

Executive Authority, Judicial Checks, and the Separation of Powers: US Tariff Measures in Trade War

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Abstract: The expansion of US executive authority in tariff imposition and the judiciary's countervailing checks during the trade war not only raise legal issues concerning tariff policy but also serve as a critical stress test for the constitutional principle of separation of powers. From the perspective of US tariff legislation enacted by Congress, Section 301 of the Trade Act of 1974 authorizes the president to address "unfair trade practices"; Section 232 of the Trade Expansion Act of 1962 authorizes the president to adjust imports on national security grounds; and the International Emergency Economic Powers Act (IEEPA) of 1977 authorizes the president to regulate international economic transactions upon declaring a national emergency. US courts have traditionally shown substantial deference in reviewing tariff measures under Section 301, and virtually no presidential action under Section 232 has ever been invalidated. However, regarding the "reciprocal tariffs" imposed through invocation of the IEEPA during President Trump's second term, the US judiciary issued adverse rulings against the administration — first at the US Court of International Trade, then on appeal at the US Court of Appeals for the Federal Circuit (Federal Circuit), and ultimately at the Supreme Court. This series of decisions illustrates the US judiciary's critical, albeit limited, role in checking executive authority as a matter of separation of powers.

Keywords: Executive Authority, Judicial Checks, Judicial Review, Tariff Authority, International Emergency Economic Powers Act (IEEPA), Separation of Powers, Trade War

I. INTRODUCTION

When Donald Trump first assumed the US presidency in 2017, his administration launched an investigation under Section 301 of the Trade Act of 1974 against China, leading to the imposition of "Section 301 tariffs" in 2018. Upon Trump's return to the White House in 2025, his administration began implementing "reciprocal tariffs" against multiple countries effective

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April 5, 2025, and later updated the tariff rates on July 31, 2025. Overall, US tariff measures have evolved from a US–China bilateral trade war into a geographically expansive economic affair that is reshaping global industrial chains. The impact has transcended the bilateral scope and profoundly altered the global trade landscape.

At the international level, tariff measures imposed through presidential executive orders are subject to World Trade Organization (WTO) rules. However, due to the paralysis of the WTO Appellate Body and the US decision not to participate in the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), if the US loses in WTO panel proceedings, it is highly likely to appeal. The resulting dysfunction of the appellate mechanism effectively leaves adverse panel findings against the US in a state of “suspension”, making it difficult to impose substantive constraints on US unilateral tariff measures at the international level. Indeed, from January 2025 to March 2026, only China, Canada, and Brazil submitted requests for consultation to the WTO regarding US tariff measures.

At the domestic level, 17 states and several private businesses challenged the Trump Administration’s “reciprocal tariff” measures through US judicial proceedings. Two consolidated cases — *V.O.S. Selections, Incorporated v. Trump* (V.O.S) and *State of Oregon v. Trump* — not only secured initial victories at the US Court of International Trade but also prevailed on appeal before the US Court of Appeals for the Federal Circuit (Federal Circuit) and ultimately before the Supreme Court of the United States. Against this backdrop, exploring the extent to which the US judiciary can restrain the executive’s tariff authority has become a crucial analytical lens for understanding how to address the “reciprocal tariff” issue.

In view of this, this article seeks to examine three interrelated issues: (i) the statutory basis for US tariff authority; (ii) the expansion of executive authority in the tariff domain; and (iii) the judicial review of executive authority under US tariff statutes. This article also offers a preliminary assessment of judicial checks and balances from the separation of powers perspective.

II. STATUTORY BASIS FOR US TARIFF AUTHORITY

Article I, Section 8 of the US Constitution vests in Congress the exclusive

power “to lay and collect taxes” and “to regulate commerce with foreign nations”.¹ Since the Constitution confers no specific tariff authority upon the president, before the 1930s, the president remained largely a passive “spectator” in tariff policy formulation.

In 1930, Congress enacted the Smoot-Hawley Tariff Act (Tariff Act of 1930), which was regarded as a strongly protectionist tariff-authorizing statute passed under pressure from trade conservatives and was widely criticized by the economics community at its inception.² The legislative lessons of the Tariff Act of 1930 prompted Congress to reflect deeply on the institutional flaws inherent in direct congressional tariff-setting and to begin conditionally delegating its constitutional tariff authority to the president. This marked the beginning of the institutional transfer of trade policy power from Congress to the executive branch.³ For example, in 1934, Congress enacted the Reciprocal Trade Agreements Act (RTAA), authorizing the president to reduce import tariffs in trade agreements — a watershed moment when the executive branch first obtained unprecedented tariff policymaking authority. Subsequently, Congress passed the Trade Expansion Act of 1962, the Trade Act of 1974, and the International Emergency Economic Powers Act (IEEPA) of 1977, among other tariff statutes. These enactments authorize the president and/or the US Trade Representative (USTR) to exercise tariff authority under specified conditions.

As noted above, during his first term, President Trump invoked Section 301 to impose additional tariffs against China; during his second term, the administration widely invoked the IEEPA to declare a national emergency and imposed “reciprocal tariffs”. The legal basis for these measures derived from existing US domestic emergency and trade legislation. The application and boundaries of these tariff measures have sparked widespread controversy.

