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Tariffs, the Executive Branch and Recent Developments in U.S. Trade Policy

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EXECUTIVE SUMMARY

Since returning to office in January 2025, President Donald Trump has pursued an aggressive and unpredictable trade policy that directly affects Canada. Central to this agenda has been the imposition of new tariffs, typically justified on national security grounds, that stretch or outright violate U.S. trade commitments under the Canada-United States-Mexico Agreement (CUSMA) and World Trade Organization (WTO) rules. Canada has responded with both targeted retaliatory measures and diplomatic engagement, though the volatility of U.S. policy continues to inject uncertainty into the bilateral relationship.

The Trump administration first linked Canada to the U.S.'s fentanyl crisis by expanding a southern border emergency declaration in February 2025 to cover illicit drug deaths from drug trafficking. Despite evidence from the Canadian government that very minor quantities of fentanyl cross the northern border, Trump threatened sweeping tariffs unless "sufficient action" was taken. Canada implemented enhanced border enforcement, including appointing a fentanyl czar and bringing in other measures, but Trump still wasn't satisfied and imposed tariffs on March 4, 2025: 10 per cent on Canadian energy and potash and 25 per cent on most other goods. Congress and U.S. industry pressure moderated the impact on energy and potash, but overall, Canadian exporters faced steep new costs.

Subsequent escalations raised the tariff burden further. On July 31, the administration increased the *International Emergency Economic Powers Act* (IEEPA) tariff rate on Canada to 35 per cent, citing failed negotiations to secure concessions. However, thanks to an exemption Trump granted in March 2025, exports meeting CUSMA requirements were excluded from the IEEPA tariffs. This carve-out has proven critical, as nearly 90 per cent of Canadian exports were shipped to U.S. markets under CUSMA rules in April 2025. As a result, Canada's effective tariff burden, while officially as high as 35 per cent, averages closer to 6.3 per cent. Preserving market access through CUSMA is therefore vital for Canadian trade interests.

Beyond IEEPA, Canada also faces punishing tariffs under Section 232 of the 1962 *Trade Expansion Act*: 50 per cent on steel and aluminum, 25 per cent on automobiles and auto parts, 50 per cent on copper, and 10 per cent on softwood lumber, with further investigations pending. These measures compound the strain not only on Canada-U.S. trade, but on formerly warm relations between the two countries. The measures also create frustrating uncertainty for businesses that rely on predictable market access.

Litigation underway in U.S. courts may determine whether the executive branch's expansive use of tariff authority under IEEPA and Section 232 withstands legal scrutiny. Congress retains constitutional authority to regulate trade, but so far has done nothing about Trump's actions. Trading partners, including Canada, must plan for two scenarios. Courts may vacate tariffs, pushing the administration to pursue alternative authorities, or tariffs will remain in place and

deals negotiated under threat will persist. In either case, given the Trump administration's volatility and flip-flopping on tariffs, the risk of further unilateral U.S. measures is high.

The Canadian government faces difficult choices and must strike a delicate balance. It must weigh continued participation in talks with Washington against the danger of legitimizing erratic policies. It must also prepare for the scheduled CUSMA review in July 2026, which Trump may treat as a renegotiation rather than a technical assessment.

U.S. trade policy under Trump is marked by protectionism, unpredictability and the aggressive and possibly unconstitutional expansion of presidential authority. Canada has a double challenge: Ottawa must mitigate immediate economic damage while simultaneously bracing itself and preparing for a prolonged period of instability in its most important trading relationship.

U.S. President Donald Trump's second term in office has brought trade policy into the limelight through his penchant for using tariffs as a broad foreign policy tool. Trump sees tariffs as an effective way to get countries on the phone in order to extract a wide range of concessions, from lowering trade barriers to purchasing U.S. goods or increasing investments in the United States.

In a world where certainty seems impossible, clarity for the cause of the uncertainty acts as a stand-in and a critical asset for policymakers and business.

