began as a bilateral dispute between Washington and Beijing is increasingly evolving into a systemic challenge for the governance of international trade.

More fundamentally, the proliferation of sanctions and counter-sanctions reflects a broader transformation in the relationship between trade and national security. For much of the post-war period, the multilateral trading system sought to isolate commercial relations from geopolitical rivalry. Today, that separation is rapidly eroding. Trade, finance, technology, investment, and industrial policy have become integral components of strategic competition. As both the United States and China increasingly weaponize access to their respective markets and legal systems, the multilateral trading system risks evolving from a rules-based order into a fragmented landscape of competing spheres of economic influence. Whether the WTO can adapt to this new reality may well determine its relevance in the decades ahead.

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INTERNATIONAL ECONOMIC LAW

Presidential Power Over Secondary and Wartime Tariffs

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On April 8, 2026, President Donald J. Trump announced on social media that the United States would impose new tariffs on any product coming from a country that "supplies military weapons" to Iran.[1] The April threat was, in some respects, an amplification of the president's February 6, 2026 executive order in which he determined that it was "necessary and appropriate to impose an additional *ad valorem* duty on imports of articles that are products of foreign countries that directly or indirectly purchase, import, or otherwise acquire any goods or services from Iran."[2] These sorts of tariffs, imposed by the U.S. government on products from countries with a relationship to another state, have come to be known as "secondary tariffs" for their indirect rationale.[3] They are deployed in an effort to chill relations between the "primary" state and the "secondary" state. They do so by targeting imports into the United States from the secondary state to pressure that state to change its policies toward the primary state.[4] Since returning to office in January 2025, the Trump

[1] Donald J. Trump, @realDonaldTrump, TRUTH SOCIAL (Apr. 8, 2026, 7:30 a.m.) ("A Country supplying Military Weapons to Iran will be immediately tariffed, on any and all goods sold to the United States of America, 50%, effective immediately. There will be no exclusions or exemptions!"), *at* https://truthsocial.com/@realDonaldTrump/posts/116368854361048135 [https://perma.cc/HG6G-853V].

[2] Addressing Threats to the United States by the Government of Iran, Exec. Order 14382, 91 Fed. Reg. 6493 (Feb. 6, 2026) (emphasis in original).

[3] The term "secondary tariffs" was not used for this purpose until 2025 when the Trump administration first announced tariffs purportedly based on the International Emergency Economic Powers Act. *See* Jacob Katz Cogan, Contemporary Practice of the United States, 119 AJIL 573, 586 (2025). Prior uses of the term vary across disciplines. We omit a review of them given limited space.

[4] *See id.*; *see also Trump Imposes Novel "Secondary Tariffs" on Countries Importing Venezuelan Oil and Petroleum Products*, STEPTOE (Mar. 31, 2025), *at* https://www.steptoe.com/print/v2/content/250663/Trump-Imposes-Novel-Secondary-Tariffs-on-Countries-Importing-Venezuelan-Oil-and-Petroleum-Products.pdf [https://perma.cc/7GQG-9SAF]; Luisa Palacios, *The Impact of the New US Oil Tariffs on Venezuela*, CTR. GLOB. ENERGY POL'Y COLUMBIA (Apr. 1, 2025), *at* https://www.energypolicy.columbia.edu/the-impact-of-the-new-us-oil-tariffs-on-venezuela [https://perma.cc/2YEN-E8EB]; *The Expanding U.S. Economic Statecraft: The Introduction of*

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administration has threatened or imposed secondary tariffs on countries trading with Russia, Venezuela, and Cuba, in addition to Iran.[5] This Essay considers whether U.S. law authorizes the president to deploy tariffs as tools of indirect economic coercion—in general, and in the particular context of wartime.