1 Constitution of the United States, Article I, Section 8.

2 Frank Whitson Fetter, The Economists’ Tariff Protest of 1930, *Econ Journal Watch*, Vol. 4, No. 3, 2007, pp. 345–358.

3 Karen E. Schnietz, The Institutional Foundation of US Trade Policy: Revisiting Explanations for the 1934 Reciprocal Trade Agreements Act, *Journal of Policy History*, Vol. 12, No. 4, 2000, p. 417.

III. THE EXPANSION OF EXECUTIVE AUTHORITY IN THE TARIFF DOMAIN

The gradual expansion of US executive authority in the tariff domain is substantially attributable to the broad delegations conferred upon the executive by several domestic statutes.

A. USTR Tariff Authority Under the Trade Act of 1974

Section 301 grants the USTR authority to investigate and remedy “unfair” foreign trade practices through tariffs and other trade restrictions. These unfair practices may include violations of US trade agreements or certain foreign behaviors, policies, or actions that are unreasonable and burden US commerce, including restrictions on US market access or other export barriers. The USTR may initiate a Section 301 investigation on its own or upon request from an interested party. Section 301(b) further confers discretionary authority: upon finding that a foreign country’s policies or practices are unreasonable or discriminatory and burden US commerce, the USTR may take appropriate action to eliminate such practices.

However, Section 301 does not clearly define the boundaries of the unilateral measures that the USTR may employ.⁴ This statutory ambiguity permitted the Trump Administration to impose tariffs on China on a scale far exceeding the \$50 billion annual damage assessment in the USTR’s initial investigation report. Through Section 301, the administration could effectively impose and modify tariff measures against target countries with minimal statutory constraint. Section 301 has thus become a key instrument of leverage and threat in US trade negotiations.⁵

B. Presidential Tariff Authority Under the Trade Expansion Act of 1962

Section 232 of the Trade Expansion Act of 1962 authorizes the president to

4 Scott Lincicome et al., *Unfair Trade or Unfair Protection? The Evolution and Abuse of Section 301*, CATO Institute Policy Analysis, No. 930, 2022, p. 10.

5 Zhang Junqi, *Analysis on the Legality of Section 301, 301 Investigation and Customs Measures under the WTO Law: From the Perspective of “the US – Tariff Measures Case” in the Sino-US Trade War*, *Chinese Review of International Law*, No. 4, 2021, p. 46.

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impose restrictions on imports, or to negotiate with trading partners regarding such goods, after the Department of Commerce completes an investigation and determines that the quantity or circumstances of such imports “threaten to impair the national security” of the United States. The Department of Commerce may initiate a Section 232 investigation on its own or upon request of the president, a federal agency head, or an interested party. The Department conducts its investigation based on factors including US defense needs, the health of critical industries, industrial capacity, labor conditions, supply chain security, energy resources, and external dependencies, and submits a report to the president within 270 days. If the Department finds that imports threaten national security, the Secretary of Commerce recommends that the president take action to address the threat. If the president concurs, he must decide within 90 days of receiving the report whether to impose additional tariffs, set quotas, or prohibit imports, among other measures. The nature and duration of the action are determined by the president.

Notably, before President Trump’s first term, the last presidential action under Section 232 occurred in 1986, when the Department of Commerce determined that imports of metal-cutting and metal-forming machine tools threatened national security; in response, the president sought voluntary export restraint agreements with major foreign exporters and developed domestic programs to revitalize relevant US industries.⁶ Prior presidents thus used Section 232 cautiously. In contrast, the current administration has frequently invoked Section 232. As of July 2025, since the beginning of President Trump’s second term, the administration initiated nine new Section 232 investigations.⁷ Moreover, Section 232 itself provides no clear definition of “threaten to impair the national security”, implying that apart from the time limit for submitting the investigation report, the president enjoys virtually unreviewable discretion in its application.

6 Rachel F. Fefer et al., Section 232 Investigations: Overview and Issues for Congress, Congressional Research Service (CRS), <https://www.congress.gov/crs-product/R45249> (Last Visited on April 10, 2026).

7 Kyla H. Kitamura, Section 232 of the Trade Expansion Act of 1962, Congressional Research Service (CRS), <https://www.congress.gov/crs-product/IF13006> (Last Visited on October 24, 2025).

C. Presidential Tariff Authority Under the IEEPA of 1977

The IEEPA was enacted during the Cold War to address emergencies and extended the Trading with the Enemy Act (TWEA). Since its enactment, the president has enjoyed broad discretion to address any “unusual and extraordinary” political, economic, or national security threats originating abroad.⁸ Before President Trump’s second term, as of January 2024, among the 79 national emergencies declared by successive presidents, 70 invoked the IEEPA.⁹ Historically, successive presidents have implemented comprehensive or partial economic sanctions, asset freezes, import and export controls, and financial transaction restrictions under the IEEPA, but no president had used this statute as a basis for imposing tariffs.¹⁰

Under Section 1701 of the IEEPA, the president must first formally declare, in accordance with the National Emergencies Act (NEA), that an “unusual and extraordinary threat” exists that endangers US national security, foreign policy, or economic interests, and that this threat originates substantially abroad. The proviso to this section requires that the declaration of emergency be limited to the specific threat. After the president declares a national emergency, Section 1702 grants the president broad authority to regulate imports and exports. Yet controversy persists over whether this provision authorizes the president to impose tariffs directly. Since January 20, 2025, President Trump has invoked Section 1702 of the IEEPA as domestic legal authority to declare a national emergency and has issued multiple executive orders imposing tariffs on specific countries and virtually all trading partners. The nature and scope of these measures were historically unprecedented and have given rise to legal challenges.

