¹³⁶

In early 2018, the Trump Administration ordered new tariffs on steel and aluminum imports. Imported aluminum was subject to a 10% tariff, and imported steel was subject to a 25% tariff. Canada and Mexico were exempted, as well as a handful of other countries that agreed to import quotas. These tariffs were justified using Section 232 of the Trade Expansion Act of 1962, based on the Secretary of Commerce's finding that the imports were threatening or impairing national security.¹³⁷

Over the course of 2018 and 2019, the Trump Administration passed a series of tariffs on a number of products from China in

Act of 1962, Pub. L. 87-794, 76 Stat. 872, codified at 19 U.S.C. ch. 7 to deal with the competitive effects of imports. As *United States v Yoshida International Inc.*, 526 F.2d 560 (C.C.P.A. 1975) emphasized in upholding these surcharges, President Nixon's surcharges deliberately stayed within the range of import duties approved by Congress, thereby respecting the limits on presidential authority imposed by trade agreement statutes.) Brief for as Amicus Curiae Supporting Respondents, *V.O.S Selections inc., v Trump*. Docket No. 25-250, 2025 WL 2601020, at 4. (Carla Hills was the 10th U.S. Trade Representative, serving under President George H.W. Bush from 1989 to 1993. She was also instrumental in negotiating both NAFTA and the General Agreement on Tariffs and Trade in 1994.)

¹³⁶ Christopher A. Casey et al, "Trump Administration Tariff Actions: Frequently Asked Questions" (15 December 2020), online (government website): <congress.gov/crs-product/R45529> [perma.cc/7PQX-BH3V].

¹³⁷ *Ibid.*

response to what it considered unfair intellectual property practices. These tariffs collectively affected over 20,000 categories of products, subjecting them to a 25% duty. They were justified based on Section 301 of the Trade Act of 1974, following a USTR investigation which concluded China's trade practices were unjustifiable and/or unreasonable.¹³⁸ In 2019, the Trump Administration passed a series of tariffs on \$7.5 billion worth of products from the European Union and United Kingdom. The tariffs cover agricultural products, large civil aircraft, and various other product categories. As with the tariffs on China, they were justified based on Section 301.¹³⁹ However, in the case of the European tariffs, further legitimacy was added by a World Trade Organization (WTO) ruling which authorized the \$7.5 billion worth of tariffs after concluding that the European Union unfairly subsidized its domestic aircraft industry.¹⁴⁰

There was some litigation during Trump's first term around these tariffs; although he never used IEEPA as a justification, it was clear from various arguments and briefs from Trump's Justice Department that he was not relying on statutory authority alone, but also on his inherent Constitutional authority over foreign affairs.¹⁴¹ In his many executive orders on tariffs and other matters related to foreign relations in his second term, Trump has claimed inherent powers under Article II of the Constitution.¹⁴² Because "commerce" (a specific domain of Congress in the Constitution)

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ Office of the U.S. Trade Representative, "U.S. Wins \$7.5 Billion Award in Airbus Subsidies Case" (2 October 2019), online (government website): <ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/us-wins-75-billion-award-airbus> [perma.cc/6TH2-EGNP].

¹⁴¹ See, for example: Br. For Pet'r at 2, 47, *Trump v. Hawaii*, No. 17-965 (U.S. 2017).

¹⁴² Devin Ombres, "The President and Constitutional Violations: Will the Federal Courts Contain the President's Power Grabs?" (20 May 2025), online (website): <americanprogress.org/article/the-president-and-constitutional-violations-will-the-federal-courts-contain-the-presidents-power-grabs/> [perma.cc/D5BB-4SRM] ("[i]n the more than 150 executive orders (EOs) that President Trump has issued during the first four months of this term, he frequently asserts that he is acting under authority granted him by Article II of the Constitution.")

has increasingly become part of U.S. foreign relations, the Executive Branch could make plausible-sounding arguments that “inherent” authority over foreign affairs is a sound Constitutional basis for various Presidential orders on trade, whether it be lowering tariffs, raising them, or setting other requirements on transnational commerce.

2. Tariffs During President Trump’s Second Term

The first months of Donald Trump’s second term as President featured a flurry of tariff activity.

On February 1, 2025, the Trump Administration announced tariffs of Canada,¹⁴³ Mexico,¹⁴⁴ and China.¹⁴⁵ The three countries are among the U.S.’ largest trading partners, accounting for 40% of products imported into the U.S. All goods imported from China were subject to a 10% tariff, which was subsequently raised to 20% on March 3.¹⁴⁶ Trump reached agreements with the leaders of Mexico and Canada to pause the tariffs on imports from their countries, but the respite proved to be temporary.

On March 6, 2025, following a one-month delay, Trump implemented tariffs on imports from Canada¹⁴⁷ and Mexico.¹⁴⁸ Nearly all goods imported from the two countries were subject to a 25% tariff, except Canadian energy products, which were only subject to a 10% tariff. Products that are considered compliant with the U.S.-Mexico-Canada Agreement (USMCA), meaning those that are produced within one of the three countries from local materials, were exempt from the tariffs.¹⁴⁹

¹⁴³ Exec. Order No. 14193, 90 F.R. 9113 (2025)

¹⁴⁴ Exec. Order No. 14194, 90 F.R. 9117 (2025)

¹⁴⁵ Exec. Order No. 14195, 90 F.R. 9121 (2025)

¹⁴⁶ Peter Hoskins. “Trump to hit Canada, Mexico and China with tariffs on Saturday”, *BBC News* (31 January 2025), online: <bbc.com/news/articles/ckg0m79gm10o> [perma.cc/BJR6-GK4L].

¹⁴⁷ Exec. Order No. 14231, 90 F.R. 11785 (2025)

¹⁴⁸ Exec. Order No. 14232, 90 F.R. 11787 (2025)

¹⁴⁹ David Lawder, David Shepardson & David Ljunggren, “Trump exempts some automakers from Canada, Mexico tariffs for one month”, *Reuters* (last updated 5 March 2025), online: <reuters.com/world/americas/us-make-canada-mexico-tariff-announcement-wednesday-commerce-chief-says-2025-03-05/> [perma.cc/8MRB-EETE].

The Trump Administration used IEEPA as a justification for these three sets of tariffs, having declared a national emergency in response to “the extraordinary threat posed by illegal aliens and drugs, including deadly fentanyl.”¹⁵⁰ This marks the first time that a President has used the law to justify the implementation of tariffs, although President Nixon did raise tariffs using IEEPA’s predecessor, the Trading with the Enemy Act of 1917.¹⁵¹

On April 1, 2025, President Trump announced a universal 10% tariff rate on imports from every country, effective April 9. This 10% was a baseline, with about 90 countries subject to individualized tariff rates ranging from 11% to 50%.¹⁵² The tariff on imports from China specifically was raised from 20% to 104%.¹⁵³ A few categories of products are exempt from these tariffs, including energy products, copper, semiconductors, and goods already subject to Section 232 tariffs.¹⁵⁴ This is the most substantial increase in American tariffs since 1934 and has provoked an outcry among the many affected countries.¹⁵⁵

To justify this second round of tariffs, the Trump Administration again turned to IEEPA, declaring another national emergency in response to a “large and persistent trade deficit”

¹⁵⁰ The White House, “Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China” (1 February 2025), online (government website): <[whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-imposes-tariffs-on-imports-from-canada-mexico-and-china/](https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-imposes-tariffs-on-imports-from-canada-mexico-and-china/)> [perma.cc/T9V6-8NDL].

¹⁵¹ Christopher A. Casey, “The International Emergency Economic Powers Act (IEEPA) and Tariffs: Historical Background and Key Issues” (7 April 2025), online (government website): <[congress.gov/crs-product/IN11129](https://www.congress.gov/crs-product/IN11129)> [perma.cc/QUB5-9EKY].

¹⁵² Exec. Order No. 14257, 90 F.R. 15041 (2025).

¹⁵³ Aimee Picchi & Anne Marie D. Lee, “See the full list of reciprocal tariffs by country from Trump’s ‘Liberation Day’ chart”, *CBS News* (last updated 9 April 2025), online: <[cbsnews.com/news/trump-reciprocal-tariffs-liberation-day-list/](https://www.cbsnews.com/news/trump-reciprocal-tariffs-liberation-day-list/)> [perma.cc/B7S3-HWTY].

¹⁵⁴ The White House Fact Sheet (April 2025), *supra* note 52.

¹⁵⁵ Ari Hawkins, Phelim Kine & Daniel Desrochers. “‘Shock. Frustration. Anger.’ Trump’s tariff letters roil Asian allies”, *Politico* (8 July 2025), online: <[politico.com/news/2025/07/08/trumps-tariff-letters-roil-asian-allies-00443008](https://www.politico.com/news/2025/07/08/trumps-tariff-letters-roil-asian-allies-00443008)> [perma.cc/QF6D-R73K]. See also Willem Marx, “Trump tariffs spark ire and dismay from international leaders”, *National Public Radio (NPR)* (last updated 3 April 2025), online: <[npr.org/2025/04/03/nx-s1-5349625/trump-tariffs-international-reaction](https://www.npr.org/2025/04/03/nx-s1-5349625/trump-tariffs-international-reaction)> [perma.cc/H7G4-K9NQ].

caused by “foreign trade and economic practices.”¹⁵⁶ Ultimately, the Supreme Court decided that IEEPA could not be used as Trump had done,¹⁵⁷ but deciding the cases on the statutory language of IEEPA did not approach the ongoing diminution of Congressional oversight on Presidential emergency powers.

IV. DIMINISHING CONGRESSIONAL POWERS OVER FOREIGN AFFAIRS

The separation of powers among the three branches of government has been foundational for the legal and political stability of the United States.¹⁵⁸ Before looking specifically at the National Emergencies Act, and the very few judicial interpretations of that Act, it is relevant to see how “emergency powers” are used (and abused) by the leaders of other nations. This section will explore the importance of checks and balances in the U.S. Constitutional system, the use of emergency powers by leaders of authoritarian nations, the National Emergencies Act, and how that Act must be amended if Congress is to reclaim its Article I powers.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Learning Resources, Inc. v Trump*, 146 S. Ct. 628.

¹⁵⁸ Heritage Foundation, “The Genius of the Constitution...The Founder’s Design” (last visited 27 May 2026), online (website): <heritage.org/essential-constitution/the-genius-the-constitution > [perma.cc/GQ8S-CLZ7]. (“[t]he Framers knew that human nature made this a difficult task. James Madison, for example, wrote that ‘[i]f men were angels, no government would be necessary’ and that ‘[i]f angels were to govern men, neither external nor internal controls on government would be necessary.’ The challenge they faced was that ‘[y]ou must first enable the government to control the governed; and in the next place, oblige it to control itself.’..The Constitution accomplishes this by preventing too much power from ending up in too few hands. The Constitution divides and disperses government power, making it difficult for any person or group to obtain power without first seeking to compromise and reach consensus with others. The Constitution divides power to create ‘checks and balances’ among the three branches of the federal government and between the states and the federal government while also recognizing the priority of certain individual rights and requiring widespread agreement to change the ‘supreme law of the land.’”)

A. Separation of Powers and the Framers of the U.S. Constitution

The concept of checks and balances is familiar to most students in U.S. civics classes and was central to the Founders of the U.S. Constitution.¹⁵⁹ The Founders were aware of how the Roman Republic failed from within due to corruption¹⁶⁰ and the ever-increasing powers for the Caesars and the relative sidelining of the Roman Senate.¹⁶¹ The Founders were also influenced by their experiences with British rule, understanding that concentrating

¹⁵⁹ Samuel Strom, "Separation of Powers: An Overview" (last updated 22 May 2025), online (website): <ncls.org/about-state-legislatures/separation-of-powers-an-overview> [perma.cc/8CVL-AF74] ("[t]he term 'trias politica' or 'separation of powers' was coined by Charles-Louis de Secondat, baron de La Brède et de Montesquieu, an 18th century French social and political philosopher. His publication, *Spirit of the Laws*, is considered one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States. Under his model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently.")

