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Navigating Trump 2.0

Reclaiming the Reins? Congress, the Courts, and Trump's Tariffs

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SYNOPSIS

President Donald Trump's April 2025 tariffs triggered diplomatic, economic and financial turmoil across the world as he sought to reorder the global trading system. Congress, having delegated its tariffs powers and bereft of a legislative veto, struggles to counter Trump's actions. Lawsuits challenge the president's tariff authority, but slow judicial processes and political gridlock heighten the risk of economic and constitutional crises, underscoring the dangers of Trump's erratic trade policies.

COMMENTARY

On 2 April, President Donald Trump imposed his "[Liberation Day](#)" tariffs – sweeping "baseline" 10% duties on goods from almost every country worldwide, including [islands inhabited only by penguins](#) but [not on Russia](#). He followed that measure with [even higher "reciprocal" tariffs](#) on goods from over 70 countries, such as Cambodia (49%), Vietnam (46%), Taiwan (32%) and Japan (24%).

Tariffs, Turmoil and Temporary Turnarounds

Barely a week later, however, Trump [announced](#) a 90-day "pause" on the reciprocal tariffs on all countries but China while keeping *in situ* the 10% baseline tariffs. He also maintained the 25% [fentanyl-related](#) tariffs on imports from Canada and Mexico and the tariffs on steel and aluminium. Washington and Beijing escalated their trade war to the point that tariff rates between the United States and China now stand at 145% and 125%, essentially [embargoing commerce](#) between the world's two largest economies. The latest twist in the tariff saga is that the hastily announced [exemption](#) of

some technology products is only [temporary](#), and that duties on electronic goods will be decided later through an industry-specific tariff model.

Trump's flip-flops on tariffs have triggered wild fluctuations on Wall Street, [wiping out](#) over US\$5 trillion in market equity. However, unlike previous instances of economic turmoil where investors sought safety in US dollar assets, this time there was a simultaneous [unloading of Treasuries](#) and downward pressure on the dollar. Besides [increasing](#) the prospects for recession and inflation, [undermining](#) consumer confidence, and confusing and paralyzing businesses, Trump's tariffs have so [unsettled financial markets](#) that the attractiveness of the US dollar as the global reserve currency is now being [openly questioned](#).

Can Congress Rein in Trump's Tariffs?

Article I, Section 8, of the [US Constitution](#) grants Congress the power to impose tariffs, and historically Congress used this authority directly by setting detailed tariff rates through legislation like the Tariff Act of 1890 (better known as the McKinley Tariff, named after [Trump's favourite president](#)) or the Smoot-Hawley Tariff Act of 1930. Beginning with the [Reciprocal Trade Agreements Act of 1934](#), however, Congress – for reasons of practical efficiency and political expediency – began delegating significant authority over tariffs to the president. This development has resulted in the power to control and execute tariff policies, as defined by Congress, devolving to the president and executive branch agencies such as the Commerce Department and the US Trade Representative (USTR).

Currently, [six statutory provisions](#) regulate how the president and the executive branch can deploy tariffs, but the most significant for the current Trump tariffs are: [Section 232](#) of the [Trade Expansion Act of 1962](#) and the [International Emergency Economic Powers Act of 1977](#) (IEEPA). Section 232 covers national security-related tariffs and both the first and second Trump administrations used it to impose [tariffs](#) on steel and aluminium imports. Meanwhile, the Commerce Department is launching Section 232 investigations on [critical minerals](#), [semiconductors](#) and [pharmaceuticals](#) that could [lead to new tariffs](#). With IEEPA, the president can declare an emergency under the [National Emergencies Act](#) (NEA) and use those powers to regulate or prohibit imports, which is precisely what Trump has done in declaring a national economic emergency and imposing sweeping tariffs.

While Congress voluntarily delegated great swaths of authority over tariffs, it was mindful of the “principal-agent” problem and inserted [“legislative veto”](#) provisions into the statutes as checks on the executive branch's exercise of delegated power. The legislative veto allowed a single chamber of Congress to negate actions taken by the president and executive branch agencies. Section 232 and IEEPA contained such legislative veto provisions.