Several executive orders issued under the IEEPA currently face multiple

⁸ United States Code, Title 50, Section 1701.

⁹ Christopher A. Casey et al., *The International Emergency Economic Powers Act: Origins, Evolution, and Use*, Congressional Research Service (CRS), <https://www.congress.gov/crs-product/IN11129> (Last Visited on April 10, 2026).

¹⁰ Christopher A. Casey, *The International Emergency Economic Powers Act (IEEPA), the National Emergencies Act (NEA), and Tariffs: Historical Background and Key Issues*, Congressional Research Service (CRS), <https://www.congress.gov/crs-product/IN11129> (Last Visited on April 10, 2026).

lawsuits. On May 28, 2025, the US Court of International Trade ruled against the administration in the V.O.S. and *State of Oregon v. Trump*. On August 29, the Federal Circuit affirmed the Court of International Trade’s substantive holding that the “reciprocal tariffs” were unlawful, but remanded for reconsideration the scope of the permanent injunction. The Court of Appeals held that the multiple tariffs imposed under the IEEPA exceeded congressional authorization.¹¹ However, the Court permitted the tariffs to remain in effect pending appeal. On September 3, the administration filed an appeal with the Supreme Court of the United States, seeking to overturn the Federal Circuit’s judgment. On February 20, 2026, the Supreme Court, in a 6-3 majority, affirmed the Federal Circuit’s judgment, holding that the tariff measures at issue exceeded the authority conferred upon the president under the IEEPA.

In summary, Congress has granted the president trade and tariff authority through multiple statutes, but these delegations have boundaries. Section 301 authorizes the president to address unfair trade practices; Section 232 authorizes the president to adjust imports on national security grounds; and the IEEPA authorizes the president to regulate import and export transactions after declaring a national emergency. Yet for nearly fifty years since its enactment, the IEEPA had been applied only to financial sanctions and asset freezes, never to general tariff measures. Does this indicate that the IEEPA’s legislative intent excludes authorization to impose ordinary tariffs? This question lies at the heart of the current judicial controversy.

IV. JUDICIAL REVIEW OF EXECUTIVE AUTHORITY UNDER US TARIFF STATUTES

The separation of powers constitutes a fundamental principle of the US Constitution — legislative, executive, and judicial powers operate independently while mutually checking and balancing one another. The theoretical origins of this system can be traced to John Locke’s conception of the separation and balance of powers and Montesquieu’s systematic exposition of the separation

¹¹ V.O.S. *Selections, Incorporated v. Trump*, Federal Circuit, No. 1:25-cv-00066-GSK:TMR-JAR.

of powers doctrine.¹² Article I, Section 8 of the Constitution explicitly provides that Congress possesses the power to lay and collect taxes, duties, imposts and excises. This constitutional design reflects the Framers' deep suspicion of exclusive executive authority, ensuring that trade policies affecting the economic interests of the entire nation are debated through the legislative institution rather than being determined solely through unilateral executive action. Consequently, President Trump's second-term tariffs beginning in 2025 have generated significant legal controversy over the boundaries of executive authority, as the administration has frequently invoked statutes such as the IEEPA to implement tariff policies. In 2025 and thereafter, several federal courts, including the US Court of International Trade and the Federal Circuit, reviewed challenges to the Trump Administration's tariff measures, raising significant questions regarding the constitutional limits of executive tariff authority. This sequence provides a paradigmatic example for observing how the US judiciary checks and balances the expansion of executive authority in tariff regulation under the separation of powers system. The following analysis examines a series of US court rulings regarding the Trump Administration's tariff policies, identifying the legal basis and practical effects of the US judicial system in restraining the executive's tariff authority.

A. Judicial Review of Section 301

Judicial review of executive authority under US tariff statutes has long been shaped by the "Chevron deference" doctrine established by the Supreme Court in *Chevron U.S.A., Incorporated v. Natural Resources Defense Council, Incorporated* (1984). Under that doctrine, where statutory language is ambiguous, courts must defer to a reasonable agency interpretation, provided the agency's construction is neither arbitrary nor capricious.¹³ Although the Supreme Court formally overruled Chevron deference in *Loper*

¹² Wu Lan, The Differentiation, Reinforcement, and Integration of Supervision over Public Administrative Power: Reflections on the Functional Allocation between Supervision and Administrative Procuratorial Public Interest Protection, *Journal of Political Science and Law*, No. 2, 2018, p. 71.

¹³ *Chevron U.S.A., Incorporated v. Natural Resources Defense Council, Incorporated*, US Reports, Vol. 467, 1984, p. 837.

Bright Enterprises v. Raimondo (2024), this development has not altered the established pattern of prior judicial practice. Since President Trump’s first term, although importers have repeatedly challenged US tariff measures, courts have almost uniformly upheld executive authority under Section 301.

