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Navigating Tariffs – Legal Strategies for a Shifting Global Trade Landscape

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History of Tariffs in the United States

From the founding of the Republic through the early twentieth century, tariffs occupied a central place in the fiscal and constitutional structure of the United States. In the absence of a federal income tax, customs duties served as the federal government's primary source of revenue, routinely accounting for most national receipts during the eighteenth and nineteenth centuries.[i] Early tariff legislation reflected both pragmatic revenue concerns and emerging debates over economic nationalism. The Tariff Act of 1789, enacted by the First Congress, simultaneously sought to fund the new government and to encourage domestic manufacturing, thereby linking revenue generation with protectionist policy from the outset.[ii] These dual objectives—raising revenue and shaping domestic economic development—would continue to define American tariff policy for more than a century.

Throughout the antebellum period, tariffs became a flashpoint for sectional conflict, particularly between industrializing northern states and agrarian southern states dependent on export markets. Protective tariffs such as the Tariff of 1828, pejoratively labeled the "Tariff of Abominations," intensified constitutional disputes over federal power and state sovereignty, culminating in the Nullification Crisis of 1832–33.[iii] Although compromise measures temporarily eased tensions, tariff policy remained deeply entangled with broader questions of political economy and constitutional interpretation. Notably, advocates of high tariffs increasingly justified protection as necessary to foster domestic industry and national self-sufficiency, while opponents framed such measures as unconstitutional favoritism that distorted markets and burdened consumers.[iv]

By the late nineteenth century, tariffs had evolved from a fiscal necessity into an entrenched policy instrument shaping industrial growth and party politics. High protective tariffs became a hallmark of Republican economic policy, while Democrats increasingly championed tariff reduction as a means of lowering consumer prices and promoting international trade.[v] This era culminated in the Tariff Act of 1930 (the Smoot–Hawley Tariff), which dramatically increased duties on imported goods and is widely regarded as exacerbating the Great Depression by provoking retaliatory trade barriers abroad.[vi] In response, Congress fundamentally reoriented U.S. trade policy through the Reciprocal Trade Agreements Act of 1934, delegating tariff-setting authority to the executive branch and marking a decisive shift from unilateral protectionism toward negotiated trade liberalization—a structural transformation that continues to define modern U.S. trade law.[vii]

Second Trump Administration Tariffs

The second administration of Donald J. Trump has reaffirmed tariffs as a central instrument of U.S. trade and industrial policy, building directly upon—and in several respects entrenching—the tariff framework adopted during the first Trump presidency. Rather than dismantling the existing trade barriers, the administration has largely preserved Section 232 steel and aluminum tariffs and the majority of Section 301 tariffs on Chinese imports, while signaling an expanded willingness to deploy tariff authority in pursuit of broader economic and national-security objectives.[viii] In this respect, the second Trump administration has treated tariffs not as temporary bargaining tools but as durable regulatory mechanisms shaping global supply chains and domestic production incentives.

A defining feature of the second-term tariff policy has been its emphasis on economic security and strategic decoupling, particularly with respect to China. The administration has reiterated findings that Chinese industrial policies—especially in advanced manufacturing, semiconductors, and clean-energy technologies—pose systemic risks to U.S. economic resilience.[ix] Tariffs thus have been framed as a defensive response to non-market practices rather than as conventional protectionism. Unlike earlier periods of U.S. trade enforcement, this approach explicitly links tariffs to long-term industrial capacity and supply-chain reorientation, reflecting an expanded conception of

"national security" within trade statutes such as Section 232 of the Trade Expansion Act of 1962.[x]

Legally, the second Trump administration has continued to rely on broad delegations of authority enacted by Congress in the mid-twentieth century, raising renewed questions about the separation of powers in trade regulation. By maintaining and potentially expanding tariffs without new legislative authorization, the administration has reinforced an executive-centered model of tariff governance that limits Congress's practical ability to calibrate trade policy ex post.[xi] Scholars have noted that this continuity further normalizes presidential tariff-making as a matter of routine administrative discretion rather than exceptional crisis response.[xii] Ongoing litigation challenging the scope of Section 232 and Section 301 authority underscores the unresolved constitutional tensions embedded in this framework.