Two elements made the April announcement particularly striking. First, in the time between President Trump's executive orders of February 6 and April 8, 2026, the U.S. Supreme Court rejected the Trump administration's reliance on the International Emergency Economic Powers Act (IEEPA) for tariffs, including secondary tariffs. In *Learning Resources v. Trump*, the Court held that IEEPA's authority to regulate importation does not permit the president to impose tariffs.[6] The president promptly ended the collection of secondary tariffs arising under his February 6 IEEPA-premised order.[7] Second, on February 28, eight days after the Supreme Court's decision in *Learning Resources*, the United States and Israel attacked Iran, initiating a months-long conflict. *Learning Resources* reserved judgment on whether the president enjoyed authority to impose tariffs during wartime, under either the Constitution or some other statute.[8] The president's April announcement thus suggested that the Trump administration might explore whether the existence of an armed conflict expanded its authority to impose tariffs—whether, in other words, President Trump's secondary tariffs might be authorized as "wartime tariffs." Such a maneuver would be consistent with the administration's ongoing efforts to reimpose the full scope of IEEPA-based tariffs using other authorities.[9]

As of July 2026, the Trump administration has not imposed any tariffs on products from countries trading with Iran during the conflict. However, the threats have continued. On July 8, 2026, the president appeared to instruct Treasury Secretary Scott Bessent to "[c]ut off all trade with Spain," in part due to Spain's refusal to cooperate with the United States during the war with Iran.[10] The prospect of secondary wartime tariffs thus prompts at least three important questions. First, does the president have the authority to impose secondary tariffs at all, and, if so, under what conditions? Second, does the president have the authority to

"Secondary Tariffs," K2 INTEGRITY (Apr. 7, 2025), *at* https://www.k2integrity.com/en/knowledge/policy-alerts/the-expanding-u-s-economic-statecraft-the-introduction-of-secondary-tariffs [https://perma.cc/SW92-V8L3]; Elena Cima & Makane Moïse Mbengue, *Brave New "Tariff" World: Secondary Tariffs as a New Form of Secondary Sanctions*, EJIL:TALK! (Aug. 26, 2025), *at* https://www.ejiltalk.org/brave-new-tariff-world-secondary-tariffs-as-a-new-form-of-secondary-sanctions [https://perma.cc/5WHJ-G8WY].

[5] Addressing Threats to the United States by the Government of Cuba, Exec. Order 14380, 91 Fed. Reg. 5085 (Jan. 29, 2026); Addressing Threats to the United States by the Government of the Russian Federation, Exec. Order 14329, 90 Fed. Reg. 38701 (Aug. 6, 2025); Imposing Tariffs on Countries Importing Venezuelan Oil, Exec. Order 14245, 90 Fed. Reg. 13829 (Mar. 24, 2025).

[6] Learning Resources, Inc. v. Trump, 607 U.S. __ (2026). See also our prior analysis in these pages: Julian Arato, Kathleen Claussen & Timothy Meyer, *The "America First Trade Policy" in Practice*, 119 AJIL 668 (2025).

[7] Ending Certain Tariff Actions, Exec. Order 14389, 91 Fed. Reg. 9437 (Feb. 20, 2026).

[8] *Learning Resources*, *supra* note 6, at 18–19 (slip op.) ("Regardless of what they might mean for the President's inherent wartime authority, all agree that the President has no inherent peacetime authority to impose tariffs." (emphasis removed)).

[9] Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems, Proclamation 11012, 91 Fed. Reg. 9339 (Feb. 20, 2026); Initiation of Section 301 Investigations of Acts, Policies, and Practices of Various Economies Related to the Failure to Impose and Effectively Enforce a Prohibition on the Importation of Goods Produced with Forced Labor, 91 Fed. Reg. 12884 (Mar. 17, 2026).

[10] Tiago Ventura, *Trump Orders U.S. to Cut All Trade with Spain as Feud Escalates at NATO Summit*, TIME MAG. (July 8, 2026), *at* https://time.com/article/2026/07/08/trump-united-states-spain-trade-cuts-nato-feud/ [https://perma.cc/WX72-ZCJL]. As of the time of writing, the administration has taken no follow up action.

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impose wartime tariffs, either primary or secondary, and if so, under what conditions? This Essay focuses on these two legal questions in light of the Trump administration's actions and the Supreme Court's decision in *Learning Resources*. A third, separate question is whether Congress should make such tariffs available to the president as a foreign policy tool in these sorts of circumstances. Although we leave this policy question aside here, we note that Congress could delegate such powers to the president.[11] Policymakers ought to consider carefully whether to do so and, if so, under what constraints—in full view of this administration's expansive efforts to engage in economic coercion.