For example, in the Section 301 cases involving China, the US Court of International Trade held that Congress delegated broad authority to the president under Section 301, with the USTR responsible for implementing and administering relevant trade measures pursuant to presidential delegation, and that the USTR had not acted beyond its statutory authority under Section 301 and Section 307 of the Trade Act of 1974 in implementing Lists 3 and 4A of product-related tariffs. The Court upheld the legality of the USTR’s measures as consistent with the statutory goal of “eliminating China’s behaviors, policies and practices”.¹⁴ At the same time, the Court noted that although the USTR had collected thousands of public comments, it failed to provide “further explanation” on key issues in its final tariff decision, which was incompatible with the Administrative Procedure Act (APA)’s requirement that agencies respond to “basis and purpose” in decision-making. The Court therefore required the USTR to provide sufficient justification.¹⁵

In *HMTX Industries LLC v. United States*, the plaintiffs argued that the USTR had exceeded its authority under Section 301 by imposing additional tariffs on Chinese goods. However, the Federal Circuit held that Section 307(a)(1)(C) of the Trade Act of 1974 supplied a valid basis for the USTR’s measures. The Federal Circuit also rejected the plaintiffs’ claims that the USTR failed to adequately assess the potential economic impact of its tariff measures, failed to substantially consider public comments, and violated the APA procedural obligations.¹⁶ These rulings reinforced the validity and continuity of Section 301 as a US trade policy instrument. Thus, under Section 301, US courts have exercised careful and limited review of executive authority, generally deferring to agency discretion in trade policy while imposing only procedural checks at

¹⁴ *In Re Section 301 Cases*, Court of International Trade, No. 21-00052-3JP, Slip Opinion 22-32, 2022.

¹⁵ United States Code, Title 5, Section 553(c).

¹⁶ *HMTX Industries LLC v. United States*, Federal Circuit, No. 2023-1891, 2025.

the margins.¹⁷

B. Judicial Review of Section 232

Judicial review of Section 232 has generally been deferential. In *Transpacific Steel LLC v. United States*, the Federal Circuit, in a 2-1 decision, reversed the decision of the Court of International Trade, which had held that President Trump's Proclamation No. 9772 failed to comply with the time limits for presidential action set forth in Section 232(c)(1) of the Trade Expansion Act of 1962. The Federal Circuit, however, held that Section 232 permits the president to adopt a "continuing course of action", i.e., the president may announce an action plan within the statutory time limit and then adjust relevant measures based on that plan, including by increasing import restrictions. Thus, the word "shall" in Section 232 is not a mandatory requirement but a permissive provision.¹⁸

In this case, the Court of International Trade attempted to impose constraints on the president's tariff authority based on Section 232's procedural time limits, reflecting a limited intervention in executive authority. The Federal Circuit, however, by interpreting "shall" as permissive and by characterizing the administration's measures as a "continuing course of action", significantly weakened Section 232's procedural constraints and in substance granted the president even broader discretion. The Court of International Trade had itself acknowledged in *American Institute for International Steel v. United States* that Section 232 could leave "gray areas", and that the president could invoke this provision to address matters that fall within the constitutional purview of Congress, so long as the president's actions did not objectively exceed his legal authority — and the Court further recognized the difficulty of judicial review in identifying such a boundary.¹⁹ In fact, no court has invalidated Section 232 on constitutional grounds, nor has any court fundamentally vetoed the president's

¹⁷ Li Tiansheng and Zang Xiangzhen, The Research on the Conflicts between Domestic Law and International Law in the Application of the US Additional Tariff Measures, *Journal of Political Science and Law*, No. 2, 2020, p. 77.

¹⁸ *Transpacific Steel LLC v. United States*, Federal Circuit, No. 20-2157, 2021.

¹⁹ *American Institute for International Steel v. United States*, Court of International Trade, No. 18-00152, Slip Opinion 19-37, 2019.

authority to impose tariffs under Section 232 as applied. This suggests that the president may take action under Section 232 by transforming trade issues into security issues.

C. Judicial Review Under Section 1702 of the IEEPA

In *Loper Bright Enterprises v. Raimondo* (Loper Bright) (2024), the Supreme Court held that, under Section 706 of the United States Code, courts must determine all relevant legal issues, interpret constitutional and statutory provisions, and determine the meaning or applicability of terms in agency actions.²⁰ In so holding, the Court signaled that it would no longer defer to agencies; instead, where the law is silent or ambiguous, the Court must itself complete the task of statutory interpretation rather than follow agency interpretations under the Chevron deference doctrine.²¹ This decision appeared to provide a constraint on the continued expansion of executive authority in the tariff domain, namely, by judicial interpretation limiting ambiguous or controversial statutory delegations in US tariff legislation, thereby exercising the judiciary's role in checking executive power. The Loper Bright case marked the Supreme Court's turn toward stricter review of executive authority and provided a precedential basis for lower courts to constrain executive overreach.

In the V.O.S. case, because neither the IEEPA nor its predecessor statute, the NEA, provides a clear definition of “national emergency” or “unusual and extraordinary threat”, and given the open-ended nature of the statutory delegation as well as the involvement of diplomacy and national security, courts have traditionally afforded substantial deference to executive judgments involving foreign affairs and national security and have adopted a cautious stance against intervention. The Court of International Trade and, on appeal, the Federal Circuit and the Supreme Court, ultimately invalidated the administration's “global and retaliatory tariffs” under the IEEPA based on five principal grounds: (i) constitutional separation of powers; (ii) the plain text of the statute; (iii) legislative purpose; (iv) the scope of delegation; and (v) the

²⁰ *Loper Bright Enterprises v. Raimondo*, US Reports, Vol. 603, 2024, p. 14.