¹⁶⁰ Zephyr Teachout, *Corruption in America* (Cambridge, Massachusetts: Harvard University Press 2014). In Chapter Four, Teachout discusses Edward Gibbon's *The History of the Decline and Fall of the Roman Empire*, of which the first volume had been published in 1776, and which had a clear impact on the thinking of Franklin, Jefferson, and other Founders. ("Gibbon both reflected and influenced the intellectual currents of eighteenth-century intellectuals, with a particular message for the new revolutionaries trying to build sustainable political architecture. The Americans read the story of Rome as a direct analogy to the corruption in the British Empire and a caution for the future" at 33.

¹⁶¹ World Atlas, "The Demise of the Roman Senate" (last visited 6 June 2026), online (website): <worldatlas.com/ancient-world/the-demise-of-the-roman-senate.html> [perma.cc/2LJH-V7PQ] ("[a]s Rome expanded outwards through its many conquests, military generals started to rise in power that often exceeded that of the Senate. There were many such cases when the Senate would issue commands to generals only for the generals to completely disregard their orders. Ultimately, true power in the Late Roman Republic was held by the Legions rather than the Senate. This became abundantly true during the time of Julius Caesar. Caesar, who had gained considerable power and prestige by conquering Gaul (modern-day France) marched on Rome and after vanquishing his political adversaries he declared himself dictator. Caesar then grew the number of senators to 900, most of these new positions were filled with his allies.")

power in any one branch or individual posed the greatest threats to liberty. As James Madison wrote in *Federalist* No. 51:

“The accumulation of all powers, legislative, executive and judicial[] in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.”¹⁶²

The Founders were pragmatic about human nature, believing as James Madison did that “ambition must be made to counteract ambition” and that only a system of mutual checks could preserve freedom.¹⁶³ They divided legal authority among three branches—legislative, executive, and judicial—so that each could check the others and prevent any one branch from becoming too powerful. Each branch has mechanisms to check the others, such as the presidential veto, congressional impeachment powers, and Senate approval of appointments and treaties.¹⁶⁴ They saw the separation of powers as essential not just for effective government, but for the protection of individual rights and the prevention of any form of despotism, whether from a monarch, a legislative majority, or a populist movement.

¹⁶² *Federalist Papers*: No. 51.

¹⁶³ *Ibid.* As James Madison wrote, “[a]mbition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

¹⁶⁴ James M. Burnham, “Separation of Powers: A Primer” (9 September 2015), online (website): <fedsoc.org/commentary/fedsoc-blog/separation-of-powers-a-primer> [perma.cc/LN6M-TFXQ] (“[t]he Founders then enmeshed each branch’s powers in an elaborate system of checks and balances, whereby the branches (attempt to) keep each other in line. For example, although Congress enacts legislation, the President can veto it (subject to an override by a two-thirds vote of each house of Congress). While the President appoints officers, the Senate has the power to give advice and consent to those appointments, and also to the President’s treaties. And although federal judges enjoy life tenure and salary protection, they are empowered only to apply the law rather than make it, and they can be impeached.”)

B. Emergencies and Authoritarian Rulers

Authoritarian leaders around the world have increasingly invoked states of emergency—often citing national security, public health crises, or social unrest—as pretexts to suppress free speech, curtail civil society, and consolidate power.¹⁶⁵ President Trump has praised several autocrats as “smart” and “savvy” leaders, including Vladimir Putin and Victor Orban of Hungary.¹⁶⁶ Trump has also expressed admiration for Turkey’s President Recep Tayyip Erdoğan.¹⁶⁷ After a failed coup attempt in July 2016, President Erdoğan’s government declared a state of emergency and launched a sweeping purge against academics, journalists, and civil society leaders. Emergency decrees were used to dismiss thousands from their posts, revoke passports, and restrict travel, often under accusations of terrorism or dissent.¹⁶⁸ Laws criminalizing “insulting Turkishness” have further stifled criticism and fostered self-censorship.¹⁶⁹

Like President Trump’s declared immigration emergencies, Victor Orbán’s government in Hungary declared a “mass migration emergency” in 2016, citing the influx of refugees and migrants as a threat.¹⁷⁰ This state of emergency was extended multiple times

¹⁶⁵ Steven Levitsky & Daniel Ziblatt, “Opinion: Why Autocrats Love Emergencies...Crises – real and imaginary – loosen normal constitutional constraints”, *The New York Times* (12 January 2019), online: <nytimes.com/2019/01/12/opinion/sunday/trump-national-emergency-wall.html> [perma.cc/W5J8-864E].

¹⁶⁶ Kristen Holmes & Andrew Millman, “Trump praises ‘fantastic’ Viktor Orbán while hosting Hungarian autocrat at Mar-a-Lago for meeting and concert”, *CNN Politics* (last updated 9 March 2024), online: <cnn.com/2024/03/08/politics/trump-orban-mar-a-lago> [perma.cc/8XLZ-BTN4].

¹⁶⁷ Rebecca Falconer, “Trump praises “very smart” Turkish strongman Erdoğan”, *Axios* (8 April 2025), online: <axios.com/2025/04/08/trump-netanyahu-israel-turkey-erdoan> [perma.cc/N6JJ-MT7F].

¹⁶⁸ Gabriel Davis, “Commentary: Türkiye’s Endless Border Emergency” (4 April 2023), online (website): <carnegieendowment.org/sada/2023/04/turkiyes-endless-border-emergency> [perma.cc/NNM9-URTJ].

¹⁶⁹ Bülent Algan, “The Brand New Version of Article 301 of Turkish Penal Code and the Future of Freedom of Expression Cases in Turkey” (2008) 9:12 *German L Rev* 2238.

¹⁷⁰ Audrey Stone, “Hungary: Permanently Ruling by Emergency Decree” (28 March 2023), online: (website):

through 2020. The migration emergency allowed the government to bypass normal legislative procedures and rule by decree, setting a precedent for future emergency regimes. Orbán also used the 2020 COVID-19 pandemic to declare an emergency and extend his powers.¹⁷¹ May 2022, citing the Russian invasion of Ukraine and its “constant threat” to Hungary’s security, Orbán’s government amended the constitution to allow the declaration of a “state of danger” in the event of armed conflict or humanitarian disaster in a neighboring country.¹⁷² This “state of danger,” declared immediately after Orbán’s re-election, again enabled the government to rule by decree, suspend laws, and bypass parliamentary debate, with very limited judicial oversight.

Vladimir Putin’s government has repeatedly invoked emergencies—whether public health crises, internal unrest, or war—to justify sweeping crackdowns on civil liberties in Russia. These emergencies provide legal and rhetorical cover for measures that restrict freedoms of assembly, expression, and association.¹⁷³

Thus, when some nation’s leaders have had flexible powers to declare an “emergency,” the result has been significant restrictions on political and civil liberties in those nations and a deterioration of checks and balances in the political system. At this point, the United States is becoming more like those other nations, contrary to the constitutional order envisioned by the Framers.¹⁷⁴

<studentbriefs.law.gwu.edu/ilpb/2023/03/28/hungary-permanently-ruling-by-emergency-degree/> [perma.cc/6JPC-N6VJ].

¹⁷¹ Judy Dempsey, “Commentary: Orbán Exploits Coronavirus Pandemic to Destroy Hungary’s Democracy” (31 March 2020), online (website): <carnegieendowment.org/europe/strategic-europe/2020/03/orban-exploits-coronavirus-pandemic-to-destroy-hungarys-democracy> [perma.cc/95E3-EV FY].

¹⁷² Amanda Coakley, “Hungary’s Orbán Dials Dictatorship Up a Notch”, *Foreign Policy* (26 May 2022), online: <foreignpolicy.com/2022/05/26/hungary-orban-dictator-state-of-emergency/> [perma.cc/5M8Q-T4DL].

¹⁷³ Denis Grekov, “Russia’s Recurring States of Emergency” (18 April 2018), online (blog): <ridl.io/russias-recurring-states-of-emergency/> [perma.cc/UG3W-FG8K].

¹⁷⁴ Ilya Somin, “Trump’s ‘Emergencies’ Are Pretexts for Undermining the Constitution” (15 May 2025), online (blog): <lawfaremedia.org/article/trump-s-emergencies-are-pretexts-for-undermining-the-constitution> [perma.cc/HBM9-AB4W].

C. “National Security” Emergencies

By repeatedly invoking “national security,” Trump has acted as though there were emergent situations that required immediate and significant curtailment of civil liberties. Notably, Trump has invoked the Alien Enemies Act, an 18th-century law intended for wartime—to deport Venezuelan migrants accused of gang ties without due process. This marked the first use of the law outside declared wars, bypassing constitutional protections.¹⁷⁵ The administration revived post-9/11 tactics, such as mass surveillance,¹⁷⁶ and Guantánamo Bay detentions, to justify targeting immigrants. This included racial profiling and indefinite detention without trial.¹⁷⁷

“National security” matters also qualify as “emergencies” for President Trump with regard to tariffs. In 2025, Trump declared that foreign trade and economic practices created a national emergency, invoking IEEPA to impose new tariffs on imports from countries including Canada, Mexico, and China.¹⁷⁸ These actions were justified as necessary to protect American workers, combat illegal immigration, and address the flow of drugs like fentanyl, all framed as threats to U.S. national and economic security

But, like emergencies, national security threats seem to be largely in the eye of the beholder. Even as Trump invokes “national security” for tariffs and deportation of non-citizens (and even some citizens), he has allowed actual national security threats to appreciably increase,¹⁷⁹ and has made some personnel decisions

¹⁷⁵ Sofia Ferreira Santos, “What is the 1798 law that Trump used to deport migrants?”, *BBC News* (3 September 2025), online: <bbc.com/news/articles/cy871w21d3vo> [perma.cc/FN76-4DEB] (“[w]hile the Alien Enemies Act was enacted to prevent foreign espionage, the Trump administration has invoked it as the legal basis for the deportation of hundreds of alleged gang members.”)

¹⁷⁶ Adam Satariano et al, “The Tech Arsenal That Could Power Trump’s Immigration Crackdown”, *The New York Times* (25 January 2025), online: <nytimes.com/2025/01/25/technology/trump-immigration-deportation-surveillance.html> [perma.cc/7AHW-W4V4].

¹⁷⁷ *Ilya Somin, supra* note 174.

¹⁷⁸ Exec. Order No. 14195, 90 F.R. 9121 (2025).