In 1983, however, the US Supreme Court declared the legislative veto to be unconstitutional in [INS v. Chadha](#), holding that it violated the principle of bicameralism (a bill must pass both houses of Congress) and the Constitution's presentment clause (a bill must be presented to the president for approval or veto). The *Chadha* decision invalidated legislative vetoes in more than 200 statutes, including Section 232 and IEEPA.

Currently, Congress must either pass a joint resolution (involving both the House and Senate) disapproving of Trump's tariffs, amend the underlying laws, or pass new ones to reclaim control – all of which are subject to the president's veto. Thus, even though [four Republicans joined all Senate Democrats](#) in adopting a resolution to nullify Trump's 25% tariffs on Canadian imports, it was futile since House Republicans [blocked moves](#) to force a vote repealing the tariffs. Similarly, although Republican Senator Chuck Grassley [introduced legislation](#) to limit the president's power to impose tariffs, it stands no chance of becoming law in the Republican-controlled Congress.

Justice Byron White's warning in his [dissenting opinion](#) in *Chadha* has proved prescient: depriving Congress of the legislative veto has crippled its ability to effectively check the executive, leaving it reliant instead on time-consuming and veto-prone legislation and a political process rendered dysfunctional by intense partisan divisions.



Unless the Democrats are able to retake both chambers of Congress with veto-proof majorities in the 2026 midterms, there are few avenues to challenge President Donald Trump's tariff policy.

Image source: Unsplash.

What About the Courts?

There are currently two lawsuits seeking to overturn Trump's tariffs: one [filed](#) in a federal judicial district court in Florida and the other [filed](#) in the US Court of International Trade. The plaintiffs in both suits allege that the president lacks the power under IEEPA to impose sweeping tariffs. The legislative history of IEEPA suggests that Congress intended the law to be used sparingly, with the House [report](#) stating that "emergencies are by their nature rare and brief, and are not to be equated with normal, ongoing problems." On this point, the United States' massive trade deficit with the world – which has been a long-standing issue – would not appear to constitute an emergency within the meaning of the statute that would require the president to take exigent action. Further, a plain reading of IEEPA [reveals](#) that the broad powers conferred on the president do not explicitly include the power to "tariff" or to "tax". This point is noteworthy as no president before Trump had used IEEPA to levy tariffs.

Four years ago, the US Supreme Court used the major questions doctrine (MQD) – a principle of statutory interpretation – to limit the scope of executive authority in cases involving "vast economic and political significance" (see [West Virginia v. EPA](#)). Under

the MQD, IEEPA does not possess clear statutory language authorising the president to impose sweeping tariffs. Further, the American Revolution was fought on the principle that there should be no taxation without representation, and tariffs – as taxes on imports to be borne by American consumers – should be decided upon by the people’s representatives, Congress.

Conclusion

The courts [declared](#) in the *Youngstown Sheet & Tube Co. v. Sawyer* case of 1952 that executive authority is not unlimited and must have constitutional or statutory basis, and Justice Robert Jackson contended in his opinion on the case that presidential power is at its “lowest ebb” when presidents take actions at odds with the expressed or implied will of Congress. Such would appear to be the case with Trump and his imposition of sweeping tariffs.

The wheels of justice grind on, but they grind slowly, and it may take months before the courts can provide relief from the tariffs. That also presumes that the administration will defer to an adverse judicial decision and not trigger a constitutional crisis through defiance. Midterm congressional elections are more than 15 months away, and even then unless the Democrats are able to retake both chambers of Congress with veto-proof majorities, there are few avenues to check the president on tariff policy. The Constitution’s system of checks and balances is becoming dysfunctional, and the president has demonstrated that he is prepared to change course only when confronted with *force majeure* – a crisis in the bond markets. That is the sort of brinkmanship that neither the United States nor the world should be prepared to tolerate.

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