²¹ *Ibid.*, p. 4.

requirement of a substantial nexus.

First, the authority to impose tariffs belongs to Congress, not the president. The Court of International Trade, invoking the nondelegation doctrine and the major questions doctrine, stated that the phrase “to regulate ... importation” in Section 1702(a)(1)(B) of the IEEPA does not sufficiently demonstrate congressional intent to delegate to the president the authority to impose global tariffs.²² To understand this judicial reasoning, it is necessary to clarify the core content of these two doctrines.

The nondelegation doctrine holds that if Congress grants unlimited legislative power to the executive without providing clear guidelines, such a delegation violates the constitutional separation of powers.²³ The doctrine was originally used to review whether congressional delegations were unconstitutional. In fact, since the Supreme Court rejected congressional delegations in *Panama Refining Company v. Ryan*²⁴ and *A.L.A. Schechter Poultry Corporation v. United States*²⁵ in 1935, the nondelegation doctrine remained dormant for nearly a century, with the Court never striking down a federal delegation on that basis. This landscape shifted after *Gundy v. United States*,²⁶ although the Supreme Court declined to invoke the doctrine to strike down the statute, Justices Gorsuch, Roberts, Thomas, and Alito all expressed a strong desire to revitalize it.²⁷ Justice Kavanaugh expressed similar concerns in a related case.²⁸ This suggests that a majority of the Justices are inclined to reinvigorate the nondelegation doctrine substantively. In the V.O.S. case, although the Court of International Trade did not analyze whether the IEEPA itself violated the Constitution, it noted that “a certain interpretation of the IEEPA” (i.e., an interpretation “granting unlimited tariff power to the

22 V.O.S. *Selections, Incorporated v. Trump*, Court of International Trade, No. 25-00066 and No. 25-00077, Slip Opinion 25-66, 2025, pp. 28–29.

23 John Yoo, Rational Nondelegation, *Harvard Journal of Law & Public Policy*, Vol. 47, 2024, p. 814.

24 *Panama Refining Company v. Ryan*, US Reports, Vol. 293, 1935, p. 388.

25 *A.L.A. Schechter Poultry Corporation v. United States*, US Reports, Vol. 295, 1935, p. 495.

26 *Gundy v. United States*, US Reports, Vol. 588, 2019, p. 128.

27 *Ibid.*, Gorsuch, Justice, dissenting (joined by Roberts, Chief Justice, and Thomas, Justice); Alito, Justice, concurring in judgment.

28 *Paul v. United States*, US Reports, Vol. 589, 2019, p. 128 (Kavanaugh, Justice, statement respecting denial of certiorari).

president”) would raise serious constitutional questions.²⁹ In other words, the Court did not make a constitutional judgment on the statute itself, but rather analyzed the boundaries of permissible statutory interpretation. In the Supreme Court’s ruling, however, the majority opinion did not rely on the nondelegation doctrine as a reasoning tool to delineate the IEEPA’s boundaries; instead, it employed pure statutory interpretation. The constitutional discussions concerning the nondelegation and major questions doctrines appeared in the concurring and dissenting opinions.³⁰

The major questions doctrine provides that if Congress intends to grant an agency decision-making authority of vast economic and political significance, it must do so in clear and explicit language.³¹ Although the doctrinal basis can be traced to earlier precedents, it was not until *West Virginia v. EPA* (2022) that the Supreme Court first explicitly invoked the major questions doctrine as an independent basis for decision.³² In that case, the Court struck down the Environmental Protection Agency (EPA)’s attempt to “structurally reshape” the entire US energy market based on vague statutory authority. The following year, the Court again invoked the doctrine in *Biden v. Nebraska*, striking down the federal government’s large-scale student loan forgiveness program.³³ From a constitutional perspective, the rise of the major questions doctrine has substantially filled the review vacuum left by the long dormancy of the nondelegation doctrine. When courts are reluctant to strike down executive action on “excessive delegation” grounds, they may instead adopt the interpretive path of “unclear delegation” to achieve a similar review effect. In the V.O.S. case, the six justices who concluded that the administration had overreached nevertheless diverged in their reasoning. Three conservative justices (Roberts, Gorsuch, and Barrett) applied the major questions doctrine alongside textual analysis; the three liberal justices explicitly declined to use

²⁹ *Supra* n. 22, p. 28.

³⁰ *Learning Resources, Incorporated v. Trump*, US Reports, Vol. 607, 2026.

³¹ *Utility Air Regulatory Group v. EPA*, US Reports, Vol. 573, 2014, p. 302 (quoting *FDA v. Brown and Williamson Tobacco Corporation*, US Reports, Vol. 529, 2000, p. 120); Curtis Bradley and Jack Landman Goldsmith, Foreign Affairs, Nondelegation, and the Major Questions Doctrine, *University of Pennsylvania Law Review*, Vol. 172, No. 7, June 2024, pp. 1789–1790.

³² *West Virginia v. EPA*, US Reports, Vol. 597, 2022, p. 697.