¹⁷⁹ David Frum, “Podcasts: Trump’s National Security Disaster”, *The Atlantic* (21 May 2025), online: <theatlantic.com/podcasts/archive/2025/05/david-frum-show-trumps-national-security-disaster/682868/> [perma.cc/G42L-

that for many observers don't reflect serious concerns about national security. Congresswoman Tulsi Gabbard's nomination as director of national intelligence is one such decision.¹⁸⁰

The Senate did confirm Ms. Gabbard's nomination along partisan lines, 52-48.¹⁸¹ Senator Mitch McConnell (R-KY), for many years the Majority Leader in the U.S. Senate, voted against her nomination, stating:

"The Office of the Director of National Intelligence (ODNI) is a key participant in the process that informs every major national security decision the President makes. The ODNI wields significant authority

3JFF]. In an interview with Susan Rice, formerly a national security advisor to President Barack Obama as well as U.S. Ambassador to the United Nations, she warned that Secretary of State Marco Rubio has too many jobs to effectively serve as Trump's national security advisor. Rice noted, "[y]our role is not only to brief and advise the president but, very importantly, to manage the National Security Council staff of over 300 professionals and to coordinate the Cabinet level national security Principles Committee, which should be carefully assessing and exploring the most significant national security challenges of the day, weight options, making recommendations to the President and insuring that the decisions the President makes are being implemented...No human, however competent – let alone Marco Rubio, who's barely been in the role of secretary of state for four months – can do all of those jobs, or even two of those jobs effectively." As of December 2025, Rubio had four jobs in the Trump Administration: Secretary of State (Senate-confirmed cabinet position); National Security Adviser or interim/acting national security adviser at the White House; Acting Administrator of the U.S. Agency for International Development (USAID); Acting Archivist of the United States, heading the National Archives and Records Administration (NARA). If President Trump were serious about national security, he would have one competent official to act as national security advisor, which as former U.N. Ambassador Susan Rice points out, is in itself a full-time position.

¹⁸⁰ Tom Nichols, "Tulsi Gabbard's Nomination Is a National-Security Risk", *The Atlantic* (13 November 2024), online: <theatlantic.com/newsletters/archive/2024/11/tulsi-gabbard-nomination-security/680649/> [perma.cc/J77G-2E7N] ("Gabbard ran for president as a Democrat in 2020, attempting to position herself as something like a peace candidate. But she's no peacemaker: She's been an apologist for both the Syrian dictator Bashar al-Assad and Russia's Vladimir Putin. Her politics, which are otherwise incoherent, tend to be sympathetic to these two strongmen, painting America as the problem and the dictators as misunderstood.")

¹⁸¹ Julian E. Barnes & Robert Jimison, "Gabbard Sworn In as Top Intelligence Official", *The New York Times* (12 February 2025), online: <nytimes.com/2025/02/12/us/politics/tulsi-gabbard-senate-confirmation-vote.html> [perma.cc/9XRZ-8F54].

over how the intelligence community allocates its resources, conducts its collection and analysis, and manages the classification and declassification of our nation's most sensitive secrets. In my assessment, Tulsi Gabbard failed to demonstrate that she is prepared to assume this tremendous national trust."¹⁸²

President Trump nominated Mike Waltz as his National Security Advisor, but within a few months of his confirmation, the President had to replace him because of (among other issues) the "Signalgate" controversy.¹⁸³ "Signalgate" revealed weak national security measures, but early in his second term President Trump

¹⁸² Mitch McConnell U.S Senate, "Press Releases: McConnell Comments on Gabbard's Nomination" (12 February 2025), online (government website): <mcconnell.senate.gov/public/index.cfm/pressreleases?ID=9639B1E9-C3F0-4160-8D13-C87C7310AB55> [perma.cc/FM2R-ZH6L]. Senators Durbin and Warren also released statements voicing strong objections to her lack of experience and other factors. See Elizabeth Warren U.S Senate, "Press Releases: ICYMI: On Senate Floor, Warren Warns Confirmation of Tulsi Gabbard to Head National Security Agencies is a 'Dangerous Mistake'" (12 February 2025), online (government website): <warren.senate.gov/newsroom/press-releases/icymi-on-senate-floor-warren-warns-confirmation-of-tulsi-gabbard-to-head-national-security-agencies-is-a-dangerous-mistake> [perma.cc/7PRQ-3H5Z]. See also Dick Durbin U.S Senate, "Press Releases: Durbin Condemns Tulsi Gabbard's Nomination To Serve As Director Of National Intelligence" (12 February 2025), online (government website): <durbin.senate.gov/newsroom/press-releases/durbin-condemns-tulsi-gabbards-nomination-to-serve-as-director-of-national-intelligence> [perma.cc/V2YW-USRE]. Senator Martin Heinrich (D-NM) also voted against Tulsi Gabbard's confirmation as ONDI. He stated that, "...Ms. Gabbard has elevated conspiracy theories, parroted dictators' talking points, and repeatedly undermined our country's national security. Her poor judgment and lack of national security experience make her wholly unqualified to keep New Mexicans safe." See Martin Heinrich U.S Senate, "A National Security Risk" (4 February 2025), online (government website): <heinrich.senate.gov/newsroom/blog/a-national-security-risk> [perma.cc/M9J6-8UM3].

¹⁸³ Justin Klawans, "A running list of Trump's second-term national security controversies", *The Week* (16 April 2025), online: <theweek.com/politics/donald-trump-national-security-controversies> [perma.cc/8JD8-CV64]; Bernd Debusmann, Jr. & Ali Abbas Ahmadi, "Trump ousts Waltz as national security adviser and nominates him for UN post", *BBC News* (1 May 2025), online: <bbc.com/news/articles/cx20zw32lpgo> [perma.cc/QB8J-ZF32]; See also Ronald J. Deibert, "The Real Lesson of Signalgate...A Surveillance Arms Race Has Poked a Gaping Hole in National Security", *Foreign Affairs* (24 April 2025), online: <foreignaffairs.com/united-states/real-lesson-signal-gate-pete-hegseth> [perma.cc/72TA-BM8Q].

also weakened U.S. national security structures by firing experienced leaders like Gen. Timothy Haugh and Deputy Director Wendy Noble.¹⁸⁴ These dismissals were reportedly the result of accusations of disloyalty from unofficial Presidential advisers like Laura Loomer.¹⁸⁵ President Trump's 2025 national security team lacks diverse opinions and options, and as it has become centralized and without the benefit of diplomatic and foreign policy expertise, it has become more reactive and unpredictable.¹⁸⁶ The Trump Administration has also made significant budget cuts in cyber capabilities and those involved in counterterrorism – both foreign terrorism and domestic terrorism – both of which can clearly compromise national security.¹⁸⁷ In May of 2025, Trump also fired 100 National Security Council staffers, claiming that they were “part of the Deep State” and so had to go.¹⁸⁸

¹⁸⁴ Jonathan Landay, Erin Banco, and Patricia Zengerle, “Trump fires NSA director in national security purge, sources say”, *Reuters* (last updated 4 April 2025), online: <reuters.com/world/us/us-nsa-director-timothy-haugh-fired-washington-post-reports-2025-04-04/> [perma.cc/X573-ZAR2].

¹⁸⁵ *Ibid.* “No reason was given for the firings, which took place after the Republican president had an Oval Office meeting with Laura Loomer, a far-right political activist known as a conspiracy theorist, who said on X.com she had given Trump a list of officials she considered disloyal to him.”

¹⁸⁶ Missy Ryan et al, “The Tiny White House Club Making Major National-Security Decisions”, *The Atlantic* (15 August 2025), online: <theatlantic.com/national-security/archive/2025/08/trump-national-security-decisions/683887/> [perma.cc/HKF3-A52L].

¹⁸⁷ Klawans, *supra* note 183. See also Brian Krebs, “Trump 2.0 Brings Cuts to Cyber, Consumer Protections” (23 February 2025), online (blog): <krebsonsecurity.com/2025/02/trump-2-0-brings-cuts-to-cyber-consumer-protections/> [perma.cc/RCX8-DWR7] ([o]ne month into his second term, President Trump's actions to shrink the government through mass layoffs, firings and withholding funds allocated by Congress have thrown federal cybersecurity and consumer protection programs into disarray. At the same time, agencies are battling an ongoing effort by the world's richest man to wrest control over their networks and data.”)

¹⁸⁸ Thomas Wright, “The Administration Takes a Hatchet to the NSC”, *The Atlantic* (28 May 2025), online: <theatlantic.com/international/archive/2025/05/trump-national-security-council-firing/682952/> [perma.cc/26P8-DMVK] (“[t]he NSC is a crucial tool for the president in a moment of crisis. Russia's invasion of Ukraine in 2022, for example, called for a policy response spanning much of the U.S. government. The Biden administration's policy mobilized sanctions, weapons, diplomacy, and intelligence cooperation; it required coordination

Finally, forming a sensible set of national security policies is one of the key responsibilities of a U.S. President, and President Trump's use of emergency tariffs to make the U.S. more secure is an oft-repeated claim.¹⁸⁹ But his foreign policies follow no discernible, consistent principles, and convey a kind of incoherent and impulsiveness that have alarmed many experts on national security.¹⁹⁰ The National Security report issued by the White House late in 2025 appeared largely incoherent to many observers.¹⁹¹

or communication with Europe, China, the Middle East, Congress, and the press. To make all of this happen, National Security Adviser Jake Sullivan met daily with senior NSC staffers, not only to solve immediate problems, but also to figure out what more could be done to advance the president's objectives. The NSC was behind the move to get Ukraine sufficient numbers of air-defense missiles; it came up with an inventive scheme to generate funds for Ukraine out of Russian sovereign assets without seizing them outright; and it recommended the strategic declassification of intelligence to pressure Russia...Trump, of course, could use his NSC to advance very different goals than Biden did. That's as it should be. But he has opted instead to divest himself of this tool. He has a few senior directors left—an unspecified number were fired on Friday, and others have been let go over the past couple of months—and each oversees a massive portfolio. The Europe directorate alone covers about 50 countries, including Russia and Turkey. These senior directors are now largely on their own. They have hardly anyone to draft policy guidance, review speeches, or be the first point of contact for embassies.”

¹⁸⁹ The White House Fact Sheet (April 2025), *supra* note 52.

¹⁹⁰ Wassim Daghrir, “Trump’s Foreign Policy Doctrine of Uncertainty” (29 June 2020), online (blog): <e-ir.info/2020/06/29/trumps-foreign-policy-doctrine-of-uncertainty/> [perma.cc/8TKL-GLHW] (“Trump’s administration has no clear foreign policy pattern. In fact, the President’s approach appears to be impulsive, improvisational and devoid of a clear purpose and value as the administration’s decisions seem to be erratic, ill-considered and ill-conceived. Since his election Trump’s actions, have proved what many observers have long accused him of being – belligerent, rash, chaotic and short-tempered. Trump seems at odds with conventional foreign policy. His actions are bewilderingly unpredictable. He sometimes seeks withdrawal from the world and other times seems capable enough to dominate it and to leverage U.S. strength.”)

¹⁹¹ Eliot A. Cohen, “Trump’s Security Strategy Is Incoherent Babble”, *The Atlantic* (5 December 2025), online: <theatlantic.com/ideas/2025/12/national-security-strategy-incoherent-babble/685166/> [perma.cc/WUR2-23PJ]; Emily Harding, “The National Security Strategy: The Good, the Not So Great, and the Alarm Bells” (5 December 2025), online (website): <csis.org/analysis/national-security-strategy-good-not-so-great-and-alarm-bells> [perma.cc/KS9M-KQZU].

The culmination of his foreign policies may have come not only with his threats to “take” Greenland and Cuba, but with his decision to start of “war of choice” with Iran.¹⁹² As Bill Piekney stated in April 2026, the United States under President Trump appears to be “sleepwalking into danger.”¹⁹³

At present, then, the invocation of “national security” or “emergencies” is a matter of almost complete discretion on the part of President Trump, who will take some national security matters more seriously than others, and may not have a coherent national security strategy at all.¹⁹⁴

A stark reminder of this is with his tariff policies toward Canada; he seems to believe that many historically friendly nations represent greater threats to national security than more traditional adversaries such as Russia.¹⁹⁵ Some of President Trump’s hostile yet

¹⁹² Sarah Yerkes, “Commentary: The Iran War Is Making America Less Safe...A conflict launched in the name of American security is producing the opposite effect” (26 March 2026), online (website): <carnegieendowment.org/emissary/2026/03/iran-war-us-less-safe> [perma.cc/ZD9M-CAC4].