Secondary Tariffs and IEEPA

Secondary tariffs take their name from so-called secondary sanctions, a form of economic coercion deployed widely by the United States.[12] Such sanctions traditionally target corporations and financial institutions that trade with or finance the primary targets of U.S. sanctions.[13] Secondary sanctions have been especially important in the long-running dispute over Iran's nuclear enrichment program and support for state-sponsored terrorism. For example, in 2020, President Trump issued an executive order blocking trade with Iran's mining, manufacturing, and textile industries and authorizing sanctions for violation of the order's prohibition.[14] As a matter of U.S. law and in the absence of a more specific statute, secondary sanctions, including President Trump's 2020 order, usually rely on IEEPA's grant of authority to "block . . . prevent or prohibit" a range of transactions.[15]

Statutory authority of this kind is necessary to impose secondary sanctions. As we have previously discussed in these pages, Article I of the Constitution grants Congress power to lay and collect duties as well as to regulate commerce with foreign nations.[16] The president's power over commerce and taxes is purely statutory.[17] Consequently, the president must locate the power for any economic sanctions that he seeks to deploy in authority delegated by Congress.

In introducing secondary tariffs during his second term, President Trump married a longstanding tool of U.S. foreign policy with his preferred tool of tariffs. He first threatened tariffs on products from countries importing Venezuelan oil as part of his efforts opposing the Maduro government.[18] He then threatened to impose secondary tariffs on products from countries importing Russian oil, a response to Russia's ongoing war in Ukraine.[19] The United States followed through on the threat, imposing tariffs on certain products from

[11] As we discuss below, some lawmakers appeared poised to do so at the time of writing.

[12] *See, e.g.*, Tom Ruys & Cedric Ryngaert, *Secondary Sanctions: A Weapon Out of Control? The International Legality of, and European Responses to, US Secondary Sanctions*, 89 Brit. Y.B. Int'l L. 1 (2020) (discussing the history and legality of secondary sanctions).

[13] *Id.* at 7–9.

[14] Imposing Sanctions with Respect to Additional Sectors of Iran, Exec. Order 13902, 85 Fed. Reg. 2003 (Jan. 10, 2020).

[15] 50 U.S.C. § 1702(a)(1)(B).

[16] *See* Arato, Claussen, & Meyer, *supra* note 6, at 669 (citing U.S. Const., Art. I).

[17] *Id.*

[18] Exec. Order 14245, *supra* note 5.

[19] Exec. Order 14329, *supra* note 5.

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India from August 27, 2025 to February 7, 2026.[20] He subsequently announced that he would impose tariffs on products from any country that "directly or indirectly sells or otherwise provides any oil to" Cuba.[21] In each instance, the president relied on IEEPA for authority.

But on February 20, 2026, the Supreme Court foreclosed the use of IEEPA as a statutory vehicle for the president to impose tariffs. Writing for the majority, Chief Justice John Roberts emphasized that the words in IEEPA on which the government relied, "regulate . . . importation," "cannot bear such weight."[22] That is, they do not give the president "the independent power to impose tariffs on imports from any country, of any product, at any rate, for any amount of time."[23] The Court emphasized its skepticism that Congress "hid a delegation of its birth-right power to tax within the quotidian power to 'regulate.'"[24]

Importantly, the Supreme Court did not hold that only the subset of President Trump's tariffs that the plaintiffs had challenged exceeded his authority under IEEPA, as the Court of International Trade and the Federal Circuit had held below.[25] Rather, the Supreme Court made clear that the language in IEEPA on which the government relied does not authorize the president to impose tariffs or increase tariff rates at all. As the chief justice wrote, "Our task today is to decide only whether the power to 'regulate . . . importation,' as granted to the President in IEEPA, embraces the power to impose tariffs. It does not."[26]

As a result of the Supreme Court's decision, IEEPA remains available to impose secondary *sanctions* but cannot be used to impose secondary *tariffs*. The same day that the Supreme Court released its *Learning Resources* decision, President Trump declared his IEEPA-based tariffs, including any IEEPA-based secondary tariffs, to be no longer in effect.[27]

Trade War Powers

President Trump's April 8, 2026 Truth Social post that renewed the threat of secondary tariffs was silent as to the legal authority upon which he planned to rely to impose tariffs on products from countries supporting the Iranian military.[28] But the narrowing of the justification for secondary tariffs from February 6, 2026 (secondary tariffs for trading with Iran) to April 8, 2026 (secondary tariffs for trading weapons with Iran) suggested that the Trump administration sought to rely on the state of war between the United States and Iran as a basis for unlocking tariff authorities.