³³ *Biden v. Nebraska*, US Reports, Vol. 600, 2023, p. 477.

the major questions doctrine as an independent analytical tool and reached their conclusions solely on statutory text. This suggests that the major questions doctrine is becoming a key judicial tool for constraining unilateral presidential action, but its constitutional status and scope remain unsettled. Notably, the nondelegation and major questions doctrines are not separate doctrines; rather, they are coordinated expressions of the same constitutional value — protecting legislative authority and maintaining separation of powers — operating in two dimensions: the nondelegation doctrine safeguards legislative authority from intentional excessive delegation by Congress, while the major questions doctrine protects legislative authority from unintentional delegation. Together, they form an institutional defense against improper transfer of legislative power to the executive.³⁴

Second, the phrase “regulate ... importation” in Section 1702(a)(1)(B) of the IEEPA does not indicate that Congress authorized the president to impose tariffs. The Court, invoking *United States v. Yoshida International, Incorporated* (Yoshida II), interpreted “regulate ... importation” as Congress having granted the president relatively limited powers, in order to avoid unconstitutionality and to maintain the independent exercise of power by different government branches.³⁵ In other words, although the IEEPA permits the president to exercise certain emergency powers, those are limited powers related to tariffs and do not include the major measure of establishing “unlimited tariffs”.

Third, the authority granted to the president by Congress through the IEEPA is more limited than that granted by the TWEA. Although the IEEPA retained the phrase “regulate ... importation” from the TWEA, Congress’s clear intent in enacting the IEEPA was to enable the president to act only during national emergencies to address specific “unusual and extraordinary threats”, not to make it serve as general tariff authority.³⁶

Fourth, as an emergency statute, the IEEPA must be strictly construed in its delegation. After comparing Section 122 of the Trade Act of 1974 with Section 1702 of the IEEPA, the Supreme Court pointed out that Section 122

34 Randolph J. May and Andrew K. Magloughlin, *NFIB v. OSHA: A Unified Separation of Powers Doctrine and Chevron’s No Show*, *South Carolina Law Review*, Vol. 74, No. 2, 2022, p. 266.

35 *Supra* n. 22, p. 31.

36 *Ibid.*, pp. 44–45.

imposes specific limitations on the president's authority to address international balance-of-payments problems, for example, additional duties not exceeding 15% and a duration not exceeding 150 days. This indicates that pure "large and serious US balance-of-payments deficits" do not warrant invocation of emergency authority, and that Congress authorized only limited relief measures within specified procedural constraints. Thus, the broad authority granted to the president during national emergencies under the IEEPA does not include measures that may be taken to address balance-of-payments deficits (especially trade deficits). Since the global and retaliatory tariffs were measures taken in response to "the persistent and severe annual deficit in US goods trade",³⁷ that action fell within the scope of addressing international balance-of-payments deficits and should have been governed by the more restrictive non-emergency statute — Section 122 of the Trade Act of 1974.³⁸

Fifth, "responding to unusual and extraordinary threats" does not extend to imposing burdens on an adversary in exchange for concessions from the other party, regardless of whether there is an actual connection between the imposed burden and the demanded concession. If "deal with" could be interpreted as "pressuring others to respond", it would effectively permit the president to do whatever he wishes, because the president would need only to claim that a certain action is a "pressure" or "leverage" strategy, and could then use the IEEPA to take any action in response to some unrelated so-called "threats". When Congress explicitly emphasized that IEEPA authority "must not be used for purposes other than 'deal with' threats", its legislative intent was clearly not to authorize universal tariffs.³⁹

Taken together, the V.O.S. case directly implicates the core issue of executive authority expansion. The courts' rulings constitute an important restriction and clarification of the president's trade authority, reaffirming Congress's central role in this domain.

Overall, the foregoing discussion demonstrates that, in judicial review practice, US courts have traditionally exercised substantial restraint in

³⁷ Executive Order 14257, *Federal Register*, Vol. 90, p. 15041.

³⁸ *Supra* n. 22, pp. 32–35.

³⁹ *Ibid.*, p. 46.

reviewing tariff measures under Section 301, reflecting special deference to agency decision-making in foreign trade matters. Although Section 232 has generated significant controversy, it has almost never encountered substantive judicial invalidation in domestic US proceedings, reflecting judicial deference to executive national security determinations. However, in response to the “reciprocal tariff” measures imposed during President Trump’s second term through broad invocation of the IEEPA, the Court of International Trade, the Federal Circuit, and the Supreme Court have demonstrated a shift from limited intervention to stricter statutory construction. Moreover, comparing Section 232 and the IEEPA reveals that, at the legislative purpose level, Section 232 links trade to national security, permitting the president to use trade measures directly to protect US national security, while Section 1702 of the IEEPA is more often used as an economic sanctions tool to address abnormal threats from foreign sources. At the legal application premise level, Section 232 does not require the president to declare a “national emergency”, only that the Department of Commerce determine that imports affect “national security”; whereas Section 1702 of the IEEPA requires the president first to declare a “national emergency” and that the threat originate abroad. At the delegation scope level, Section 232 authorizes the president to “take any actions he deems necessary” to adjust imports — an extraordinarily broad delegation subject to substantial judicial deference, particularly with respect to presidential national-security judgments; whereas the IEEPA authorizes the president to regulate, prohibit, or prevent imports, foreign exchange, and financial transactions — a broad but emergency-limited delegation. At the judicial review practice level, actions taken by the president under Section 232 have almost never been subject to judicial invalidation; whereas under Section 1702 of the IEEPA, although the president enjoys substantial authority, it is constrained by the “emergency” prerequisite in Section 1701 and the limitations contained in Section 1702(b).