¹⁹³ Bill Piekney, “Sleepwalking Into Danger...How strategic drift and global fragmentation are exposing America to new existential risks” (12 April 2026), online (blog): <steadystate1.substack.com/p/sleepwalking-into-danger> [perma.cc/MU8X-J583]. Piekney writes, “[a]t a moment demanding clarity, competence, and global leadership, America is instead choosing fragmentation, retreat, and strategic blindness.”

¹⁹⁴ On the one hand, he has declared the movement of fentanyl across the U.S. northern border from Canada as a national security threat but has also pardoned a convicted ex-President of Honduras who had “flooding the United States with cocaine.” See William K. Rashbaum et al, “Former President of Honduras Is Freed From Prison After Trump Pardon”, *The New York Times* (2 December 2025), online: <nytimes.com/2025/12/02/us/politics/herandez-honduras-trump.html> [perma.cc/N8AW-ZNYR] (“Mr. Hernández was convicted last year, but the investigation that led to his imprisonment began years earlier, before Mr. Trump was elected the first time. Investigators with the Drug Enforcement Administration and Manhattan federal prosecutors worked their way up a chain of cooperators involved in what they said — and multiple juries agreed — was a conspiracy to traffic enormous amounts of cocaine through Honduras and into the United States.”)

¹⁹⁵ Max Boot, “Opinion: Trump is sending a clear message to the free world...Trump’s national security strategy slams Europe, not Russia”, *The Washington Post* (8 December 2025), online: <washingtonpost.com/opinions/2025/12/08/trump-national-security-strategy-europe-russia/> [perma.cc/8P37-68DQ].

inexplicable statements toward Canada date back to his first term.¹⁹⁶

D. The National Emergencies Act

Under the NEA, there is no clear and actionable definition of what constitutes a “national emergency,” and that determination is now left almost entirely to the President’s discretion; such vagueness in the statute allows for presidential declarations based on pretext or politically motivated reasons, or no reasons at all other than presidential preferences. In the case of tariffs on Canadian goods, that discretion has been exercised in an erratic and irrational way.¹⁹⁷

1. What is an “Emergency” in the U.S. and Abroad?

Under the National Emergencies Act (NEA) of 1976,¹⁹⁸ a “national emergency” will unlock various Presidential powers.¹⁹⁹ The NEA was enacted to formalize and regulate the President’s ability to declare emergencies, and to provide some Congressional oversight of those declarations. Once a U.S. president declares an emergency, they gain access to over 130 statutory powers, ranging from controlling transportation and communications to freezing assets and deploying military resources.²⁰⁰

¹⁹⁶ The Hon. Dov S. Zackheim, “Outside Publications: Canada as National Security Threat to the United States” (4 June 2018), online: <fpri.org/article/2018/06/canada-as-a-national-security-threat-to-the-united-states/> [perma.cc/5JXF-R3QK]; Julian Spencer-Churchill, Ulysse Oliveira Baptista & Maximilien Hachiya, “Canada is Not Satisfying Core U.S. Security Concerns” (24 April 2025), online: <realcleardefense.com/articles/2025/04/24/canadas_is_not_satisfying_core_us_national_security_concerns_1106063.html> [perma.cc/M9LP-LRKM] (claiming that Canada serves as an unsupervised base for Russian, Chinese, and Iranian espionage).

¹⁹⁷ See *supra*, notes 24-64 and accompanying text.

¹⁹⁸ *National Emergencies Act*, Pub. L. No. 94-412, 90 Stat. 1255 (1976) (codified as amended at 50 U.S.C. §§ 1601-1651 (2012)).

¹⁹⁹ Protect Democracy, “Presidential emergency powers, explained” (17 July 2024), online (website): <protectdemocracy.org/work/presidential-emergency-powers-explained/> [perma.cc/6PHA-YLPF].

²⁰⁰ *Ibid.* See also Jade McClain, “Navigating the National Emergency”, *NYU News* (27 February 2019), online: <nyu.edu/about/news-publications/news/2019/february/NtlEmergency.html> [perma.cc/B4FZ-MGTR].

There is no requirement in the NEA that a Presidential declaration of emergency must be tied to a specific event (such as war, natural disaster, or public health crisis), or that the President must first seek Congressional approval. The text of the NEA does not explicitly define the term "emergency" or "national emergency." Instead, the Act focuses on the procedures for declaring, maintaining, and terminating national emergencies, as well as the reporting requirements and congressional oversight mechanisms. The NEA does not require the President to state that the declared emergency cannot be resolved by ordinary means.²⁰¹ National emergencies have been declared for events such as the September 11 terrorist attacks,²⁰² the COVID-19 pandemic, and mass illegal immigration at the U.S. southern border.²⁰³ There are at least 40 Presidential emergencies still in effect, going back to President Carter's declaration of an emergency after the U.S. Embassy was taken over by Iranian "students" in 1979.²⁰⁴

The lack of a clear and justiciable legal definition means that, in practice, the President has broad discretion to declare a national emergency, subject to very weak political and judicial checks.²⁰⁵ Mr. Trump has invoked "emergency" in no fewer than ten of his 2025 Executive orders.²⁰⁶ Emergency declarations under the NEA are supposed to expire after one year unless renewed by the president, but there is no statutory limit on the number of renewals. Many emergencies have been renewed annually for decades without

²⁰¹ Rachel Riegelhaupt, "Manufactured Emergencies: The Crisis at the Core of the National Emergencies Act" (2020) 23 *Journal of Legislation and Public Policy* 277.

²⁰² George W. Bush, "Declaration of National Emergency by Reason Of Certain Terrorist Attacks" (14 September 2001), online (White House archives): <georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010914-4.html> [perma.cc/8PFP-37D2].

²⁰³ The White House, "Declaring a National Emergency at the Southern Border of the United States" (20 January 2025), online (Government website): <whitehouse.gov/presidential-actions/2025/01/declaring-a-national-emergency-at-the-southern-border-of-the-united-states/> [perma.cc/2RYU-WTZB].

²⁰⁴ Executive Order No. 12170, 1979. 44 F.R. 65729, *Blocking Iranian Government Property*.

²⁰⁵ See *infra* notes 206-213 and accompanying text.

²⁰⁶ Federal Register, "2025 Donald J. Trump Executive Orders" (last visited 6 June 2026), online (government website): <federalregister.gov/presidential-documents/executive-orders/donald-trump/2025> [perma.cc/8EY5-6KAE].

substantive review,²⁰⁷ and President Trump will likely do this as well.

In many other countries, the legal threshold for declaring a national emergency or state of emergency is more clearly defined and often includes a requirement that the situation "threatens the life of the nation," such as war, invasion, insurrection, natural disaster, or other public emergencies that cannot be managed by ordinary laws.²⁰⁸ Also, the measures taken must be strictly required by the situation and aimed at restoring normalcy as soon as possible. The legislature often must approve, renew, or can terminate the state of emergency.

The U.S. Congress may have intended to exercise careful oversight, but in practice, the president can unilaterally renew any declared emergency each year by simply notifying Congress and publishing a notice in the Federal Register within 90 days before the anniversary of the declaration. Past practice does not provide examples of strong Congressional oversight; Congress rarely reviews or terminates ongoing emergencies, resulting in dozens of emergencies remaining active for years or even decades without

²⁰⁷ Congressional Research Service, "National Emergencies Act: Expedited Procedures in the House and Senate" (3 February 2025), online (government website): <congress.gov/crs-product/R46567> [perma.cc/3YWZ-66MR].

²⁰⁸ Nicos Alivizatos et al, "Venice Commission: Respect for Democracy, Human Rights and the Rule of Law During States of Emergency" (19 June 2020), online (website): <coe.int/en/web/belgrade/-/venice-commission-respect-for-democracy-human-rights-and-the-rule-of-law-during-states-of-emergency-reflections> [perma.cc/4PVP-GP4H]. See also Alan Greene, "State of emergency: how different countries are invoking extra powers to stop the coronavirus", *The Conversation* (30 March 2020), online: <theconversation.com/state-of-emergency-how-different-countries-are-invoking-extra-powers-to-stop-the-coronavirus-134495> [perma.cc/4YN3-PWNM] ("[i]t's useful to use the European Convention on Human Rights (ECHR) as a benchmark for good practice because 47 states have signed up to the document. It therefore gives a good indication of what they agree is acceptable and what is not. Article 15 the ECHR allows countries to declare a state of emergency 'in times of war or other public emergency threatening the life of the nation.' States can't just do whatever they like to respond to the crisis, however. Exceptional powers are only allowed 'to the extent strictly required by the exigencies of the situation.'")

meaningful oversight.²⁰⁹ There are currently 49 ongoing national emergencies, some of which are decades old.²¹⁰

The NEA was intended to allow Congress to terminate national emergencies through a “legislative veto,” but Congress was hobbled in its intended oversight by a 1983 decision, the *Immigration and Naturalization Service v Chadha*.²¹¹ The Immigration and Nationality Act (INA) passed by Congress and signed by the President had allowed either chamber of Congress, acting alone, to overrule any decision of the executive branch; in Chadha’s case, it was the U.S. Attorney General’s decision to suspend Chadha’s deportation that the House of Representatives attempted to veto.

Jagdish Rai Chadha, from Kenya, had overstayed his U.S. student visa and faced deportation. Using authority under the Immigration and Nationality Act (INA), an immigration judge suspended Chadha’s deportation. However, the House of Representatives then exercised a legislative veto under § 244(c)(2) of the INA to overturn the suspension, ordering Chadha’s deportation. Chadha challenged the constitutionality of this one-house veto provision. The Supreme Court, in a 7-2 decision, held that the one house legislative veto violated the Constitution’s requirements for bicameralism (approval by both houses of Congress) and presentment (submission to the President for approval or veto). The Court emphasized that Congress must follow the constitutionally prescribed legislative process when enacting laws or overturning executive branch actions. Allowing a single house to unilaterally invalidate an executive branch decision, the Court held, violated constitutional safeguards.

But that decision has proved to be momentous; the *Chadha* case effectively invalidated the legislative veto system in over 200 laws.²¹² Before *Chadha*, Congress used legislative vetoes in hundreds of statutes to maintain oversight over executive agencies. But the holding in *Chadha* specified that not only single house legislative vetoes were unconstitutional, but that even provisions for both

²⁰⁹ Congressional Research Service, *supra* note 207.

²¹⁰ Wikipedia, “List of national emergencies in the United States” (last visited 15 June 2026), online (website): <[wikipedia.org/wiki/List_of_national_emergencies_in_the_United_States](https://www.wikipedia.org/wiki/List_of_national_emergencies_in_the_United_States)> [perma.cc/Q26K-XGGK].

²¹¹ *Ins v Chadha*, 462 U.S. 919 (1983).

²¹² *Ibid* at 967 (White, J. dissenting).

houses of Congress to overturn executive actions without passing a new law (which a president might veto) were unconstitutional. The *Chadha* decision thus shifted considerable power to the Presidency, since passing any new law or amending existing ones would face a possible presidential veto, making a 2/3rds majority in both chambers a pre-requisite to effective oversight on Congressionally delegated powers.