Supporters of the second Trump administration's tariff policy argue that its durability demonstrates strategic coherence rather than ad hoc unilateralism. Proponents contend that sustained tariffs provide leverage for renegotiating trade relationships, incentivize domestic investment, and counteract foreign subsidies that distort global markets.[xiii] They further argue that prior decades of tariff liberalization failed to prevent industrial decline and that maintaining trade barriers is necessary to restore manufacturing employment and technological leadership.[xiv] From this perspective, the second administration's refusal to unwind Trump-era tariffs reflects a recalibration of U.S. trade priorities rather than a repudiation of international trade norms.

Critics, however, maintain that the continued reliance on tariffs imposes significant economic and institutional costs. Empirical studies from the first Trump administration indicate that tariff burdens fell predominantly on U.S. firms and consumers, and critics argue that extending these measures risks entrenching inefficiencies without clear evidence of net welfare gains.[xv] From an international-law standpoint, continued unilateral tariffs—especially those justified on expansive national-security grounds—are viewed as undermining the credibility of the rules-based trading system administered by the World Trade Organization.[xvi] As the second Trump administration proceeds, these critiques frame an ongoing debate over whether tariffs can serve as a sustainable foundation for U.S. trade policy or whether they represent a legally and economically unstable substitute for multilateral governance.[xvii]

Legal Challenges to Trump Tariffs

A central legal challenge to the second Trump administration's tariff regime focuses on the administration's use of the International Emergency Economic Powers Act ("IEEPA") as the statutory basis for imposing broad import duties. Multiple federal cases—originating in the U.S. Court of International Trade and the U.S. District Court for the District of Columbia—have held that IEEPA does not authorize the sweeping tariff actions at issue because the statutory emergency powers Congress conferred were intended to address distinct economic emergencies and sanctions, not to grant the President unilateral authority to impose tariffs on a near-global scale.[xviii] In *V.O.S. Selections, Inc. v. Trump*, the Court of International Trade held that the "Liberation Day" tariffs exceeded the executive's statutory authority, and similarly in *Learning Res., Inc. v. Trump*, the D.C. district court concluded that IEEPA authorizes sanctions but not tariffs per se.[xix] Importantly, both decisions were stayed pending appeal, leaving the tariffs in effect while appellate review proceeds.[xx]

The U.S. Court of Appeals for the Federal Circuit affirmed the lower courts' holdings that the IEEPA tariffs were unauthorized, prompting the government to seek review by the United States Supreme Court.[xxi] The Supreme Court granted certiorari and heard consolidated arguments in *Learning Res., Inc. v. Trump* in November 2025, with Justices expressing skepticism about the government's interpretation of IEEPA and its implications for Article I's allocation of taxing and tariff powers to Congress.[xxii] The case implicates fundamental separation-of-powers doctrines and the "major questions" doctrine, as the Court must decide whether a broadly worded emergency-

powers statute can be read to authorize extensive tariff powers historically reserved to Congress and the Legislative Branch.[xxiii] A decision is expected imminently (to be discussed at our conference), with potentially substantial consequences for executive authority in economic and trade policymaking.[xxiv]

Even as the Supreme Court considers the IEEPA challenges, there is parallel litigation involving refund claims by importers who paid tariffs now at risk of invalidation. If the tariffs are held unlawful, companies including Costco, Revlon, and others are preparing to seek refunds of tens of billions of dollars in duties collected, with some already initiating suits or selling refund claims.[xxv] U.S. Customs and Border Protection has begun modernizing refund processes in anticipation of potential payouts, although any refund regime's scope and timing remain uncertain.[xxvi] The magnitude of at-issue tariffs—estimated at well over $130 billion—has heightened practical and doctrinal stakes, as courts and litigants grapple with questions of retroactivity, equitable relief, and compliance burdens.[xxvii]