[20] Notice of Implementation of Additional Duties on Products of India Pursuant to the President's Executive Order 14329, Addressing Threats to the United States by the Government of the Russian Federation, 90 Fed. Reg. 41837 (Aug. 27, 2025).

[21] Exec. Order 14380, *supra* note 5.

[22] *Learning Resources*, *supra* note 6, at 5 (slip op.).

[23] *Id.*

[24] *Id.* at 14–15.

[25] V.O.S. Selections, Inc. v. Trump, 149 F.4th 1312 (Fed. Cir. 2025); V.O.S. Selections, Inc. v. Trump, 772 F. Supp. 3d 1350 (Ct. Int'l Trade 2025).

[26] *Learning Resources*, *supra* note 6, at 16.

[27] Exec. Order No. 14389, *supra* note 7.

[28] Megan Messerly, *Trump Threatens 50 Percent Tariffs on Iran Arms Supplies. His Legal Path Is Murky*, Politico (Apr. 8, 2026), *at* https://www.politico.com/news/2026/04/08/trump-threatens-50-percent-tariffs-on-iran-arms-supplies-his-legal-path-is-murky-00863519.

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In *Learning Resources*, the Court expressly noted that IEEPA is a peacetime statute.[29] Chief Justice Roberts's opinion reserved the question of whether the president might have the power, either under the Constitution or under a different statute, to impose tariffs during a war.[30] Justice Gorsuch, in his concurrence, likewise observed: "IEEPA is not a wartime statute, nor does the President claim we are at war with the countries whose goods are subject to the tariffs."[31] The Court thus left unanswered the critical question as to whether the president can impose tariffs during a war.

Does wartime unlock presidential tariff powers? Despite the chief justice and Justice Gorsuch's statements to the contrary, there is a provision of IEEPA that applies when the United States is "engaged in armed hostilities."[32] It allows the president under those circumstances to "confiscate" any property of any foreign entity that he determines has aided in such hostilities.[33] Whether this language leaves space for the executive to levy duties was not at issue in *Learning Resources* and thus remains open to interpretation.

Alternatively, a congressional declaration of war or authorization to use force against a country such as Iran would grant the president access to the powers in the Trading with the Enemy Act (TWEA).[34] At its core, TWEA prohibits trading with the enemy or an ally of an enemy.[35] TWEA authorizes the president to grant licenses for trading with the enemy and enemy allies, and with respect to enemy allies, and it also authorizes the president to suspend the operation of TWEA entirely with respect to enemy allies.[36] The operative provision of TWEA, 50 U.S.C. § 4305, then divides the president's authority to regulate trade between countries that are enemies and enemy allies,[37] and "any foreign country"—that is, all foreign countries including countries that are neither enemies nor enemy allies.[38]

With respect to "any foreign country," TWEA gives the president the power to "regulate . . . importation" using nearly identical wording to IEEPA.[39] As in IEEPA, that language authorizes the president to regulate "by means of instructions, licenses, or otherwise," but it does not otherwise elaborate on the president's licensing authority.[40] In *Learning Resources*, the Supreme Court apparently did not think that the bare reference to licenses as a *means* of regulation was enough to allow the president to impose tariffs. Given the similarity of the language that applies to "any foreign country" to the language in IEEPA addressed in *Learning Resources*, the Court may not look favorably upon a president's use of this language in TWEA as a basis for secondary tariffs.

[29] *Learning Resources*, *supra* note 6, at 19.
[30] *Id.* at 18–19.
[31] *Id.* at 36 n. 5 (Gorsuch, J., concurring).
[32] 50 U.S.C. § 1702(a)(1)(C).
[33] *Id.*
[34] Act of Oct. 6, 1917 (Trading with the Enemy Act), Ch. 106, 40 Stat. 411 (codified at 50 U.S.C. § 4301 et seq.).
[35] 50 U.S.C. § 4303.
[36] 50 U.S.C. § 4303(a).
[37] 50 U.S.C. § 4305(a).
[38] 50 U.S.C. § 4305(b).
[39] 50 U.S.C. §§ 4305(b)(1)–(b)(1)(B) ("During the time of war, the President may . . . regulate . . . importation or exportation of . . . any property in which any foreign country or a national thereof has any interest.").
[40] *Compare* 50 U.S.C. § 4305(b); 50 U.S.C. § 1702 *with* 50 U.S.C. § 4305(a).