Attention to Trump's trade policy is shifting to an analysis of the various deals he is trying to secure with U.S. trading partners. However, the underlying issue of the tariff authorities that are being used to encourage those talks remains highly relevant. As debates rage in Canada over how and what to negotiate with the Trump administration, understanding the somewhat unique and certainly novel use of tariff powers is essential for trading partners. It helps to understand what they are signing up to. They also must grapple with the fact that many of the laws the president is using to wage this trade war are legally tenuous, placing the content of some of those deals into question.

This policy brief explains recent developments in U.S. trade policy and the legal authority on which Trump is relying to pursue his foreign policy goals. It starts by reviewing the basics of trade policy making in the United States, including the clear mandate in the U.S. Constitution for Congress to have exclusive power to regulate trade. It examines why Congress delegated some of this authority to the president and explores the key tariff authorities currently being used or considered and which set of tariffs will impact Canada. It will also look at what options are available to U.S. trading partners as they manage a highly protectionist U.S. market.

U.S. TRADE POLICY 101

Article 1, Section 8 of the U.S. Constitution grants Congress the express power "to lay and collect Taxes, Duties, Imposts and Excises" and to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes" (Cornell Law School n.d.a.). This means that Congress holds primary authority over trade policy, including setting tariff rates, creating preference programs for trade with developing countries and approving trade agreements. At the same time, the president has broad foreign policy powers under Article 2 of the Constitution, which allows the executive branch to negotiate treaties (Cornell Law School n.d.b.). Many presidents have used their Article 2 authorities to negotiate investment treaties or treaties of friendship, commerce and navigation (Wofford 2025).

During the Biden administration, the U.S. reached an economic agreement with Taiwan under the U.S.-Taiwan Initiative on 21st Century Trade, which brought the tension between Article 1 and Article 2 powers into focus (Office of the USTR 2024).

The agreement with Taiwan was not a traditional trade agreement that centred on improving market access but instead was limited to areas of economic co-operation. Congress pushed back against the Biden administration's approach to concluding the deal without congressional oversight, and after it was signed, enacted legislation that required robust transparency for future discussions that would build on the framework the agreement had established (Manak 2023).

Former president Joe Biden appeared displeased with Congress for making a fuss over the negotiations and passing legislation to rein in his negotiating authority. Upon signing the bill into law, he issued a statement saying he would treat the transparency requirements in the new law "as non-binding" in cases where they "would impermissibly infringe upon my constitutional authority to negotiate with a foreign partner" (White House 2023). Essentially, Biden was arguing that his Article 2 authorities allowed him to undertake such negotiations and that he would use his own judgment to decide whether or not to comply with requirements to consult with Congress as outlined in the law.

This episode is important because it raises questions about Congress's future role in trade policy making and the guardrails, if any, on presidential action in this area. Early delegations of authority, such as the *Tariff Act* of 1890 and the *Tariff Act* of 1922 permitted the president to modify tariffs by suspending market access and to "equalize ... differences in costs of production" by modifying tariff rates (Zirpoli 2025). Historically, trade agreements were not treaties, but rather congressional-executive agreements which are negotiated by the executive branch (the president) and approved by Congress (Zirpoli 2025).

The most notable delegation of power from Congress to the executive branch was in 1934, with the *Reciprocal Trade Agreements Act*, which gave the president the authority to reduce tariffs. This delegation of authority eventually became Trade Promotion Authority, also known as fast-track authority, which provides for an up-and-down vote without amendments on trade agreements submitted by the president to Congress (Casey and Cimino-Isaacs 2024). It was also incorporated into subsequent legislation concerning free trade agreements.