After *Chadha*, Congress has relied more on informal committee oversight, statutory requirements for reporting, and the regular legislative process to influence executive actions. However, these methods are generally less direct and less efficient than the legislative veto, and are weak controls, at best. Some scholars and legislators have called for constitutional amendments or new statutes to restore some oversight powers in a manner consistent with the Constitution.²¹³

Justice Byron White, in dissent, argued in *Chadha* that because of the many delegations of power from Congress to executive branch agencies, the legislative veto was a practical and essential tool for Congress. Given the scope and complexity of executive agency rulings, a check on the executive branch was essential to maintain separation of powers. He reasoned that if it had been Constitutional for Congress to delegate significant authority to the executive branch in the first place, it should also be able to impose limitations on how that authority is exercised.²¹⁴ In other words, Justice White saw the majority's strict formalism as entirely misplaced because the Court had previously allowed Congress to delegate authority in ways not strictly delineated by the Constitution.²¹⁵

²¹³ See, for example: Donald E. Elliott, "Ins v. Chadha: The Administrative Constitution, The Constitution, and the Legislative Veto" (1983) 1983 The Supreme Court Rev 125.

²¹⁴ The common law of agency is clear and has been for centuries: the power to delegate to an agent generally includes the power to restrict or oversee the agent.

²¹⁵ "It is true that the purpose of separating the authority of Government is to prevent unnecessary and dangerous concentration of power in one branch. For that reason, the Framers saw fit to divide and balance the powers of Government so that each branch would be checked by the others. Virtually every part of our constitutional system bears the mark of this judgment...But the history of the separation of powers doctrine is also a history of

Chadha has important implications for Trump's use of the IEEPA in setting tariffs without consultations or agreement from Congress. Any Congress concerned about IEEPA's use to impose even the most erratic and irrational tariffs must pass new legislation that can overcome a Presidential veto. Even with a shift in Congress from a GOP majority in both houses to a Democratic majority in both houses, U.S. Presidents have for many decades sought increased power, not less, in order to deal with "emergencies" and "national security."²¹⁶ Thus, ending a Presidentially declared emergency to justify new and even economically crippling tariffs current would require legislation from both houses of Congress, passed by a supermajority of 2/3rds to overcome a presidential veto.

2. Judicial Determinations on Emergencies and Presidential Powers

U.S. federal courts have shown considerable deference to the executive branch in matters of national security and emergencies, especially regarding foreign policy. Any legal challenges to even very dubious emergency declarations may be difficult to win. Not since *Youngstown Sheet & Tube v Sawyer*²¹⁷ has the U.S. Supreme Court

accommodation and practicality. Apprehensions of an overly powerful branch have not led to undue prophylactic measures that handicap the effective working of the National Government as a whole. The Constitution does not contemplate total separation of the three branches of Government..."[A] hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively." See Justice White, dissent, *Ins v. Chadha*, 462 U. S (1983) at para 998-99. Justice White makes the point that if the Court could interpret the Constitution more flexibly in order to address the realities and needs of a more complex United States economy, as it did in the 1930s, it should also be flexible enough to also find as Constitutional the means of maintaining Congressional oversight over those powers delegated by Congress to the executive branch. That would include the U.S. President where Congress has delegated Constitutionally assigned powers. Article I states clearly that Congress has the power to set import tariffs. See also US Const art. I, §. 8 ("[t]he Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.") .

²¹⁶ Erin Peterson, "Presidential Power Surges", *Harvard Law Today* (17 July 2019), online: <hls.harvard.edu/today/presidential-power-surges/> [perma.cc/Z8ZF-25F7].

²¹⁷ *Youngstown Sheet & Tube Co. v Sawyer*, 343 U.S. 579 (1952).

clearly negated a Presidential declaration of emergency, and federal circuit courts have been reluctant to do so as well.²¹⁸

In President Trump's first term, after Congress refused to fund the border wall, President Trump declared a national emergency. This allowed him to reprogram funds from other accounts to provide funding for border wall construction. The Ninth Circuit in *Sierra Club v Trump* and *California v Trump* held that the reprogramming of funds violated the applicable statutes and posed constitutional problems.²¹⁹ However, the Supreme Court issued a stay, which allowed construction to continue.²²⁰ After taking office, President Biden cancelled the national emergency and stopped most of the funding for the border wall. Eventually, the Sierra Club settled with the Biden Administration.²²¹

The principal cases in the federal courts challenging the Second Term Trump tariffs are the *V.O.S. Selections* case²²² and *Learning Resources, Inc. v Trump*.²²³ The *V.O.S. Selections* challenge to the tariffs was successful with the Court of International Trade,²²⁴ and the *Learning Resources* challenge was successful with the Federal District Court for the District of Columbia.²²⁵ Both cases were consolidated for decision by the Federal Circuit Court of Appeals, and an *en banc* decision by the Federal Circuit Court of Appeals affirmed the lower courts 7 – 4.²²⁶ Because the Federal Circuit

²¹⁸ For an excellent discussion of *Sawyer* and its aftermath in the federal courts, see Michael Coenen & Scott M. Sullivan, "The Elusive Zone of Twilight" (2021) 62:3 Boston College L Rev 740.

²¹⁹ *Sierra Club v Trump*, 929 F.3d 670 (9th Cir.) (2019).

²²⁰ *Trump v Sierra Club*, 140 S. Ct. 1, 204 L. Ed. 2d 1170 (2019).

²²¹ American Civil Liberties Union, "Press Releases: Sierra Club, Southern Border Communities Coalition, and ACLU Reach Settlement with U.S. Government in Border Wall Case Challenging the Illegal Transfer of Military Construction Funds" (17 July 2023), online (website): <aclu.org/press-releases/sierra-club-southern-border-communities-coalition-and-aclu-reach-settlement-with-u-s-government-in-border-wall-case-challenging-the-illegal-transfer-of-military-construction-funds> [perma.cc/L9UN-AKTF].

²²² *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 209 (2025) (the CIT's unanimous ruling for plaintiffs and enjoining the IEEPA tariffs).

²²³ *Learning Resources Inc. et al. v. Trump et al.*, 784 F. Supp. 3d 209 (2025).

²²⁴ *V.O.S. Selections*, 772 F. Supp. 3d 1350 (2025).

²²⁵ *Ibid* at 223-24.

²²⁶ *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312 (en banc decision, 7-4, upholding the CIT's injunction.).

Court was somewhat divided in *Learning Resources*, and because the matter of IEEPA tariffs was having major impacts on business, the government's petition for a writ of *certiorari* was granted²²⁷ and the case was expedited by the Court for oral argument.

The Court heard oral arguments in the consolidated cases on November 5, 2025,²²⁸ and in February 2026, issued its opinion.²²⁹ Several arguments against President Trump's IEEPA tariffs were made by Learning Resources and many other litigants that were not addressed in Chief Justice Roberts' majority opinion. Two of the more important claims by litigants include the major questions doctrine and the disconnect between the claimed emergency and the tariffs.

Many litigants argued that the imposition of such historic tariffs was a "major question" that Congress must initiate, not the Executive Branch. Justice Gorsuch embraced this view in his concurrence, but had some differences with Justices Alito, Kavanagh, and Thomas as to its application.

Other litigants, using IEEPA's language, complained that the announced tariffs were not "necessary to deal with the claimed emergency. For example, in a filed by Emily Lay Paper Company,²³⁰ the plaintiff alleged that under IEEPA, executive actions must be "necessary" to address the emergency in question. In that case, the plaintiff argued that there was "no connection between the opioid problem and the tariff," and that therefore, the national emergency does not provide a valid justification for the tariff increases.²³¹

²²⁷ *Ibid.*

²²⁸ *Learning Resources, Inc. v. Trump*, 146 S. Ct. 628 (2026).

²²⁹ *Ibid.*

²³⁰ Complaint for Injunctive and Declaratory Relief, *Emily Lay Paper Inc* (3 April 2025), online (case: *Emily Lay Paper Inc v Trump*): <nclalegal.org/filing/complaint-for-injunctive-and-declaratory-relief-5/> [perma.cc/7R7F-554C].

²³¹ The Trump Administration makes the argument that by taxing Canada and Mexico's exports, they are pressuring the governments of those countries to take action to address immigration and narcotics. Whether this is too tenuous and indirect a connection to justify the tariffs is a question for the courts to resolve. On that issue, the U.S. Court of International Trade concluded in the *V.O.S. Selections* case that the connection was indeed too tenuous. See *V.O.S. Selections, Inc. v Trump*, Slip Op. 25-66, Court No. 25-00066 (Ct. Int'l Trade May 28, 2025.).

While Emily Lay's complaint related to tariffs on Chinese goods, the arguments apply with equal force to imports from Canada, as the President claimed the same IEEPA authority he used to impose tariffs on Canada. The flow of automobiles and other tariffed goods from Canada has little to do with the movement of drugs or migrants across borders.

The President and some appellate judges would claim that such seemingly unnecessary tariffs were authorized by IEEPA because the President needs "leverage" in foreign affairs, and that historically, the judicial branch has given the executive branch wide latitude in foreign relations.

Notably, neither the Chief Justice's opinion nor Justice Gorsuch's opinion endorsed this view, but Justice Kavanagh did.

"As with tariffs on foreign imports historically, the IEEPA tariffs on foreign imports at issue in this case implicate foreign affairs. According to the Government, the President has leveraged the IEEPA tariffs into trade deals with major trading partners including China, the United Kingdom, and Japan, among other countries. The Government says that the tariffs have helped make certain foreign markets more accessible to American businesses and have contributed to trade deals with foreign nations worth trillions of dollars."²³²

Chief Justice Roberts arrived at the majority opinion without using either the major questions doctrine or the question of whether tariffs could be used as "leverage" under IEEPA. He wrote the majority opinion using textual analysis of IEEPA, holding that the statute's does not authorize the challenged tariffs with the words "regulate...importation." His opinion was joined by Justices Sotomayor, Kagan, Gorsuch, Barrett, and Jackson—forming the 6-Justice majority. Parts II-A-2 and III of the Roberts opinion applied the major questions but these parts were joined only by Justices Gorsuch and Barrett—a 3-Justice plurality.²³³

Thus, six Justices agreed that the language of the IEEPA did not delegate congressional taxing or tariff powers. After noting that Article I, Section 8 of the Constitution set forth the powers of the Legislative Branch, Chief Justice Roberts pointed to the first clause of that section, a clause that specifies that "The Congress shall have

²³² *Learning Resources, Inc. v Trump*, 2026 U.S. LEXIS 196 (Kavanagh, J., dissenting).

²³³ *Ibid*; Because Justices Sotomayor, Kagan, and Jackson do not embrace the major questions doctrine they did not join that part of Justice Roberts' opinion.

Power To lay and collect Taxes, Duties, Imposts and Excises.” He then stated, “It is no accident that this power appears first,” and that (citing Alexander Hamilton) the power to tax was “the most important of the authorities proposed to be conferred upon the Union.”²³⁴ He then noted that the power to impose tariffs is “very clear[ly]...a branch of the taxing power,”²³⁵ and that the Constitution did not vest any part of the taxing power in the Executive Branch. Because the “[g]overnment thus concedes, as it must, that the President enjoys no inherent authority to impose tariffs during peacetime,” and we are not at war with every nation in the world, the Government must rely on the statutory language in IEEPA. But, he concludes, “[w]e have long expressed ‘reluctan[ce] to read into ambiguous statutory text’ extraordinary delegations of Congress’s power.”²³⁶

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.²³⁷

In so ruling, the majority opinion does address the separation of powers question raised by the Trump IEEPA tariffs but does so indirectly. Citing *West Virginia v. Environmental Protection Agency*, Chief Justice Roberts wrote that “[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.”²³⁸

In his concurrence, Justice Gorsuch was far more focused on separation of powers. He invoked the relatively recent major questions doctrine.

Another feature of our separation of powers makes the major questions doctrine especially salient. When a private agent oversteps, a principal

²³⁴ Citing the Federalist paper: No. 33, pp. 202-203 (C. Rossiter ed. 1961).