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By contrast, the president's licensing authority over trade with enemies and enemy allies is broader as a textual matter. With respect to enemies and enemy allies, TWEA authorizes the president to "grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe."[41] Conceivably, the imposition of a wartime or secondary tariff, as a condition of granting a license to trade with an enemy or enemy ally, falls within this grant of authority. Such an argument would hinge on the fact that conditions on such licenses are explicitly authorized for enemies and enemy allies, whereas under the provision that applies to all other countries, licenses are merely a means of giving effect to a set of enumerated statutory powers that do not include the power to tax or tariff.[42] To date, however, Congress has not issued any such declaration or authorization with respect to Iran, making the usefulness of such a distinction only hypothetical.

Finally, in *Learning Resources*, the government argued that the president enjoys the *constitutional* power to impose tariffs during wartime.[43] In his dissent, Justice Kavanaugh embraced the government's constitutional arguments in relation to wartime. He wrote that:

> U.S. history from the 1800s through IEEPA's 1977 enactment illustrates how the statute came to incorporate the President's long-recognized authority to impose tariffs during wartime . . . . Long before the initial 1917 enactment of the Trading with the Enemy Act, which was IEEPA's predecessor, the President possessed inherent wartime authority to prohibit commercial relations with enemy nations.[44]

Justices Alito and Thomas joined Justice Kavanaugh's dissent, and both Chief Justice Roberts's majority opinion and Justice Gorsuch's concurrence were careful to reserve judgment on the possibility that the president may have heightened constitutional tariff authority during wartime.[45] While there may thus be five votes for the position that the president can, under the Constitution, impose tariffs on a nation with which it is at war, such a holding would be difficult to justify under the originalist framing that a majority of the Court now regularly invokes. It is true that, long before the enactment of TWEA, presidents imposed commercial restrictions on enemy nations, but, as two of us have recently written, they did so as authorized by Congress.[46] Prohibitions on trading with the enemy were

[41] 50 U.S.C. § 4305(a).

[42] Section 4303 authorizes licenses to persons in the United States with respect to both enemies and enemy allies, but it does not contain the language regarding conditions found in section 4305(a), which applies only to enemy allies. The case for tariff authority as a condition of a license is thus stronger with respect to enemy allies than enemies themselves. TWEA does not define the term "ally." *See* 50 U.S.C. § 4302.

[43] The government made this claim in service of a statutory argument that Congress had codified that authority first in TWEA and then in IEEPA as applied to peacetime emergencies. Opening Brief for the Respondents at 12–15, Learning Resources, Inc. v. Trump, Nos. 24-1287, 25-250, (U.S. Sept. 19, 2025).

[44] *Learning Resources*, *supra* note 6, at 22 (Kavanaugh, J., dissenting).

[45] *Id.* at 18–19 ("According to the Government, those precedents acknowledge an inherent Presidential power to impose tariffs during armed conflict . . . . Regardless of what they might mean for the President's inherent wartime authority, all agree that the President has no inherent peacetime authority to impose tariffs."); *id.* at 36 n. 5 (Gorsuch, J., concurring) ("Whatever the full scope of the President's Article II war powers may be (and the briefs before us reveal a healthy debate whether they include the power to impose tariffs), those powers are not implicated here.").

[46] Kathleen Claussen & Timothy Meyer, *The Foreign Commerce Power*, 114 CAL. L. REV. 407, 469 (2026).

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imposed following a congressional declaration of war because breaking off economic relations was part and parcel of the existence of a legal state of war.

The originalist grounds for the president having a constitutional power to impose wartime *secondary* tariffs—that is, tariffs on countries with whom the United States is not at war, but whose commercial policies implicated U.S. interests in war—are even weaker. In the years immediately following the Founding, absent a declaration of war against the target country, presidents regularly sought congressional authorization to undertake economic restrictions on such trade. The president's Article II powers did not overcome limitations Congress put in delegations to regulate commerce with non-enemies during conflict.[47] In short, nothing in the Constitution or in the historical practice of the president or Congress in the Founding Era indicates that the president can impose tariffs without congressional authorization, regardless of whether the nation is engaged in an armed conflict.[48]