The reason Congress delegated negotiating authority to the president is straightforward. Prior to 1934, tariff policy was a politically charged affair and Congress sought to turn over some of its trade authority to the president, who, compared to parochial congressional interests, represented a national constituency. The president, it was thought, would be less beholden to special interests. Furthermore, preventing amendments to agreements once submitted to Congress gave trading partners more certainty that negotiated outcomes would not be changed at the last minute. This strengthened the president's ability to negotiate agreements, though regular consultation with Congress was still required.

The historical record provides many examples where Congress has delegated trade-related authorities to the president to address unfair trade practices or concerns over national security. With a focus away from tariff reductions to tariff increases, the president no longer executes his trade agenda by fast track. Therefore, authorities that allow the president to raise tariffs are largely what is at issue today, with the president increasingly reliant on those delegations to pursue a wide range of foreign economic policy objectives.

THE PRESIDENT'S TARIFF AUTHORITIES

Trump's "America First" trade policy envisions "a robust and reinvigorated trade policy that promotes investment and productivity, enhances our Nation's industrial and technological advantages, defends our economic and national security, and — above all — benefits American workers, manufacturers, farmers, ranchers, entrepreneurs, and businesses" (White House 2025a).

To achieve these goals, the president has largely relied on one tool — tariffs — which not only serve as a source of potential revenue to pay for expansive domestic tax cuts, but also as leverage to extract trade and other concessions from foreign partners (Clausing and Obstfeld 2024). However, instead of pursuing congressional-executive agreements, the executive branch is increasingly opting for non-binding trade-related agreements and taking other trade actions through issuing proclamations and executive orders (Larsson and Wennerberg 2024; Graber 2021).

While not defined in the Constitution (Contrubis 1999), an executive order has the force of law, "much like regulations issued by federal agencies" (American Bar Association 2021) though it is not legislation. Instead, an executive order "is a signed, written, and published directive from the President of the United States that manages operations of the federal government," and is published in the Federal Register (Federal Register 2025a). They can take effect instantly or require additional actions from a federal agency. Since the next president can easily overturn these actions, the durability of commitments in conducting trade policy in this way are uncertain.

The president issues executive orders pursuant to specific objectives and derives authority from Article II of the Constitution or authorities delegated by Congress, which are referenced in the orders. Of the various authorities that Congress has delegated to the president, a handful stand out as particularly relevant to current debates.

THE *INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT OF 1977*

On February 1, 2025, Trump imposed tariffs on Canada, China and Mexico, declaring a national emergency caused by the "extraordinary threat posed by illegal aliens and drugs, including deadly fentanyl" crossing the border (White House 2025b). The *International Emergency Economic Powers Act of 1977* (IEEPA) provides sweeping economic powers to the president during an emergency (Cornell Law School 1977). Essentially, the president can use these powers "to deal with any unusual and extraordinary threat" if he "declares a national emergency with respect to such threat."

Importantly, the statute does not define what constitutes an emergency. Though Congress has the authority to revoke the underlying emergency, there is little appetite to challenge the president. Therefore, an emergency is essentially what a president says is an emergency. An accompanying brief on the court challenges around Trump's use of IEEPA deals with this issue.

Proclamation 10886, issued on January 20, 2025, declared a national emergency at the United States' southern border, claiming that it "is overrun by cartels, criminal gangs, known terrorists, human traffickers, smugglers, unvetted military-age males from foreign adversaries, and illicit narcotics that harm Americans, including America" (Federal Register 2025b). The following month, Trump expanded that emergency to include China and Canada, based on the claim that both countries are doing little to stem the flow of fentanyl into the United States.

Trump again relied on IEEPA to impose across-the-board tariffs on all U.S. trading partners on April 2, 2025, which he described as "Liberation Day." The president declared that "large and persistent annual U.S. goods trade deficits have led to the hollowing out of our manufacturing

base” and that this emergency triggered the tariff action (White House 2025c). That action included a 10 per cent baseline tariff, plus additional tariffs for countries with which the United States has a trade deficit. These countries with trade deficits were called on to negotiate concessions for the tariffs to be lifted. Canada and Mexico were not impacted by these tariffs, along with countries that do not have normal trade relations with the United States, such as Russia, Cuba and North Korea (U.S. Customs and Border Protection Agency n.d.).