V. ASSESSMENT OF JUDICIAL CHECKS ON EXECUTIVE AUTHORITY UNDER US TARIFF STATUTES

The US judiciary plays an indispensable but limited role in checking and

balancing the expansion of executive tariff authority. As Chief Justice John Marshall observed in *Wayman v. Southard*, the legislature makes the law, the executive executes it, and the judiciary interprets it.⁴⁰ From the overall separation of powers perspective, the effectiveness of judicial checks depends on their complex interaction with the legislative and executive branches.

A. The Necessity of Judicial Checks on Executive Tariff Authority

The necessity of US judicial checks on executive tariff authority is rooted in the inherent requirement of maintaining US constitutional order. Its core lies in the need for a neutral arbitration mechanism to ensure that when Congress establishes a statutory framework for tariffs, based on Congress's constitutional authority under Article I, Section 8 of the Constitution, and delegates certain tariff authority to the executive through provisions such as Section 232 of the Trade Expansion Act and Section 1702 of the IEEPA, such delegations are not exceeded. This necessity is highlighted in two scenarios.

First, in the context of “congressional failure”, when the legislative branch is unable to effectively perform its oversight duties due to political polarization, judicial power intervenes as the “last line of defense” by applying the nondelegation doctrine and the major questions doctrine to review whether executive orders have clear statutory authorization, thereby preventing the constitutional authority of Congress over duties and foreign commerce from being effectively undermined by executive action. Second, judicial checks are the key mechanism for ensuring stability and predictability of trade policy, as they require executive actions to comply with legal procedures and substantive delegations, provide stable legal expectations for market participants, and ensure that tariffs, as an economic instrument, are not abused for political purposes beyond the original legislative intent. In the V.O.S. case, the evidence submitted by affected businesses (wine importers, pipeline operators, and outdoor equipment manufacturers) showed that the administration's tariff policies forced them to significantly raise sales prices, rendering them unable to offer competitive prices to customers and seriously damaging their reputations and business opportunities. The courts focused particularly on these concrete commercial injuries, which not only reflected the urgency of the policy issue

⁴⁰ *Wayman v. Southard*, US Reports (10 Wheaton), Vol. 23, 1825, p. 1.

but also reinforced the necessity of judicial intervention.

B. The Capacity for Judicial Checks on Executive Tariff Authority

Judicial checks on executive tariff authority do not derive from the judiciary's proactive choice but are rooted in its unique constitutional interpretive power and the US tradition of judicial review. This capacity can be realized through two core doctrinal paths.

On the one hand, through textual interpretation, even in the face of highly controversial political questions, courts may strictly review the scope of authority delegated by Congress to the executive in statutes such as the IEEPA, using relevant legal principles to invalidate those radical tariff policies that lack clear congressional authorization, thereby delineating the boundaries of executive authority. For example, in the *V.O.S.* case, the Supreme Court ultimately affirmed the Federal Circuit's judgment that the IEEPA does not authorize the challenged tariffs, rendering the "reciprocal tariffs" and "fentanyl tariffs" imposed by the Trump Administration under the IEEPA invalid. At the same time, the series of trade agreements and bargaining chips that the administration had recently relied upon under the IEEPA has been seriously undermined.

On the other hand, through procedural review, courts may require the executive to fulfill strict procedural justice when addressing "unfair trade practices", such as requiring the executive to provide reasoned justification, thereby incorporating highly political discretionary actions into a legal framework for judicial constraint. For example, in the Section 301 series of cases, although the plaintiffs did not achieve substantial victory in completely overturning the tariffs, they obtained significant procedural victories, compelling the USTR to consider public comments more carefully when taking similar actions in the future and to provide stronger logical justification for its decisions. To some extent, this raised the cost of executive abuse of authority. Thus, from a positive perspective, the US judiciary provides a forum for affected states and businesses to challenge executive overreach, maintaining the separation of powers principle enshrined in the Constitution. Judicial review involves not only procedural legality but also substantive policy rationality, highlighting the judiciary's crucial role in constraining executive authority. The

foregoing cases indicate that the US judiciary is shifting from its traditional deference stance toward a more active constitutional role in the trade policy domain, which will delineate clearer boundaries for executive authority under tariff statutes.

C. The Limitations of Judicial Checks on Executive Tariff Authority

Although the US judiciary provides a key mechanism for counterbalancing the expansion of executive tariff authority, its role also has obvious limitations.

First, US judicial checks are *ex post*. Courts cannot initiate policy review on their own initiative and must await lawsuits from interested parties. Moreover, judicial proceedings often take substantial time. Even if a plaintiff prevails, the challenged tariff measures may remain effective during the appeal period if enforcement of the judgment or injunction is stayed. For example, in its August 2025 ruling, the Federal Circuit permitted the challenged tariffs to remain in place to allow the administration to appeal to the Supreme Court. This objectively weakened the immediate effect of judicial checks and provided the executive with time to adjust its strategy.