²³⁵ *Learning Resources, Inc. v. Trump*, 2026 US LEXIS 714 at 16.

²³⁶ *Ibid* at 17-18.

²³⁷ *Ibid.* at 34-35.

²³⁸ *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022) at 723-724.

may fix that problem prospectively by withdrawing the agent's authority. Under our Constitution, the remedy is not so simple. Once this Court reads a doubtful statute as granting the executive branch a given power, that power may prove almost impossible for Congress to retrieve. Any President keen on his own authority (and, again, what President isn't?) will have a strong incentive to veto legislation aimed at returning the power to Congress.²³⁹

Justice Gorsuch concluded by offering a tribute to the messy, often inefficient process of give and take between the Executive and Legislative branches.

For those who think it important for the Nation to impose more tariffs, I understand that today's decision will be disappointing. All I can offer them is that most major decisions affecting the rights and responsibilities of the American people (including the duty to pay taxes and tariffs) are funneled through the legislative process for a reason. Yes, legislating can be hard and take time. And, yes, it can be tempting to bypass Congress when some pressing problem arises. But the deliberative nature of the legislative process was the whole point of its design. Through that process, the Nation can tap the combined wisdom of the people's elected representatives, not just that of one faction or man. There, deliberation tempers impulse, and compromise hammers disagreements into workable solutions.²⁴⁰

Justice Kavanaugh, in dissent, believed that Congress had indeed delegated its tariff-setting power to the President in this case. "Neither the plaintiffs nor the Court," he wrote, "has suggested that the numerous laws granting tariff power to the President violate the Constitution's separation of powers." Further, he noted that

In an ordinary statutory interpretation case, I am confident that a majority of this Court would flatly reject the plaintiffs' exceedingly weak statutory arguments and would hold that IEEPA's authorization for the President to "regulate...importation" during national emergencies, includes the power to impose tariffs.²⁴¹

Justice Kavanaugh also made use of Judge Taranto's dissenting opinion at the Federal Circuit Court of Appeals.²⁴² As he noted, it

²³⁹ *Learning Resources, Inc. supra* note 228 at 57.

²⁴⁰ *Ibid.*, at 99-100 (Gorsuch, J., concurring).

²⁴¹ *Ibid.*, at 174 (Kavanaugh, J., dissenting).

²⁴² *Ibid.* at 121 (Kavanaugh, J., dissenting) ("[i]n 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

makes little sense to think that IEEPA allows a U.S. President, “in a declared national emergency,” to shut off all imports from China “but not to impose even a \$1 tariff on imports from China.” Again, citing Judge Taranto, Justice Kavanaugh stated that tariffs are “just a less extreme, more flexible tool for pursuing the same objective of controlling the amount or price of imports that, after all, could be barred altogether.”²⁴³

In the main, the Justices’ opinions in the main do not address²⁴⁴ any “inherent powers” argument based on Article II. Also, none of the opinions addressed the question of the potential abuse of emergency powers by a U.S. President; for example, there was no discussion on how the Trump tariffs on Canada, Mexico, and China neither directly relates to or remedied the Presidential proclamations of an “emergency.” As noted above, Presidential declarations of emergency trigger a variety of delegated statutory powers, and even though President Trump’s exercise of emergency authority around tariffs did not pass statutory muster in these cases, his emergency powers as such remain unchecked.

After the Court’s decision in *Learning Resources v. Trump*, the markets breathed a sigh of relief.²⁴⁵ President Trump and some members of his team publicly attacked the ruling, calling the six justices in the majority “traitors” and immediately announcing that

traditional and common means to do so—in particular, quotas, embargoes, and tariffs.”)

²⁴³ *Ibid*; 149 F. 4th, at 1363 (Taranto, J., dissenting).

²⁴⁴ The Justices appear to agree that the President has inherent powers in times of war, but that IEEPA is not directed toward war time situations. See for example: Justice Gorsuch’s concurrence, *supra* note 228 at footnote 5 (“[i]n places, the dissent also argues that the President’s inherent Article II authority includes a wartime tariff power. But this only highlights the dissent’s bind. Whatever the full scope of the President’s Article II war powers may be (and the briefs before us reveal a healthy debate whether they include the power to impose tariffs, those powers are not implicated here. IEEPA is not a wartime statute, nor does the President claim we are at war with the countries whose goods are subject to the tariffs.”)

²⁴⁵ See Reuters, “VIEW Stocks jump after US Supreme Court rejects Trump’s tariffs”, *Reuters* (last updated 20 February 2026), online: <reuters.com/business/view-stocks-jump-after-us-supreme-court-rejects-trumps-tariffs-2026-02-20/> [perma.cc/66G3-4MMG] (“US and European stock markets jumped right after the decision as investors welcomed relief from tariff uncertainties and potential inflation pressures. The S&P 500 rose about 0.2%, the Dow gained 0.3%, and the Nasdaq climbed 0.7% in early trading.”)

he would invoke Section 122 of the Trade Act of 1974 to impose a new across-the-board 10% tariff instead.²⁴⁶ Vice President Vance condemned the “lawlessness” from the Court.²⁴⁷

The majority’s opinion in *Learning Resources* and *V.O.S. Selections* only limits the use of IEEPA for Presidentially declared tariffs and does nothing to curb potential abuse by a president intent on abusing delegated IEEPA powers or other emergency powers conferred by Congress. Congress must now create bipartisan, veto proof amendments to the National Emergency Powers Act. Proposals such as those already introduced in the 118th and 119th Congresses would better define an actionable emergency and set expiration dates for Presidentially declared emergencies.²⁴⁸

V. RECLAIMING CONGRESSIONAL TARIFF POWERS

A significant number of representatives in Congress are worried about the seeming lack of limits to presidential power over tariffs. Several bills have been introduced to reclaim Congressional power to set tariff rates; each of them faces an uphill battle because of how the U.S. Supreme Court has limited Congressional oversight over delegated powers and the likelihood of presidential vetoes of any legislation that does not command a supermajority in Congress.

Even among GOP members of Congress and those in the Conservative Legal Movement are hesitant to embrace the extent

²⁴⁶ The Editorial Board, “Opinion: Trump Demeans Himself as He Attacks the Supreme Court”, *The Wall Street Journal* (20 February 2026), online: <wsj.com/opinion/donald-trump-supreme-court-tariffs-ieepa-john-roberts-brett-kavanaugh-90daf559> [perma.cc/EW2C-8HFC]. “He calls the Justices who ruled against him ‘very unpatriotic’ and ‘fools.’” He called the liberals a “disgrace to our nation.” But he heaped particular vitriol on the three conservatives. They “think they’re being ‘politically correct,’ which has happened before, far too often, with certain members of this Court,” Mr. Trump said. “When, in fact, they’re just being fools and lapdogs for the RINOs and the radical left Democrats—and...they’re very unpatriotic and disloyal to our Constitution. It’s my opinion that the Court has been swayed by foreign interests.”

²⁴⁷ Sarah Davis, “Vance: Supreme Court tariff decision represents ‘lawlessness from the court’”, *The Hill* (20 February 2026), online: <thehill.com/homenews/administration/5748269-vance-supreme-court-tariff-ruling/> [perma.cc/2AUR-57L7].

²⁴⁸ See *infra* notes 249-58 and accompanying text.

to which President Trump is claiming expanded executive powers.²⁴⁹ In May 2025, several GOP politicians in Washington D.C. publicly expressed serious reservations about President Donald Trump's sweeping new tariff powers and policies. They worry about economic fallout, impact on consumers (and their voters) as well as now clear over-concentration of trade authority in the executive branch. GOP Senators now expressing criticism or reservations include Rand Paul (R-Ky) and Ted Cruz, (R-TX)²⁵⁰ as well as Susan Collins (R-ME), Lisa Murkowski (R-AK), and Tom Tillis (R-NC).²⁵¹

Seven GOP senators have co-sponsored the Trade Review Act, which would automatically end new tariffs after 60 days unless Congress approves them.²⁵² Senators Collins, Murkowski, Paul, and McConnell, all Republicans, have voted with Democrats on resolutions to roll back Trump's tariffs, especially those targeting

²⁴⁹ Mattathias Schwartz, "The Federalist Society Is Torn Between Its Legal Philosophy and Trump's Demands", *The New York Times* (22 November 2025), online: <[nytimes.com/2025/11/22/us/trump-federalist-society.html](https://www.nytimes.com/2025/11/22/us/trump-federalist-society.html)> [perma.cc/W3UG-MZYE].

²⁵⁰ Alexandra Hutzler, Isabella Murray & Allison Pecorin, "Republicans Ted Cruz, Rand Paul speak out on risks of Trump tariff policy", *ABC News* (7 April 2025), online: <abcnews.com/Politics/republicans-ted-cruz-rand-paul-speak-risks-trump/story?id=120558254> [perma.cc/E8CA-S4VS].

²⁵¹ Richard Cowan, "More US Senate Republicans voice support for congressional oversight on tariffs", *Reuters* (4 April 2025), online: <reuters.com/world/us/more-us-senate-republicans-voice-support-congressional-oversight-tariffs-2025-04-04/> [perma.cc/NL5W-Y9T4]. Lisa Kashinsky & Mia McCarthy, "GOP senators vs. Trump on tariffs", *Politico* (1 April 2025), online: <politico.com/newsletters/inside-congress/2025/04/01/gop-senators-vs-trump-on-tariffs-00262865> [perma.cc/N7X8-MDXT] ("Republican Sens. Susan Collins and Thom Tillis signaled Monday they intend to back Democratic Sen. Tim Kaine's resolution that would block Trump's 25 percent across-the-board tariffs on the nation's northern neighbor and leading trade partner. The resolution would terminate the national emergency Trump declared last month over fentanyl trafficking and illegal immigration to justify the tariffs.")

²⁵² Brian Metzger, "These 7 GOP senators are backing a bill to curb Trump's tariff powers", *Business Insider* (7 April 2025), online: <businessinsider.com/which-republicans-trade-review-act-trump-tariffs-2025-4/> [perma.cc/SW97-UHSR]. See also Alexander Bolton, "Farm-state Republicans rocked by tariffs fear Trump lacks exit strategy", *The Hill* (8 April 2025), online: <thehill.com/homenews/senate/5236734-republicans-trade-war-economic-turmoil/> [perma.cc/7XKN-H23E].

U.S. allies like Canada.²⁵³ Some Republicans, while not voting for Democratic resolutions, have signaled support for separate bipartisan bills to restore congressional authority over tariffs. On April 30, Senate Republicans narrowly voted down a Democratic resolution Wednesday that would have blocked global tariffs announced by Donald Trump earlier in April. A 49-49 tie had to be broken by Vice President J.D. Vance.²⁵⁴ In late October, four GOP Senators joined Democrats in passing a resolution that expressed rejection of President Trump's IEEPA tariffs.²⁵⁵

Finally, long-standing conservative leaning think tanks like the American Enterprise Institute²⁵⁶ and the CATO Institute²⁵⁷ have been critical of Trump's second term tariffs, noting that under the U.S. Constitution, the power to impose, raise, or lower tariffs, or repeal them entirely, are under the explicit purview of Congress. Therefore, any power the President must set tariffs must come from a statute delegating that authority. If the delegating statutes are not clear to the federal judiciary at this point, there are several moves that Congress can make; some will only express the sense of the Congress while others may send serious caution signals to President

²⁵³ Alexander Bolton, "GOP senators express alarm over scale of Trump tariffs", *The Hill* (4 April 2025), online: <thehill.com/homenews/senate/5231295-trump-tariffs-reaction-republicans/> [perma.cc/CC6S-ZSVB] (Sen. Susan Collins (Maine), one of four Republican senators who voted Wednesday for a resolution to undo Trump's 25 percent tariff against Canada, said Trump shouldn't treat allies the same as adversaries when it comes to levying tariffs.)