Historically, IEEPA has been used to impose an array of sanctions, such as curtailing exports and blocking foreign assets, but it has never been used to raise tariffs on imports into the United States (Congressional Research Service 2024). Its predecessor statute, the *Trading With the Enemy Act* (TWEA), was enacted in 1917 mainly to regulate trade with the enemy states after the First World War but was later used more broadly as a tool for sanctions during the Cold War.

In 1971, it was used by then-President Richard Nixon to levy a 10 per cent tariff on all imports. Though this covered imports from every trading partner, it was mainly seen as leverage against Japan and Germany to revalue their currencies. This was a temporary measure, which was soon lifted. Nixon’s action led to the review of the TWEA and calls for reform. The discussions stemming from that led to the creation of the *National Emergencies Act* and the IEEPA to set up some guardrails against presidential abuse of this authority.

Trump’s current actions under IEEPA are under legal review. Experts generally agree that the use of IEEPA now is at the very least a major stretch of the statute, and at its worst, simply unconstitutional. If the courts strike down the IEEPA tariffs, experts have pointed to two other avenues for which the broad applications of tariffs may be pursued, Section 122 and Section 338, detailed below.

SECTION 122 OF THE *TRADE ACT OF 1974*

Section 122 of the *Trade Act* of 1974 gives the president the power to address “large and serious” balance-of-payments deficits by imposing tariffs up to 15 per cent or requiring quotas for imports (Cornell Law School 1975a). The balance of payments is just an accounting measure of payments to foreign countries (such as imports, travel, aid and investment) and receipts from foreign countries (such as exports and investment income).

This law was enacted in response to Nixon’s use of the TWEA, providing clearer delegated authority around a limited set of actions. Section 122 does not require the input of any executive agencies, nor does it require an investigation before taking action, giving the president ample discretion. However, if the president imposes tariffs using this law, these actions are limited to 150 days, unless Congress allows them to be extended. Importantly, this law cannot be used to target any individual country but must be applied to everyone equally.

It is debatable whether Section 122 would provide Trump with the authority to undertake his April 2 IEEPA actions to address trade imbalances. For example, some point to the legislative history in drafting Section 122, which suggests that it was not intended to provide authority to raise tariffs in cases of trade imbalances, but rather allowed for reductions in tariffs (Zirpoli 2025). This suggests that Congress considered as distinct the meanings of “balance of payments” and “balance of trade.”

Section 122 has never been used to impose trade restrictions, but it is entirely possible that the president could use it to apply a 15 per cent tariff across the board for 150 days and as leverage to negotiate concessions from the U.S.’s trading partners.

SECTION 338 OF THE *TARIFF ACT OF 1930*

Section 338 of the *Tariff Act* of 1930 gives the president authority to raise tariffs up to 50 per cent of an imported good's value if another country is unreasonably discriminating against U.S. trade through tariffs, regulations and other actions (Cornell Law School 1930). This means that the president must find that another country is imposing "any unreasonable charge, exaction, regulation, or limitation which is not equally enforced upon the like articles of every foreign country" or that "by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or Prohibition" that a foreign country discriminates against U.S. products or services.

Importantly, the statute states that action can be taken "whenever [the president] shall find as a fact" that discrimination has occurred. This suggests that an investigation may not be required or necessary. The statute makes reference to the "Commission" (its successor is the International Trade Commission (ITC), an independent agency) for ascertaining when discrimination may occur. However, the language is not explicit that this determination must be made before the president can act. It also is not clear whether the ITC's role is simply to monitor, generally speaking, discriminatory acts by foreign governments and keep the president apprised of those actions.