Other Paths to Secondary Tariffs

Despite the Supreme Court's holding that IEEPA's authorization to "regulate . . . importation" does not include authority to impose tariffs, and doubts that the president's Article II powers during wartime or TWEA (at least as applied to countries that are not enemy allies) can justify secondary tariffs, the president maintains a robust toolkit, including the power to impose tariffs in narrow circumstances prescribed by Congress, that could provide a basis for secondary tariffs. Congress has repeatedly delegated authority to the president to levy tariffs under carefully circumscribed conditions, including several that are premised on a finding by the president or a federal agency of a threat to the U.S. economy or security.[49] Among them, three provide the clearest avenues to secondary tariffs: Section 301 of the Trade Act of 1974, Section 338 of the Tariff Act of 1930, and Section 232 of the Trade Expansion Act of 1962.[50] The Trump administration has already invoked all three of these statutes in 2026.[51]

Section 301 enables the Office of the U.S. Trade Representative (USTR) to impose tariffs on products from a country that is engaged in an act, policy, or practice that is unreasonable or discriminatory and that burdens or restricts U.S. commerce.[52] Under this language, one could envision a qualifying finding by the USTR of an act, policy, or practice that involved economic or military engagement with an adversary of the United States. For instance, the Iran war has resulted in the extended closure of the Strait of Hormuz, which has created significant economic challenges for many countries, including the United States. One could imagine the USTR finding that trading with Iran in general, and supporting its military specifically, is unreasonable and burdens U.S. commerce by supporting the closure of the Strait.

[47] Little v. Barreme, 6 U.S. 170 (1804).

[48] Claussen & Meyer, *supra* note 46, at 469.

[49] Kathleen Claussen, *Trade's Security Exceptionalism*, 72 Stan. L. Rev. 1097, 1115–25 (2020).

[50] Trade Act of 1974, Pub. L. No. 93–618, Title III, § 301, 88 Stat. 2041 (1975) (codified as amended at 19 U.S.C. § 2411); Trade Expansion Act of 1962, Pub. L. No. 87–794, Title II, § 232, 76 Stat. 877 (1962) (codified as amended at 19 U.S.C. § 1862).

[51] Arato, Claussen & Meyer, *supra* note 6, at 670–72.

[52] 19 U.S.C. § 2411.

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Section 338 of the Tariff Act of 1930, a forerunner of Section 301, also permits the president to declare new duties on products from another country when he finds that the country "discriminates in fact against the commerce of the United States, directly or indirectly."[53] Imposing secondary tariffs under that language on a similar theory may be more challenging, but not impossible. Section 338(e), however, authorizes the president to impose a duty of not more than 50 percent if he determines that "any benefits accrue or are likely to accrue to any industry in any foreign country by reason of any such imposition or discrimination imposed by any foreign country *other than the foreign country in which such industry is located* . . . ."[54] Thus, if the president concluded that an act, including an act of war, constitutes discrimination against the commerce of the United States under Section 338, he may be able to impose secondary tariffs on other countries that benefit from the underlying discrimination. For example, if the president concluded that the Iranian closure of the Strait of Hormuz constituted discrimination under Section 338, he may seek to impose secondary tariffs on products from countries that he found benefitted from such closure. Section 338 had lain dormant since the 1930s, but on July 20, 2026, President Trump relied on Section 338 in announcing an additional 50 percent duty on certain Canadian imports, teeing up the possibility that Section 338 could be used more broadly.[55]

Section 232 authorizes the president to take action to "adjust the imports" of any article "being imported into the United States . . . under such circumstances as to threaten to impair the national security."[56] Section 232's terms are capacious.[57] President Trump could conceivably use Section 232 to impose secondary tariffs on the basis of his determination that such tariffs create leverage for the United States to change the "secondary" states' policies with respect to a conflict. Lower federal courts have upheld tariffs justified on similar grounds. For instance, in *Transpacific Steel LLC v. United States*, the Federal Circuit upheld the president's decision to increase duties on Turkish steel, despite the fact that the president initially announced that the increase had to do with unrelated Turkish policies with which the president disagreed.[58] Similarly, in *Severstal Export GmbH v. United States*, the Court of International Trade found that generating leverage in trade agreement negotiations was "not wholly unrelated" to Section 232's definition of "national security" and thus President Trump's statement that he had imposed steel and aluminum duties for that purpose were not "sufficient on their own to underpin a credible case that the President has clearly misconstrued his authority under [Section 232]."[59]

[53] 19 U.S.C. § 1338(a)(2).

