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Beyond IEEPA: Exploring President Trump's Remaining Tariff Options

In early 2025, the U.S. government imposed steep tariffs under the International Emergency Economic Powers Act (IEEPA) targeting imports from China, Canada, and Mexico. These tariffs were levied, in part, as penalties for the target countries' perceived contribution to the flow of synthetic opioids (mainly fentanyl) into the United States. The reciprocal tariff program, implemented in April of 2025, was intended to address persistent trade deficits with U.S. trading partners. Imports from most countries are subject to a baseline reciprocal tariff rate of 10%, and several countries have seen increased reciprocal tariff rates of up to 50%. Both the fentanyl and reciprocal tariff programs were accompanied by declarations of national emergencies setting forth President Trump's justification for the new tariffs.

On Friday, August 28, 2025, the United States Court of Appeals for the Federal Circuit affirmed the U.S. Court of International Trade's earlier determination in *V.O.S. Selections, Inc. v. Trump* that President Trump's imposition of the fentanyl and reciprocal tariff programs exceeded his powers under IEEPA. While the 1977 law empowers the president to "regulate importation" in times of national emergency, the Federal Circuit held that IEEPA's language does not explicitly include the power to impose tariffs. Further, the Federal Circuit held that the phrase "regulate importation" does not encompass the authority to levy tariffs. The Federal Circuit also noted that the major questions doctrine requires clear congressional authorization for actions of significant economic and political impact, which it found was lacking in this case.

Importantly, the Federal Circuit's order allows the tariffs to stay in place through October 14, 2025, in anticipation of an appeal by the Trump administration to the U.S. Supreme Court.

Other Tariff Options Under Federal Law

U.S. Treasury Secretary [Scott Bessent indicated](#) that he is confident that the Supreme Court will uphold President Trump's use of IEEPA. However, given the Court of International Trade and Federal Circuit holdings on the issue, the Supreme Court may determine that the fentanyl and reciprocal tariffs go beyond the president's authority under IEEPA. If so, the Trump administration has several other options for imposing tariffs in the future.

Section 338 of the Tariff Act of 1930: Retaliatory Measures

Section 338 of the Tariff Act of 1930 empowers President Trump to impose retaliatory tariffs against countries that have taken "unreasonable" or "discriminatory" actions that negatively affect U.S. commerce. This provision aims to protect American industries from unfair foreign trade practices.

The president can impose tariffs of up to 50% on imports under Section 338. If the target country continues its unreasonable or discriminatory actions, President Trump is authorized to completely block the importation of all products from the target country.

Section 338 tariffs are not subject to a formal investigation or other regulatory requirements, meaning they can be imposed rapidly.

Section 122 Balance-of-Payments Authority: Economic Stability

Section 122 of the Trade Act of 1974 allows President Trump to impose tariffs of up to 15% for up to 150 days to address balance-of-payments deficits. This authority is intended to protect the U.S. economy from excessive foreign competition that could destabilize domestic industries.

If President Trump finds that a "large and serious United States balance-of-payment deficit" exists, or if action is required to "prevent an imminent and significant depreciation of the dollar in foreign exchange markets," then he is authorized to act under Section 122. No formal review is required before the imposition of tariffs or other protectionary actions under Section 122.

Because the reciprocal tariff program is intended to rebalance trade flows with U.S. trade partners, the president could potentially use Section 122 to replace the program if necessary. While Section 122 is limited in its scope and severity, its lack of procedural requirements means that President Trump would be able to quickly impose tariffs against trade partners with which the U.S. maintains trade deficits.

Section 232 Tariffs

Section 232 of the Trade Expansion Act of 1962 grants President Trump the authority to impose tariffs to address national security concerns. Section 232 tariff actions are subject to formal investigation and reporting requirements that tend to slow the imposition of new tariffs.

Section 232 tariffs have been used to implement tariffs on imported steel, aluminum, copper, and their derivatives. Automobiles and auto parts are also subject to Section 232 tariffs. While limited exclusions from some Section 232 tariffs have been available in the past, the process for requesting steel and aluminum tariff exclusions has been replaced with an “inclusion” process, whereby new products can be requested for inclusion under the scope of Section 232 tariff measures.

Due to the investigation and reporting requirements associated with Section 232 tariffs, President Trump is unlikely to be able to quickly impose new tariffs on products that have not been investigated by the Department of Commerce. However, [Section 232 investigations have been initiated](#) on timber and lumber, semiconductors and semiconductor manufacturing equipment, trucks, processed critical minerals and derivative products, commercial aircraft and jet engines, polysilicon and its derivatives, unmanned aircraft systems and associated parts and components, and wind turbines. As such, the imposition of tariffs on these products will likely become an option for the president in the near future.

Section 301 Tariffs

Section 301 of the Trade Act of 1974 empowers President Trump to impose tariffs in response to unfair trade practices by other countries. Like Section 232 tariffs, Section 301 tariffs must be preceded by a formal investigation and report by the Office of the U.S. Trade Representative. Ongoing Section 301 investigations include an investigation into China's maritime, logistics, and shipbuilding sectors, as well as an investigation into Nicaragua's labor and human rights practices.

Section 301 tariffs were notably used during the first Trump administration to impose significant tariffs on imports of a variety of products from China, ranging from textiles and medical equipment to electric vehicles and lithium-ion batteries. These tariffs remain in effect and could be expanded in the future under the Office of the U.S. Trade Representative's four-year review process. Thus, while the Section 301 process can be slow-moving, its effects can be significant and wide-reaching.

Next Steps

The Supreme Court is expected to decide whether to review the Federal Circuit's ruling in the coming weeks. Until then, President Trump's IEEPA tariffs will remain in effect. Frost Brown Todd's [Trade and Foreign Law](#) team is continuing to track this case and all other tariff-related developments. Please contact the authors of this article if you have any questions.

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