Historically, this law has never been used to impose trade restrictions. However, the president made a finding of discrimination in one instance with regard to Germany and Australia in 1935 (Veroneau and Gibson 2016). In that case, no action was ultimately pursued.

SECTION 232 OF THE *TRADE EXPANSION ACT OF 1962*

Section 232 authorizes the president to modify imports through the imposition of tariffs or quotas on "any article" that "would threaten to impair the national security" (Cornell Law School 1962). The president can determine whether action is warranted after an investigation and upon recommendations by the secretary of commerce. Section 232 does not provide a definition for what constitutes a national security threat, and thus there is broad room for interpretation. Increasingly, the line between national security and economic security has blurred, leading to greater recourse to this tool for a wide range of perceived threats (Manak 2025a).

In determining the impact on national security, the statute outlines what the secretary of commerce and the president can consider. First, there are defence considerations: mainly, how much domestic production is required of a product to meet defence needs, whether the domestic industry has the capacity to meet those needs and the impact of imports on domestic capacity. Consideration can also be given to the general economic welfare, such as competition from imports and displacement from "excessive imports" that can result in "substantial unemployment" and losses in investment or skills, for instance.

The Trump administration has relied largely on economic considerations for its actions, as it is difficult to see how imports from U.S. allies, especially those part of the defence-industrial base such as Canada, pose a national security threat. However, the Trump administration's expansive view of national security and economic security has, in practice, meant that goods produced outside of the United States are generally viewed as threatening because production is located elsewhere.

In his first term, Trump initiated eight investigations, covering steel, aluminum, automobiles and auto parts, uranium, titanium sponge, transformers and certain grain-oriented electrical steel parts, mobile cranes and vanadium. At the time, he only took action on steel and aluminum (25 per cent and 10 per cent tariffs respectively on all trading partners).

The Biden administration maintained the tariffs and the limited exemptions or converted them into quotas. Upon taking office again, Trump has wielded Section 232 more frequently and to date, he has imposed tariffs on cars, car parts and copper, and investigations on eight other sectors are in progress (Bureau of Industry and Security 2025). While there is a procedure for these investigations, it is regularly ignored.

Section 232 tariffs are commonly referred to as “sectoral” tariffs, because they focus on a product or set of related products. For instance, Trump imposed tariffs on steel and aluminum derivative products, including fasteners (screws, nuts and bolts, etc.) and beer cans. These tariffs also must apply generally, meaning that a specific country cannot be targeted, because presumably, the security threat of certain imports should exist regardless of where the product comes from; otherwise, it would not be a security threat.

Trump’s reinvigorated use of Section 232 is likely due to the deference the courts give to presidents on the use of this statute. Congress could overturn Section 232 actions through a disapproval resolution, which requires both houses of Congress to revoke the president’s action, but this has rarely been used (Kitamura 2025). Likewise, calls for reform have gained little traction in Congress (Lincicome and Manak 2021). Table 1 provides a summary of the ongoing 232 investigations.

Table 1. Ongoing Section 232 Investigations

Date Initiated	Items	Deadline for Receipt of Public Comments
March 10, 2025	Copper in all forms, including, but not limited to, raw mined copper; copper concentrates; refined copper; copper alloys; scrap copper; and derivative products	April 1, 2025
March 10, 2025	Wood products, timber, lumber and their derivative products	April 1, 2025
April 1, 2025	Semiconductors and semiconductor manufacturing equipment (SME) and their derivative products	May 7, 2025
April 1, 2025	Pharmaceuticals and pharmaceutical ingredients, including finished drug products, medical countermeasures, critical inputs such as active pharmaceutical ingredients and key starting materials and derivative products of those items	May 7, 2025
April 22, 2025	Trucks, medium-duty trucks, heavy-duty trucks and medium- and heavy-duty truck parts and their derivative products	May 16, 2025.
April 22, 2025	Processed critical minerals as well as their derivative products	May 16, 2025
May 1, 2025	Commercial aircraft and jet engines and parts for commercial aircraft and jet engines	June 3, 2025
July 1, 2025	Polysilicon and its derivatives	August 6, 2025
July 1, 2025	Unmanned aircraft systems (UAS) and their parts and components	August 6, 2025
August 13, 2025	Wind turbines	September 9, 2025