[54] 19 U.S.C. § 1338(e) (emphasis added).

[55] Imposing Additional Duties to Offset Canadian Discrimination Against the Commerce of the United States with Respect to Alcoholic Beverages, Proclamation 11046, 91 Fed. Reg. 46639 (July 23, 2026); Imposing Additional Duties to Offset Canadian Discrimination Against the Commerce of the United States with Respect to Dairy, Proclamation 11047, 91 Fed. Reg. 46653 (July 23, 2026); Imposing Additional Duties to Offset Canadian Discrimination Against the Commerce of the United States with Respect to Motor Vehicles, Proclamation 11048, 91 Fed. Reg. 46663 (July 23, 2026).

[56] 19 U.S.C. § 1862(c)(3).

[57] 19 U.S.C. § 1862(d).

[58] Transpacific Steel LLC v. United States, 4 F.4th 1306 (Fed. Cir. 2021).

[59] Severstal Export GmbH v. United States, 2018 WL 1705298, Slip Op. 18-37 (Ct. Int'l Trade Apr. 5, 2018).

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Conclusion

At a time when lawmakers are reconsidering the appropriate bounds of the president's economic security toolkit,[60] it is worth asking whether there is a place for tariffs beyond those already codified. Tariffs can be a tool of war in the U.S. repertoire. In 2022, Congress passed the Suspending Normal Trade Relations with Russia and Belarus Act, which revoked Russia's most-favored-nation status in light of its hostilities toward Ukraine.[61] The Act also gave President Joseph R. Biden the authority to raise tariffs beyond the rates imposed by Congress, which he did.[62] Likewise, in July 2026, there was a groundswell of bipartisan support for legislation that would give the president the power to impose secondary tariffs as an additional tool against Russia.[63] The bill under consideration at the time of writing would require the president to increase tariff rates up to 100 percent on all goods from certain countries that make major purchases of crude oil or natural gas that originated in the Russian Federation.[64]

Crucial to our separation of powers is that the president and Congress act together in this regard. The president's power to impose secondary and wartime tariffs depends on his ability to persuade Congress to grant him (or let him retain) the authority to impose such duties. Congress's actions with respect to Russia show that Congress maintains the practical ability to act in the face of conflict. These actions also reflect a more constitutionally sound approach to secondary and wartime tariffs, one in which Congress grants the president authority to impose tariffs in response to specific countries and situations, rather than the president trying to identify vague and overly broad twentieth century statutes that might plausibly fit his aims.

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[60] *See, e.g.*, Congressional Trade Powers Reform Act of 2026, S. 5081, 119th Cong. (2026); Lindsey O. Graham Sanctioning Russia and Iran Act of 2026, S. 5025, 119th Cong. (2026); Protecting Americans from Tax Hikes on Imported Goods Act of 2025, S. 151, 119th Cong. (2025); Congressional Trade Authority Act of 2025, H.R. 1903, 119th Cong. (2025); Trade Review Act of 2025, H.R. 2665, 119th Cong. (2025).

[61] Suspending Normal Trade Relations with Russia and Belarus Act, Pub. L. No. 117–110, 136 Stat. 1159 (2022).

[62] Increasing Duties on Certain Articles from the Russian Federation, Proclamation 10420, 87 Fed. Reg. 38875 (June 27, 2022).

[63] Laura Kelly, *Russia Sanctions Bill May Move as Congress Looks to Honor Graham*, The Hill (July 14, 2026), *at* https://thehill.com/homenews/senate/5966575-bipartisan-russia-sanctions-bill-graham.

[64] Lindsey O. Graham Sanctioning Russia and Iran Act of 2026, *supra* note 60, Sec. 113. In remarks to reporters on July 29, 2026, President Trump indicated that he wanted members of Congress to add to the bill a delegation of authority for him to impose secondary tariffs targeting countries that support Iran, as well. Donald J. Trump, *President Trump Announces Renovation Agenda for Dulles International Airport*, C-SPAN (July 29, 2026), *at* https://www.c-span.org/program/white-house-event/president-trump-announces-renovation-agenda-for-dulles-international-airport/683509.

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