²⁵⁴ Anna Commander, "JD Vance Casts Tiebreaking Vote to Defeat Democrats on Trump Tariff Plan", *Newsweek* (30 April 2025), online: <newsweek.com/jd-vance-casts-tiebreaking-vote-defeat-democrats-trump-tariff-plan-2066490> [perma.cc/WZ96-QTC4].

²⁵⁵ Alexander Bolton, "Senate passes resolution to end Trump's global tariffs; 4 Republicans side with Dems", *The Hill* (30 October 2025), online: <thehill.com/homenews/senate/5581377-trump-tariffs-senate-republicans/> [perma.cc/3AA9-YLLR]. The resolution will have no practical effect, as it is not legislation that has passed both houses and withstood a Presidential veto. The House rejected a similar resolution by a vote of 213-211.

²⁵⁶ Kevin Corinth & Stan Veuger, "President Trump's Tariff Formula Makes No Economic Sense. It's Also Based on an Error." (4 April 2025), online (website): <aei.org/economics/president-trumps-tariff-formula-makes-no-economic-sense-its-also-based-on-an-error/> [perma.cc/6FLL-CVXW].

²⁵⁷ Ryan Bourne, "The Logic Behind Trump's Tariffs Is Not Coherent" (7 April 2025), online (website): <cato.org/commentary/logic-behind-trumps-tariffs-not-coherent> [perma.cc/9LY3-6DUE].

Trump if the numbers are high enough; still others, where there is a supermajority, would be binding.

First, Congress could effectively repeal Canadian tariffs and any other tariffs they don't agree with by passing a resolution terminating the national emergency used to justify it. For example, Senator Tim Kaine (D-VA) introduced a joint resolution to the U.S. Senate that would terminate President Trump's February 1 executive order, removing the resulting tariffs on Canada, and possibly also China and Mexico.²⁵⁸ The resolution passed the Senate by a vote of 51-48, with four Republican senators joining their Democratic peers in voting in favor. However, this resolution is seen as unlikely to pass in the House of Representatives,²⁵⁹ and even if it did, President Trump could and likely would veto it.

Second, to more permanently affect tariff authority, Congress could pass legislation amending IEEPA to expressly state that the law does not delegate tariff authority of any kind to the President. Senator Jeanne Shaheen introduced a bill that would amend IEEPA to explicitly prohibit the president from implementing tariffs based on the law.²⁶⁰ She has also introduced legislation to limit "sweeping tariffs on Canada and Mexico."²⁶¹ That option would also face a likely presidential veto.

²⁵⁸ US, S.J. Res 37, *A joint resolution terminating the national emergency declared to impose duties on articles imported from Canada*, 119th Cong, 2025 ("[r]esolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, pursuant to section 202 of the National Emergencies Act (50 U.S.C. 1622), the national emergency declared on February 1, 2025, by the President in Executive Order 14193 (90 Fed. Reg. 9113) is terminated). See also Economic Policy Institute, "Senate votes to block Trump administration's tariffs on Canada (S.J. Res. 37)", online (Congress): <epi.org/policywatch/senate-votes-to-block-trump-administrations-tariffs-on-canada-s-j-res-37/> [perma.cc/RJ8J-Z92F].

²⁵⁹ Eric Boehm, "Congress Just Made It Harder for Congress to Block Trump's Tariffs", *Reason Magazine* (12 March 2025), online: <reason.com/2025/03/12/congress-just-made-it-harder-for-congress-to-block-trumps-tariffs/> [perma.cc/JG3L-C7Q6]. See also Bo Erickson, "House Republicans Block Congress' ability to challenge Trump's tariffs", *Reuters* (11 March 2025), online <reuters.com/world/us/house-republicans-block-congress-ability-challenge-trump-tariffs-2025-03-11/> [perma.cc/3S7L-F8LT].

²⁶⁰ US, S. 151, *Protecting Americans from Tax Hikes on Imported Goods Act of 2025*, 119th Cong, 2025.

²⁶¹ U.S Senate Office of Jean Shaheen, "After Trump Levels Sweeping Tariffs on Canada and Mexico, Senate GOP Blocks Shaheen Effort to Pass Her

Third, Congress could legislate an expiration date on any tariffs unilaterally implemented by the president. Senator Maria Cantwell introduced a bill that would cause all presidentially implemented tariffs to expire after 60 days unless both houses of Congress passed a resolution to extend them; the bill had bipartisan support, including GOP Senators Grassley, McConnell, Collins, and Murkowski.²⁶² But, as noted above, that bill would have to be passed by both houses of Congress and presented to the president for signature, and neither Trump nor any subsequent U.S. President would be eager to give up the discretion to invoke emergency powers and would likely veto the legislation.

Fourth, Congress could legislate limits on the length of presidentially declared national emergencies. Representative Andy Biggs (R-AZ-5) introduced a bill that would cause any national emergencies declared by the president to terminate after 30 days unless extended by Congress by joint resolution. The bill is titled ‘Limiting Emergency Powers Act of 2025.’²⁶³ Under this legislation, any tariff implemented using the national emergencies in question would also terminate in 30 days.

As we will see in the following section, however, the odds against any significant revisions of delegated emergency powers are long, especially given that most recent U.S. Presidents have tried to

Legislation to Protect Granite States from Impact and Higher Costs” (4 March 2025), online (government website): <shaheen.senate.gov/after-trump-levels-sweeping-tariffs-on-canada-and-mexico-senate-gop-blocks-shaheen-effort-to-pass-her-legislation-to-protect-granite-states-from-impact-and-higher-costs> [perma.cc/ZAB2-WKVR].

²⁶² Scripps News Group, “New bipartisan bill would give Congress authority to control tariffs”, *Scripps News* (3 April 2025), online: <scrippsnews.com/politics/congress/new-bipartisan-bill-would-give-congress-authority-to-control-tariffs> [perma.cc/LFN7-LQUT] (“[t]he Trade Review Act of 2025 would require the president to explain the reason for the tariffs within 48 hours of imposing them. It would also require ‘an assessment of the potential impact of imposing or increasing the duty on United States businesses and consumers’...The bill also states that the tariffs would expire after 60 days unless Congress passed a joint resolution to extend them. Additionally, Congress would be able to cancel any tariff if it passed a joint resolution before the 60-day expiration date.”)

²⁶³ U.S. H.R.125, *Limiting Emergency Powers Act of 2025*, 119th Cong, 2025- (“[t]o amend the National Emergencies Act to provide that a national emergency declared by the President terminates 30 days after the declaration unless a joint resolution affirming such declaration is enacted into law, and for other purposes.”)

increase executive powers rather than encourage greater Congressional oversight.

VI. RESTORING THE BALANCE OF POWER BETWEEN CONGRESS AND THE U.S. PRESIDENT

The *V.O.S. Selections* and *Learning Resources* cases reveal that the distinction between a U.S. President's foreign and domestic powers is not all that clear, if it ever was.²⁶⁴ President Trump's tariffs are meant to boost federal revenue and revive domestic manufacturing, but they are also clearly foreign-facing; are they an exercise in domestic policy, or "foreign affairs"? Regardless of how the Supreme Court rules, there is work for Congress to do. A decision favoring the plaintiffs may not decisively resolve all tariff issues; the President could claim authority under other trade laws, with more litigation to follow.²⁶⁵ As to the extent of delegated powers in the IEEPA and the NEA, the Court could find that Congress has delegated certain kinds of unilateral tariff-making power to the President in the arena of foreign affairs, but not others. A Supreme Court decision for the government might prompt Congress, if it is willing and able, to restrict some of the Article I powers it has previously delegated to the Executive Branch by amending IEEPA and NEA.

²⁶⁴ The distinction between outward-facing foreign relations vs. domestic policy is blurry for Trump's IEEPA tariffs; many of the Fact Sheets issued by the White House in support of the IEEPA tariffs describe the emergency as domestic, not foreign, since the trade deficits were alleged to be harming domestic manufacturing. In the context of the tariff cases argued before the Supreme Court, Solicitor General Sauer had to claim that the tariff policies were "regulatory" in nature, meant to influence foreign relations, rather than policies to greatly enhance government revenue. But because tariffs are generally understood to be "taxes," Chief Justice Roberts (among others) seemed to see the tariffs as aimed at bolstering domestic finances.

²⁶⁵ Clark Packard & Stan Veuger, "Trump Has Many Options if the Supreme Court Strikes Down Tariffs" (5 December 2025), online (website): <cato.org/commentary/trump-has-many-options-supreme-court-strikes-down-tariffs> [perma.cc/CB4X-TT6B] ("[g]iven the president's misguided obsession with the trade deficit, the administration could turn to Section 122 of the Trade Act of 1974. That provision empowers the president to address 'large and serious' balance-of-payments deficits through import surcharges of up to 15 percent, import quotas, or some combination of the two.")

The growing powers of the Executive Branch over the past 50 years relative to Congress are now abundantly clear.²⁶⁶ Many have argued that the Supreme Court, and Chief Justice John Roberts in particular, have deliberately enlarged U.S. Presidential powers relative to Congress.²⁶⁷ Congress has already been ignored by

²⁶⁶ Benjamin Ginsberg, *The Imperial Presidency and American Politics: Governance by Edicts and Coups*, 1st ed (Routledge, 2022). See also Natalie Ermann Russell, “Balance of Power: Congress and the Presidency”, *University of Virginia News* (5 February 2025), online: <karshinstitute.virginia.edu/news/balance-power-congress-and-presidency> [perma.cc/AZB8-ZTRD]. (“[r]epublicans have been enthusiastic about President Trump taking unilateral action [more than 45 executive orders in the first two weeks of his administration] to pursue Republican objectives. In the last administration, Democrats in the Congressional Progressive Caucus, although less willing to push for executive unilateralism, pushed President Joe Biden to use an executive order to forgive student debt. Both parties have been complicit in pushing the boundaries of the president’s authority.”)

²⁶⁷ Beyond the immunity decision in *Trump v. United States*, 603 U.S. 593 (2024), the Court has allowed the President to fire heads of independent agencies (See *Trump v. Wilcox*, 145 S. Ct. 1415 (2025); *Harris v. Bessent*, 160 F. 4th 1235 (2025)), allowed the President to freeze congressional appropriations (*AFGE v. Trump*, 163 F. 4th 1226), allowed to gut the Education Department (See *McMahon v. New York*, 145 S. Ct. 2643), allowed to carry out mass layoffs of federal workers (See *Trump v. Boyle*, 145 S. Ct. 2653), and prevented federal district court judges from issuing nationwide injunctions against illegal Presidential actions (See *Trump v. CASA Inc.*, 606 U.S. 831). See also Peter M. Shane, “This Is the Presidency John Roberts Has Built”, *The Atlantic* (21 July 2025), online: <theatlantic.com/ideas/archive/2025/07/supreme-court-roberts-trump-dictator/683576/> [perma.cc/MEV5-4XTL] (“[g]oing beyond the precise holdings in these cases, Roberts’s superfluous rhetoric about the presidency has cast the chief executive in all-but-monarchical terms. The upshot is a view of the Constitution that, in operation, comes uncomfortably close to vindicating Trump’s: ‘I have an Article II, where I have the right to do whatever I want as president.’ Trump’s confidence is surely bolstered also by the Roberts Court’s unsigned per curiam opinions blocking even temporary relief from his sweeping actions. In May, the Court held that Trump orders removing two federal officials at key independent agencies could remain in place while the issue of their legality makes its way through the judiciary. In June, it allowed the administration to proceed with so-called third-country deportations—that is, deporting undocumented noncitizens summarily to countries to which they had no prior connection, but where they might well face torture. On July 8, the Court effectively allowed Trump to proceed with a massive restructuring of the federal executive branch, notwithstanding that the power over executive-branch organization belongs to Congress, not the president. On July 14, the conservative majority allowed the sabotaging of the Department of Education to proceed. Trump’s use of

President Trump in setting his tariffs; in 2025, billions in tariffs were imposed and collected without Congressional input.²⁶⁸ In several instances, President Trump has refused to spend funds appropriated by Congress.²⁶⁹ The required notifications to Congress under the NEA are minimal and do not involve any consultations; the legislative veto in the NEA, designed to check Presidential power, was ruled unconstitutional by the Court in *Ins v Chadha*.²⁷⁰ In retrospect, Justice White's dissent in *Chadha* is remarkably prescient, as he warns of a "Hobson's choice" facing any Congress in delegating powers to the Executive branch.²⁷¹

executive power is not a distortion of the Roberts Court's theory of the presidency; it is the Court's theory of the presidency, come to life.")