It is unclear how many Section 232 investigations Trump will pursue in his second term. If the administration maintains its current, unprecedented pace of launching ten investigations in seven months, from February to August, the volume of investigations could grow substantially. This could potentially be more disruptive than blanket tariffs, because product-specific tariffs and the ad hoc exclusions process could create even more confusion on implementation. This is particularly true if the administration applies Section 232 tariffs expansively to products derived from those listed in the action. However, it is also likely that the first tranche of actions in 2025

were rushed to deliver tariffs to the president and that negotiating exemptions to each Section 232 action will slow down the process in the near future. Still, the risk of serious expansion is not off the table.

However, if the IEEPA tariffs are vacated, the administration may choose to target even more sectors where the U.S. relies on imports, potentially covering large portions of its economy. In addition, the administration has shown a penchant for expanding existing actions to include derivative products, which is a simpler way to expand the existing actions without pursuing a new investigation.

SECTION 301 OF THE *TRADE ACT OF 1974*

Section 301 gives the United States Trade Representative (USTR) (an ambassador-level presidential appointee confirmed by Congress), at the direction of the president, broad authority to respond to unfair trade practices, including violations of trade agreements, or “an act, policy, or practice of a foreign country” that “is unreasonable or discriminatory and burdens or restricts United States commerce” (Cornell Law School 1979). The USTR can conduct investigations based on petitions from interested parties or can self-initiate investigations. Since 1974, self-initiated investigations have been on the rise.

Through an investigation, the USTR must determine one of the following: if a foreign country has violated or denied certain benefits or rights to the United States under a trade agreement; or whether an act, policy or practice maintained by a foreign country is unjustifiable, unreasonable or discriminatory, as well as burdening or restricting U.S. commerce. During the first Trump administration, the USTR launched six Section 301 investigations. Five of those investigations were brought against U.S. allies; however, the only investigation that led to the imposition of tariffs was against China, which was the centrepiece action of the U.S.-China trade war.

According to the statute, while there are no limits on the amount of tariff that can be imposed, the USTR must review the action after four years. If the petitioner for the action, or “the domestic industry which benefits from such action” requests the USTR to continue the action, then the remedies applied can stay in place. If there is no such request, the action will expire. The Biden administration reviewed the Section 301 tariffs on China. Ultimately, those tariffs were kept in place even though the majority of comments submitted by domestic industry called for their repeal (Manak, Cabanas and Feinberg 2023). Thus, the bar is very low to maintain the trade action. Calls for reforming Section 301 have also gone largely unheeded, as it would require Congress to modify the law (Lincicome, Manak and Carrillo Obregon 2022).

SECTION 201 OF THE *TRADE ACT OF 1974*

Section 201 allows the president to take actions to “facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs,” after an investigation and recommendations from the ITC (Cornell Law School 1975b). This is commonly referred to as a “safeguard” action, which provides remedies such as tariffs, quotas and other quantitative restrictions to allow the domestic industry time to adjust. These safeguard actions can also involve negotiations with the foreign trade partner.

The ITC conducts investigations at the request of a petition from domestic industry, the USTR and the House Ways and Means, or the Senate Finance Committee. It can also self-initiate investigations. For the president to take any action, the investigation must find that “an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly

competitive with the imported article.” Other economic factors can also be considered, but the bottom line is that a harm to domestic industry must be shown in order for the ITC to recommend a safeguard action to the president.