Notwithstanding the litigation over IEEPA-based tariffs, other tariff measures rooted in Section 232 of the Trade Expansion Act of 1962 and Section 301 of the Trade Act of 1974 remain less vulnerable to direct legal attack because they rest on express congressional delegations tied to national security and unfair trade practices.[xxviii] Legal commentators have observed that even an adverse Supreme Court ruling on IEEPA could leave intact many of the tariff increases implemented under these traditional authorities, though the administration's broader strategy might shift in response to judicial constraints.[xxix] Thus, the current legal landscape reflects a bifurcated challenge: an immediate constitutional and statutory confrontation over emergency tariff authority, and a secondary landscape of prospective litigation over refunds and alternative authorities shaping the contours of modern U.S. trade power.[xxx]

Legal Strategies to Mitigate Effects of Tariffs

Collectively, these legal strategies reflect a shift by businesses from reactive compliance toward proactive risk management in response to the sustained uncertainty of Trump-era tariffs. Rather than relying on any single mechanism to offset increased duties, firms have adopted integrated approaches that combine financial modeling, operational restructuring, contractual risk allocation, and market diversification. Each strategy operates at a different point along the import–export lifecycle, but together they illustrate how tariff exposure has become a multidimensional legal issue implicating customs law, commercial contracting, regulatory compliance, and corporate governance. As the durability of Trump-era tariffs has become increasingly apparent, these coordinated strategies offer a framework through which businesses can adapt to tariff volatility while maintaining legal compliance and commercial viability in a shifting trade environment.

Working Capital Modeling

One of the most immediate legal and financial responses to Trump-era tariffs has been enhanced working capital modeling to account for increased duty outlays at importation. Tariffs directly affect liquidity, borrowing needs, and compliance with credit facilities because they are payable upon entry.[xxxi] Firms facing sustained tariff exposure have increasingly integrated customs duty projections into cash-flow forecasts and covenant analyses, particularly where tariffs materially increase cost of goods sold or delay inventory turnover.[xxxii] From a legal perspective, counsel often plays a critical role in aligning tariff modeling with customs valuation rules and duty-drawback eligibility, ensuring that financial assumptions comport with regulatory requirements enforced by U.S. Customs and Border Protection.[xxxiii]

Supply Chain Diversification

Supply chain diversification has emerged as a central strategy for mitigating tariff risk, particularly in response to Section 301 tariffs on Chinese imports. Rather than exiting affected markets entirely, many firms have restructured

sourcing to shift production or final assembly to jurisdictions not subject to heightened duties.[xxxiv] This strategy raises complex legal considerations, including compliance with country-of-origin rules and substantial transformation doctrines under U.S. customs law.[xxxv] Improper restructuring can expose importers to penalties for misclassification or evasion, underscoring the need for careful legal analysis alongside operational changes.[xxxvi]

Cost Absorption and Price Adjustments

Another common response has been partial or full cost absorption, coupled with strategic price adjustments. Firms must determine whether to absorb tariff costs internally—reducing margins—or pass them downstream to customers through higher prices.[xxxvii] Legal considerations arise where pricing changes implicate long-term supply contracts, antitrust concerns, or consumer protection statutes governing price disclosures.[xxxviii] Empirical studies indicate that a substantial portion of Trump-era tariff costs were borne by U.S. importers rather than foreign exporters, lending legal significance to internal pricing decisions and risk allocation.[xxxix]

Inventory Management

Inventory management has also been deployed as a tariff-mitigation strategy, particularly through front-loading imports ahead of tariff effective dates or utilizing bonded warehouses and foreign-trade zones.[xl] These mechanisms allow importers to defer or reduce duty liability while preserving operational flexibility.[xli] However, they require strict regulatory compliance, and missteps can result in penalties or loss of program eligibility.[xlii] Legal counsel is often involved in structuring inventory strategies that balance tariff exposure against customs enforcement risk.

