

## Tariffs and Trade: Balancing Power Between the Executive, Congress, and the Courts

Under Article I, Section 8 of the U.S. Constitution, Congress holds the authority to regulate tariffs: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, ... but all Duties, Imposts and Excises shall be uniform throughout the United States.”<sup>1</sup> However, after the Smoot-Hawley act contributed to worsening the Great Depression in the 1930’s, Congress began to enact laws to cede its power to the president.<sup>2</sup>

The president can use many different acts and levers to enact trade policy and deploy tariffs. These include Section 232 of the Trade Expansion Act of 1962, which allows the president to impose tariffs for national security reasons, as well as Sections 122 and 301 of the U.S. Trade Act of 1974, which allow the president to respond to balance-of-payments issues and unfair trade practices, respectively. Additionally, the Trade Promotion Authority in the Trade Act of 2002 grants the president authority to negotiate trade agreements subject to an up-or-down vote in Congress. Finally, on February 1, 2025, President Trump was the first to use the International Emergency Economic Powers Act of 1977 (IEEPA), originally intended to impose economic sanctions and other economic measures during times of emergency, to deploy tariffs.<sup>3</sup>

Despite the heavy involvement of the executive, all three branches of government

play a role in trade policy. Congress holds constitutional authority, the president implements delegated powers, and the judiciary reviews the legality of trade actions. For a president to impose tariffs unilaterally, that power must be explicitly delegated by Congress, which presents certain legal challenges.

One of these is the major questions doctrine, which was elaborated by the Supreme Court. This means that Congress must be very specific when delegating powers to an agency to deal with matters of a particular political or economic importance, of which many consider tariffs to be. Additionally, there is the non-delegation doctrine, which limits Congress’s ability to broadly transfer its legislative powers to the Executive Branch.

So, what does this mean for trade policy? Because of this legal ambiguity, specifically pertaining to the novel use of IEEPA, lawsuits can be filed against the executive in the U.S. Court of International Trade, a federal court that deals with international trade and customs matters and disputes, and appealed up to the U.S. Federal Circuit Court of Appeals and the Supreme Court. Additionally, Congress can pass bills to take back the authority that it has delegated to the president over the course of several decades, but this level of political consensus is often difficult to achieve.<sup>4</sup>

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<sup>1</sup> Bomboy, Scott. 2025. “How Congress Delegates Its Tariff Powers to the President | Constitution Center.” National Constitution Center – Constitutioncenter.org. 2025.  
<https://constitutioncenter.org/blog/how-congress-delegates-its-tariff-powers-to-the-president>.

<sup>2</sup> Cheney, Kyle, and Doug Palmer. 2021. “Trump’s Tariffs Get Frosty Reception at Federal Appeals Court.” POLITICO. Politico. 2021.

<https://www.politico.com/news/2025/07/31/trump-tariff-arguments-appeals-court-00486972>.

<sup>3</sup> Wolff, Alan Wm. 2025. “Trump Tariffs and the Courts: Round 2.” PIIE. July 31, 2025.  
<https://www.piie.com/blogs/realtime-economics/2025/trump-tariffs-and-courts-round-2>.

<sup>4</sup> Cherney, Palmer. “Trump’s Tariffs Get Frosty Reception at Federal Appeals Court.”