Section 201 has important procedural steps, including a public hearing, that make this route a slower means to enact tariffs. There are also important limitations on the duration of the action (four years unless extended following a review), the amount of tariff (no more than 50 per cent ad valorem, which must be phased down) and the president’s ability to modify the tariffs. In his first term, Trump imposed tariffs on residential washing machines and solar cells and modules as a result of Section 201 investigations (Jones 2018). Canada reached an agreement in 2022 under the Biden administration to suspend solar safeguard measures and the safeguards on washing machines expired (Office of the United States Trade Representative 2022). No additional actions have been taken.

U.S. TARIFFS APPLIED TO CANADA

Canada faces a range of new tariffs since Trump returned to office in January 2025. These actions violate the Canada-United States-Mexico Agreement (CUSMA), and Canada has responded with retaliatory measures of its own. The timeline of actions is evolving, as the Trump administration’s approach to trade policy has been erratic and unstructured (Bowen 2025).

On February 1, 2025, Trump expanded the emergency at the southern border declared in Proclamation 10886 to include “the public health crisis of deaths due to the use of fentanyl and other illicit drugs” (White House 2025d; Federal Register 2025b). He claimed that Canada and China had taken insufficient action to stop those shipments. Trump threatened 25 per cent tariffs on Canada and Mexico and 10 per cent tariffs on China, giving each country one month to resolve the situation. Though the emergency’s nature is highly contested, the Canadian government took several steps to address it (Isai 2025; Government of Canada 2025a), including enhanced border enforcement and the appointment of a federal fentanyl “czar” while maintaining that the amount of fentanyl crossing the border is “negligible” (Government of Canada 2025b).

Despite those efforts, and data that contradict Trump’s contention, he imposed tariffs on Canada on March 4, 2025. Those tariffs included 10 per cent on energy and potash exports and 25 per cent on everything else. Energy and potash were granted a lower rate due to pressure from U.S. industry and Congress (Grassley 2025). At one point, Canada retaliated against these actions, but with more targeted tariffs (Government of Canada 2025c). However, at the beginning of September, Prime Minister Mark Carney ended those retaliatory measures (Rana 2025).

On July 31, Trump modified the IEEPA rate for Canada to 35 per cent, which went into effect on August 1, 2025. The reason for escalating the rate was a failure to meet the administration’s self-imposed deadline to secure “deals” in exchange for relaxing the tariffs (Manak 2025b). The Carney government continues to be in active discussions, but has held firm that Canada would not accept a deal “at any cost” (Austen 2025).

Importantly, exports that meet the requirements of CUSMA, the successor to the North American Free Trade Agreement (NAFTA), do not face the IEEPA tariffs. This amendment to the original executive order was made on March 6, 2025, for both Canada and Mexico (White House 2025e). However, it is not clear whether the letters sent to Canada and Mexico in July could lead to further modification that could eliminate this exemption (National Association of Manufacturers 2025). Until another amendment is issued, U.S. Customs and Border Protection will continue to apply the exemption.

This exemption is important because recent estimates suggest that while Canadian exports to the United States have declined, (in 2025's first quarter, exports to the United States decreased by 26 per cent) Canadian companies have also been able to adapt and increase their use of the trade agreement (Government of Canada 2025d). In fact, in April 2025, 90 per cent of Canadian exports appear to have accessed the U.S. market under CUSMA rules (Zanzana 2025). Therefore, while the IEEPA tariff's applied rate is up to 35 per cent, Canada actually faces a lower duty rate across the board, with some estimates suggesting it sits around 6.3 per cent (Bloomberg 2025). Maintaining the CUSMA exemption (and the trade agreement itself) is therefore critical to North American trade.

In addition to the IEEPA tariffs, Canada also faces tariffs through actions the Trump administration has taken under Section 232. As of writing, the United States has imposed 50 per cent tariffs on steel and aluminum, 25 per cent tariffs on automobiles and auto parts, 50 per cent tariffs on copper, and 10 per cent tariffs on softwood lumber. Several other investigations are underway and more are likely to be added, many of which could significantly impact Canada, such as tariffs on critical minerals (Bureau of Industry and Security 2025; O'Neil, Huesa and Paz-Soldan 2025).