Contract Renegotiation and Tariff Clauses

Contract renegotiation has been a critical legal strategy for allocating tariff risk between buyers and sellers. Many firms have sought to amend existing agreements to include tariff-specific force majeure provisions, price-adjustment clauses, or change-in-law mechanisms.[xliii] Courts evaluating these provisions generally have required clear contractual language to excuse performance or permit price modification, limiting the availability of common-law doctrines such as commercial impracticability.[xliv] As a result, Trump-era tariffs have accelerated the incorporation of explicit tariff clauses in cross-border commercial contracts.[xlv]

New Market Exploration

Finally, some firms have pursued new export and domestic markets to offset tariff-induced losses in previously profitable trade relationships. This strategy implicates trade compliance, export controls, and foreign regulatory regimes, requiring coordinated legal oversight.[xlvi] Market diversification has been particularly salient for U.S. agricultural and manufacturing exporters affected by retaliatory tariffs, many of whom have sought alternative destinations through regional trade agreements and government-supported trade promotion programs.[xlvii] While legally complex, market reorientation has been viewed as a longer-term structural response to tariff volatility rather than a temporary workaround.[xlviii]

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[i] *See* W. Elliot Brownlee, *Federal Taxation in America: A Short History* 15–18 (3d ed. 2016).

[ii] Tariff Act of 1789, ch. 2, 1 Stat. 24; see also Douglas A. Irwin, *Clashing Over Commerce: A History of U.S. Trade Policy* 40–42 (2017).

[iii] *See* William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816–1836* 257–62 (1965).

[iv] *See* John C. Calhoun, *The South Carolina Exposition and Protest* (1828), reprinted in 10 *The Papers of John C. Calhoun* 442 (Robert L. Meriwether ed., 1958).

[v] *See* Irwin, supra note 2, at 295–305.