Second, even if the statutory basis for an executive action is invalidated by the courts, the executive may seek alternative legal instruments. For example, after the IEEPA tariff authority was rejected, the Trump Administration could still activate Section 232 of the Trade Expansion Act of 1962 or Section 338 of the Tariff Act of 1930⁴¹ as alternative avenues. Indeed, on the day the Supreme Court issued its ruling, the administration activated Section 122 of the Trade Act of 1974, imposing a 10% temporary additional duty on all imported products except those on the exemption list.⁴² On March 11, 2026, the USTR initiated Section 301 investigations against sixteen economies on the grounds

41 Section 338 of the Tariff Act of 1930 was renamed Part IX Article 1338 of the United States Code after its compilation (Discrimination by foreign countries); the core content is to authorize the president of the US to impose import restrictions or impose additional tariffs on the goods of a certain country, when the president is convinced that the country has implemented discriminatory treatment against the US business or trade. See United States Code, Title 19, Section 1338 "Discrimination by foreign countries", <https://www.law.cornell.edu/uscode/text/19/1338> (Last Visited on April 10, 2026).

42 White House, President Donald J. Trump Imposes a Temporary Import Duty to Address Fundamental International Payment Problems, <https://www.whitehouse.gov/fact-sheets/2026/02/fact-sheet-president-donald-j-trump-imposes-a-temporary-import-duty-to-address-fundamental-international-payment-problems/> (Last Visited on April 10, 2026).

of “overcapacity”.⁴³ The following day, another Section 301 investigation was launched against sixty economies on “forced labor” grounds.⁴⁴ These statutory mechanisms demonstrate the flexibility of executive authority when confronted with judicial constraints.

Third, the effectiveness of judicial review ultimately depends on the votes of Supreme Court justices. Supreme Court decisions depend on justices’ interpretations of constitutional and statutory provisions, making outcomes inherently uncertain. Moreover, courts have long shown substantial deference to presidential decisions in foreign affairs, given the executive’s institutional advantages. When the president invokes a blend of constitutional and statutory powers, courts often hesitate, or are reluctant, to disentangle them, especially absent contrary congressional legislation.⁴⁵

Fourth, from a more macroscopic perspective, the effectiveness of judicial checks also depends on the posture of Congress. If Congress actively asserts its own authority, it may explicitly authorize or restrict the president’s trade authority through legislation, strengthening the foundation for judicial checks. However, the current political divergence in the US is severe, and Congress has been unable to reach consensus on trade policy, resulting in legislative absenteeism. This objectively forces the judiciary to assume greater checks-and-balances responsibilities. At this juncture, judicial intervention reflects the complexity of the modern US separation of powers mechanism.

VI. CONCLUSION

The Trump Administration’s tariff policy provides a paradigmatic case for observing power checks and balances within the US political system. Driven by political momentum, the executive branch adopted relatively broad trade

43 USTR, USTR Initiates Section 301 Investigations Relating to Structural Excess Capacity and Production in Manufacturing Sectors, <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/march/ustr-initiates-section-301-investigations-relating-structural-excess-capacity-and-production> (Last Visited on April 10, 2026).

44 USTR, USTR Initiates 60 Section 301 Investigations Relating to Failures to Take Action on Forced Labor, <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/march/ustr-initiates-60-section-301-investigations-relating-failures-take-action-forced-labor> (Last Visited on April 10, 2026).

45 Ganesh Sitaraman and Timothy Meyer, Presidential Regulation, *Yale Journal on Regulation*, Vol. 42, Spring 2025, p. 809.

protection measures to fulfill campaign promises. Meanwhile, Congress and the judiciary constrained executive behavior through legal procedures and judicial review, vividly demonstrating the dynamic interplay within the separation of powers system. Since Trump's return to the White House in 2025, the US has continuously employed unilateral trade measures to impose discriminatory tariff policies on other trading partners, raising significant concerns under the most-favored-nation principle of the GATT 1994. At the international dispute resolution level, the US continued blocking of appointments to the WTO Appellate Body contributed to its prolonged inability to function, weakening the effectiveness of WTO dispute settlement. At the US domestic law level, executive authority has shown an expanding trend in practice in tariff statutes, and the president enjoys considerable discretion. Before the Supreme Court's 2026 decision, the administration relied on IEEPA as the asserted domestic legal basis for imposing "reciprocal tariffs".

Traditionally, the US judiciary adhered to a limited intervention path that respected executive interpretive authority. However, after the Supreme Court began to conduct stricter review of executive authority in 2024, and through the V.O.S. case decisions — the 2025 rulings of the Court of International Trade and the Federal Circuit, and the 2026 Supreme Court ruling, at least from the perspective of judicial relief, US domestic judicial review may impose certain constraints on some of the Trump Administration's tariff measures. Of course, even though the administration lost the V.O.S. case, the US administration may still rely on Section 301 or Section 122 of US trade law to achieve its goal of imposing tariff measures. Yet from a legal perspective, US domestic judicial review has indeed become an effective pathway to strike down the Trump Administration's current "reciprocal tariffs". This domestic legal battle, intertwined with the evolution of the global trade landscape, creates uncertainty for future legal predictions. Nevertheless, at a time when the multilateral trading system is under severe strain, we may still hope that the WTO will activate its institutional resilience and evolve amid a dynamic world filled with uncertainties, in order to address ever-increasing challenges.