As the Trump administration continues to build out its trade agenda, additional actions may be taken that could affect the Canada-U.S. economic relationship. Furthermore, the talks that are underway regarding the IEEPA tariffs are separate from the review of CUSMA, which is supposed to take place in July 2026. The review is not meant to be a renegotiation of the deal, but all indicators point to the Trump administration potentially treating it like a reopening of the agreement.

ISSUES FOR CONSIDERATION

The executive branch wields tremendous power in the United States and Trump is testing the limits of that power in several policy areas. Trade policy has been central to his second-term agenda and there is a high degree of uncertainty over his administration's objectives. In particular, Trump's reliance on national security justifications for his trade actions raises important concerns over Congress's role, if any, in current U.S. trade policy.

While Congress has delegated significant trade authority to the president, it still retains the ultimate power to regulate trade with other countries. The fate of the system of checks and balances on a range of trade statutes will largely rest on litigation that clarifies the executive branch's role and any action that Congress may take to rein in the president's power.

In the meantime, Canada and other U.S. trading partners should consider several issues:

- Litigation on the IEEPA tariffs is underway, and if the courts vacate the tariffs, the administration may look to other statutes to levy tariffs. Understanding the various tariff authorities available to the president is therefore helpful. The first options for largely universal tariffs may be to pursue actions under Section 122 and Section 338.
- The Trump administration could also pursue investigations for unfair trade practices under Section 301 or sectoral tariffs under Section 232, with or without the continuation of IEEPA tariffs. These two pathways, while slower, more cumbersome and more limited in the number of products, are stickier and harder to overturn. Trading partners should consider the long-term impact of these tariffs on specific sectors and address supply chain vulnerabilities accordingly.

- Should the IEEPA tariffs be vacated, the deals signed under IEEPA threats could largely be dissolved. Since the deals are non-binding, U.S. trading partners can simply withdraw from them. However, since some deals may include commitments to maintain lower tariffs on Section 232 actions, trading partners may need to consider modifying the deal instead of withdrawing.
- If the tariffs and deals stay in place, U.S. trading partners should evaluate whether those deals violate trade commitments under the WTO. U.S. trading partners may want to consider extending the benefits they provide to the United States to all WTO members in order to maintain the most-favoured nation principle among themselves (Manak and Kopans-Johnson 2025).
- Monitor the 232-investigation list. Once the Federal Register posts a notice of an investigation, companies will have a minimum of a month to work with U.S. partners to prepare submissions for the investigation and an additional 120 to 270 days to prepare, by, for example, moving inventory to the U.S. in advance of increased duties. However, the U.S. government may not adhere to those timeframes and the investigation's pace could move a lot faster than statutory guidelines lay out.
- Trading partners should consider negotiating exemptions with the United States from future Section 232 tariffs. As part of its agreement with the Trump administration, the U.K. government not only obtained a quota for its steel and aluminum exports, but also a commitment to "significantly preferential treatment outcomes" on pharmaceutical exports to the United States once the president decides on the ongoing 232 investigation on pharmaceutical imports.

This brief outlined the ways in which the executive branch is exercising its authority to levy tariffs and how U.S. trading partners are affected, with particular attention given to Canada. The issues of concern will vary based on the composition and volume of trade between the U.S. and its trading partners, which will largely determine the content of any deals signed between them.

However, one point is worth emphasizing. U.S. trade policy today can best be described as erratic, unpredictable and lacking a clear rationale. The current U.S. approach is a significant departure from past norms and practices, which relied on maintaining a stable and predictable environment to facilitate trade, not hinder it. Today, the United States is actively pursuing a highly protectionist trade policy to encourage domestic production and consumption, but this agenda is also being pursued in fits and starts, leading to confusion among businesses and trading partners.

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