[vi] Tariff Act of 1930 (Smoot–Hawley Tariff), ch. 497, 46 Stat. 590; *see* Barry Eichengreen, *Golden Fetters: The Gold Standard and the Great Depression, 1919–1939* 281–83 (1992).
[vii] Reciprocal Trade Agreements Act of 1934, ch. 474, 48 Stat. 943; *see* Jagdish Bhagwati, *Protectionism* 42–45 (1988).
[viii] *See* Douglas A. Irwin, *The Persistence of Protectionism*, 41 *J. Econ. Persp.* 1, 12–15 (2024).
[ix] Office of the U.S. Trade Representative, *Four-Year Review of Actions Taken in the Section 301 Investigation* (2022).
[x] Trade Expansion Act of 1962 § 232, 19 U.S.C. § 1862 (2018); *see* Kathleen Claussen, *Trade's Security Exceptionalism*, 72 *Stan. L. Rev.* 1097, 1135–45 (2020).
[xi] *See* Timothy Meyer & Ganesh Sitaraman, *Trade and the Separation of Powers*, 107 *Calif. L. Rev.* 583, 625–30 (2019).
[xii] *See* Kristin E. Hickman & Claire R. Kelly, *Presidential Power Over International Trade*, 44 *Yale J. Int'l L.* 1, 38–42 (2019).
[xiii] *See* Robert E. Lighthizer, *No Trade Is Free* 287–94 (2023).
[xiv] *See* Peter Navarro, *Taking Back Trump's Trade Agenda*, 99 *Foreign Affs.* 22, 25–28 (2024).
[xv] *See* Amiti, Redding & Weinstein, *The Impact of the Trade War on U.S. Prices and Welfare*, 109 *J. Econ. Persp.* 187, 190–97 (2019).
[xvi] See Panel Report, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS544/R (Dec. 9, 2022).
[xvii] *See* Chad P. Bown, *The 2020s Trade Policy Crossroads*, 28 *Brookings Papers on Econ. Activity* 1, 21–26 (2023).
[xviii] *V.O.S. Selections, Inc. v. Trump*, No. 25-1812 (Fed. Cir. Aug. 29, 2025); *Learning Res., Inc. v. Trump*, No. 24-1287 (D.D.C. June 17, 2025).
[xix] *Id.*
[xx] Order Granting Stay Pending Appeal, *V.O.S. Selections, Inc. v. Trump*, No. 25-1812 (Fed. Cir. Sept. 2025); Order Granting Stay Pending Appeal, *Learning Res., Inc. v. Trump*, No. 24-1287 (D.D.C. July 2025).
[xxi] Petition for Writ of Certiorari, *Learning Res., Inc. v. Trump*, No. 25-___ (U.S. filed Sept. 2025); *see* Supreme Court of the United States, **Orders Granting Certiorari**, https://www.supremecourt.gov.
[xxii] Tony Romm, *Supreme Court Appears Skeptical of Trump's Emergency Tariff Authority*, **Wash. Post** (Nov. 5, 2025), https://www.washingtonpost.com.
[xxiii] *See West Virginia v. EPA*, 142 S. Ct. 2587, 2609–14 (2022); *see also* Kristin E. Hickman & Claire R. Kelly, *Presidential Power Over International Trade*, 44 **Yale J. Int'l L.** 1, 41–45 (2019).
[xxiv] Andrew Chung, *U.S. Supreme Court Weighs Fate of Trump Emergency Tariffs*, **Reuters** (Jan. 9, 2026), https://www.reuters.com.
[xxv] David Lawder, *U.S. Importers Poised to Seek Billions in Refunds if Trump Tariffs Fall*, **Reuters** (Jan. 8, 2026), https://www.reuters.com.
[xxvi] Paul Kiernan, *U.S. Customs Prepares for Potential Tariff Refunds*, **Wall St. J.** (Jan. 2026), https://www.wsj.com.
[xxvii]Andrew Chung, *Markets Brace for Fallout as Supreme Court Reviews Trump Tariff Powers*, **Reuters** (Jan. 8, 2026), https://www.reuters.com.
[xxviii]Trade Expansion Act of 1962 § 232, 19 U.S.C. § 1862; Trade Act of 1974 § 301, 19 U.S.C. § 2411.
[xxix]Scott Lincicome, *What Happens if the Supreme Court Strikes Down Trump's Emergency Tariffs?,* **Cato Inst.** (Jan. 2026), https://www.cato.org.
[xxx] Chad P. Bown, *The Legal and Economic Stakes of Emergency Tariffs*, **Peterson Inst. for Int'l Econ.** (Dec. 2025), https://www.piie.com.
[xxxi] *See* 19 U.S.C. § 1505 (requiring payment of duties at time of entry).
[xxxii] *See* Douglas A. Irwin, *The Trump Trade War*, 45 Int'l Econ. Rev. 1, 18–20 (2020).
[xxxiii] *See* U.S. Customs & Border Prot., *Informed Compliance Publication: Customs Valuation* (2019).
[xxxiv] *See* Office of the U.S. Trade Representative, *Section 301 Tariff Exclusions and Supply Chain Adjustment* (2020).
[xxxv] See *Anheuser-Busch Brewing Ass'n v. U.S.*, 207 U.S. 556, 562 (1908).
[xxxvi] *See* 19 U.S.C. § 1592 (penalties for customs fraud and negligence).
[xxxvii] *See* Amiti, Redding & Weinstein, *The Impact of the 2018 Trade War on U.S. Prices and Welfare*, 109 J. Econ. Persp. 187, 191–94 (2019).
[xxxviii] *See* 15 U.S.C. §§ 1–2; see also state unfair trade practice statutes.
[xxxix] *See* Irwin, supra note 2, at 22–24.

[xl] *See* 19 U.S.C. §§ 81a–81u (Foreign-Trade Zones Act).
[xli] *See* U.S. Customs & Border Prot., *Foreign-Trade Zones Manual* (2021).
[xlii] *See* 19 C.F.R. § 146, *et. seq*.
[xliii] *See* Victor P. Goldberg, *Rethinking Contractual Risk Allocation*, 37 J. Legal Stud. 1, 18–21 (2018).
[xliv] *See Transatlantic Fin. Corp. v. U.S.*, 363 F.2d 312, 318–19 (D.C. Cir. 1966).
[xlv] *See* John F. Coyle, *Boilerplate for a Tariff-Heavy World*, 74 Stan. L. Rev. Online 45, 47–50 (2021).
[xlvi] *See* 15 C.F.R. § 730–774 (Export Administration Regulations).
[xlvii] *See* U.S. Dep't of Agric., *Trade Mitigation and Market Diversification Programs* (2019).
[xlviii] *See* Chad P. Bown, *The Long Shadow of the Trade War*, 28 Brookings Papers on Econ. Activity 1, 29–33 (2023).