²⁶⁸ Committee for a Responsible Federal Budget, "Tariff Revenue Soars in FY 2025 Amid Legal Uncertainty" (27 October 2025), online (website): <crfb.org/blogs/tariff-revenue-soars-fy-2025-amid-legal-uncertainty> [perma.cc/CCL6-YGTE].

²⁶⁹ Jennifer Shutt, "GAO: Trump violated law for sixth time in withholding FEMA funds", *Government Executive* (16 September 2025), online: <govexec.com/oversight/2025/09/gao-trump-violated-law-sixth-time-withholding-fema-funds/408147/> [perma.cc/G3JE-MMDU] ("[t]he Government Accountability Office released a report Monday concluding the Federal Emergency Management Agency violated the law 'when it withheld or delayed the obligation of' funding Congress approved for the Emergency Food and Shelter Program and the Shelter and Services Program...The finding is the sixth time this year the GAO has determined the Trump administration violated the Impoundment Control Act, which lays out a legal process for the president to request Congress cancel previously approved spending.")

²⁷⁰ See *supra*, notes 211-215 and accompanying text.

²⁷¹ In his dissent from the majority in *Chadha*, Justice White wrote: "The prominence of the legislative veto mechanism in our contemporary political system and its importance to Congress can hardly be overstated. It has become a central means by which Congress secures the accountability of executive and independent agencies. Without the legislative veto, Congress is faced with a Hobson's choice: either to refrain from delegating the necessary authority, leaving itself with a hopeless task of writing laws with the requisite specificity to cover endless special circumstances across the entire policy landscape, or in the alternative, to abdicate its law-making function to the Executive Branch and independent agencies. To choose the former leaves major national problems unresolved; to opt for the latter risks unaccountable policymaking by those not elected to fill that role. Accordingly, over the past five decades, the legislative veto has been placed in nearly 200 statutes." See *INS v. Chadha*, 462 U.S. 919 at 967-68 (1983).

Greater fidelity to the original design of the Constitution now requires amending the IEEPA and the NEA in ways that federal courts can easily interpret, without difficult interpretive arguments over statutory language ambiguities and clearly marked limits on delegated powers. The Court is currently caught in a bind between its decisions that have expanded executive power²⁷² and its own jurisprudence on “major questions.”²⁷³ The Trump tariffs are clearly of considerable impact economically and politically; indeed, they are clearly of “major” importance; most observers have concluded that the Trump second term tariffs are a geopolitical game changer,²⁷⁴ which certainly sounds “major” both for domestic and foreign policy. President Trump’s IEEPA and NEA based use of tariffs is also broadly inconsistent with separation of powers, particularly as the Constitution is specific about taxing and tariff power being an Article I power. It would certainly be possible for the Court in its expansion of executive powers to say, as the Federal Circuit Court dissenters did, that a President may use IEEPA to create “leverage” in foreign affairs.²⁷⁵ President Trump’s use of tariffs as “leverage” against Brazilian prosecutions of Jair Bolsonaro,²⁷⁶ Canadian ads featuring the cautionary words of Ronald Reagan on tariffs²⁷⁷ or ending Canada’s digital services

²⁷² See *supra* note 107 and cases cited and note 267, *infra*, regarding the Roberts Court’s expansion of executive powers.

²⁷³ Asim Zaidi, “Major Questions in the Plenary Power Domain” (2025) 72:1 UCLA L Rev 256; Fred B. Jacob, “Black Hold of Administrative Law: The Threat of An Ever-Expanding Major Questions Doctrine to the Judiciary” (2024) 98:3 St. John’s L Rev 567 (2024); Michael D. Ramsey, “An Originalist Defense of the Major Questions Doctrine” (2024) 76:4 Administrative L Rev 817; Louis J. Capozzi, “In Defense of the Major Questions Doctrine” (2025) 100:2 The Notre Dame L Rev 509.

Office of the United States Trade Representative, “Op-Ed by Ambassador Jamieson Greer: Why We Remade the Global Order” (7 August 2025), online (government website): <ustr.gov/about/policy-offices/press-office/press-releases/2025/august/op-ed-ambassador-jamieson-greer-why-we-remade-global-order> [perma.cc/2H3K-F27D]; Patrick Wintour, “Trump tariffs are reshaping old alliances as the global south plots its own path”, *The Guardian* (27 August 2025), online: <theguardian.com/us-news/2025/aug/27/trumps-tariffs-trade-war> [perma.cc/ST2F-U99E]; See also Alden et al., *supra* note 10.

²⁷⁵ See *supra* notes 290, 291 and accompanying text.

²⁷⁶ See *supra* notes 61, 62 and accompanying text.

²⁷⁷ See *supra* notes 63, 74 and accompanying text.

tax²⁷⁸ that would affect social media companies operating in Canada highlight how unilateral executive power can easily be misused.

Earlier, in Part I, the erraticism and irrationality of Trump's IEEPA tariffs was detailed, along with explanations as to why executive unilateralism in tariff powers is likely to undermine national security. An "emergency" in the eyes of a given President may not be the threat to the public good that justifies long-term tariffs against nations whose friendship and goodwill can matter in maintaining a democratic republic. President Trump's IEEPA tariffs, among other decisions, have alienated former allies²⁷⁹ and moved the U.S. toward a more authoritarian model.²⁸⁰ Such a model is certainly not what the Framers of the Constitution intended or wrote into the "checks and balances" in policy decisions both foreign and domestic.

Aside from any Constitutional changes then,²⁸¹ basic changes to the NEA and IEEPA are needed, and recent proposed bills on

²⁷⁸ Kevin Breuninger, "Trump ends all U.S. trade talks with Canada over digital services tax", *CNBC* (27 June 2025), online: <[cnbc.com/2025/06/27/trump-canada-trade-talks-tariffs.html](https://www.cnbc.com/2025/06/27/trump-canada-trade-talks-tariffs.html)> [perma.cc/WN5E-MDXM] ("[w]e have just been informed that Canada, a very difficult Country to TRADE with, including the fact that they have charged our Farmers as much as 400% Tariffs, for years, on Dairy Products, has just announced that they are putting a Digital Services Tax on our American Technology Companies, which is a direct and blatant attack on our Country.")

²⁷⁹ Jeanna Smialek, Martin Fackler & Natalie Kitroeff, "With Trump's Tariffs, the Chasm Between Allies and the U.S. Widens", *The New York Times* (2 April 2025), online: <[nytimes.com/2025/04/02/world/europe/trump-tariffs-reciprocal-reaction-trade-war.html](https://www.nytimes.com/2025/04/02/world/europe/trump-tariffs-reciprocal-reaction-trade-war.html)> [perma.cc/SW5Y-NXXC]. In effect, Trump's trade policies have overturned a post-World War II international order crafted by the U.S. and its allies. ("Some leaders reacted strongly to the wave of tariffs, which many see as overturning the global trade order that the United States established after World War II.")

²⁸⁰ See *supra* notes 107-115 and accompanying text; See also Lauren Gambino, "US 'on a trajectory' toward authoritarian rule, ex-officials warn", *The Guardian* (16 October 2025), online: <[theguardian.com/us-news/2025/oct/16/trump-authoritarianism-warning](https://www.theguardian.com/us-news/2025/oct/16/trump-authoritarianism-warning)> [perma.cc/88MP-RQT2].

²⁸¹ Article II reads: "The executive Power shall be vested in a President of the United States of America." As French pointed out in August of 2025, that sentence "immediately raises two questions: What is executive power? And, crucially, what are its limits?" See David French, "Opinion: One Sentence in the Constitution Is Causing America Huge Problems", *The New York Times*

both laws are welcome. Changes to IEEPA must include: (1) a new clause to Section 203(a)(1) that specifically forbids using IEEPA for taxation or tariffs; (2) narrowing the definition of “regulate” by clarifying that the power to “regulate or prohibit...important or exportation” in Section 203(a)(1)(B) refers exclusively to non-fiscal” and “non-revenue” measures, such as imposing embargoes, freezing assets, blocking transactions, or controlling the flow of goods for national security purposes (e.g. weapons proliferation); and (3) a mandate that any IEEPA action affecting the importation or exportation of goods (short of a total embargo or asset block) that results in measurable cost increases for U.S. importers will expire automatically within 150 days unless Congress passes a joint resolution of approval. In brief, such amendments would make abundantly clear that IEEPA, unlike other trade laws designed to delegate Congressional authority over tariffs and trade, is intended for very brief and rare emergencies.

VII. CONCLUSION

The tariffs that President Donald J. Trump imposed using IEEPA and the NEA as legal authorization have been both erratic and irrational. Although Canada and Prime Minister Carney have responded thoughtfully and deliberatively, the Trump tariffs continue to be a significant disruption to trade and diplomatic relations between the U.S. and Canada. The tariffs have also disrupted traditional diplomatic relations between the U.S. and other nations, nations that have long been considered allies instrumental in shaping the geopolitical strategies of the U.S. and the industrialized democracies. The declared “fentanyl” emergency at the U.S.-Canadian border, for example, is an “emergency” that is irrational in terms of both U.S. national security and geopolitical interests.

The arc of ever-increasing powers Executive Branch power has reached a crucial point of inflection, and by itself, the U.S. Supreme Court’s decision in *Learning Resources* will not put to rest all potential Presidential misuses of the tariff and revenue powers that were assigned to Congress in the Constitution. In short, Congress

(21 August 2025), online: <[nytimes.com/2025/08/21/opinion/trump-constitution-unitary-executive.html](https://www.nytimes.com/2025/08/21/opinion/trump-constitution-unitary-executive.html)> [perma.cc/UEA2-NBKZ].

has considerable work to do to restore a more traditional separation of powers, work that almost surely will require a veto-proof majority. This article has reviewed the foundational insights of the Framers, the history and lineage of IEEPA and the NEA, and concludes that major legislative reforms to both IEEPA and the NEA are an essential order of business for Congress.

This article has suggested several such reforms and recommends the automatic expiration of NEA's emergency powers within certain time limits unless expressly re-authorized by Congress. It remains to be seen whether Congress will have the political will to over-ride a Presidential veto; but as President Trump's tariff announcements and negotiations play out in 2026 and beyond, Congress should take a stand to restore the system of checks and balances in the U.S. legal/political system. Failing to do so will be evidence that the legislative branch of the U.S. government continues to be a silent bystander to U.S. Presidential power.