

How The New Tariff Landscape May Unfold

By **Joseph Grossman-Trawick** (March 9, 2026, 5:41 PM EDT)

The U.S. Supreme Court's Feb. 20 decision in *Learning Resources Inc. v. Trump* **struck down** tariffs President Donald Trump imposed under the International Economic Emergency Powers Act. **During his State of the Union on Feb. 24, the president proclaimed the tariffs would remain in place under "fully approved and tested alternative legal statutes," stating that while these laws are "a little more complex . . . they're actually probably better, leading to a solution that will be even stronger than before."**



Joseph Grossman-Trawick

And in the wake of the IEEPA ruling, the administration has implemented or expressed its intention to pursue new tariffs under these alternative statutes — **the so-called three-digit tariff laws** — including Section 122 and Section 301 of the Trade Act of 1974, and Section 232 of the Trade Expansion Act. The administration may also utilize Section 201 of the Trade Act or Section 338 of the Tariff Act of 1930.

Unlike IEEPA, these statutes clearly empower the president to impose tariffs. However, they carry limitations on the magnitude and duration of tariffs, and require agencies to follow statutory procedures and make certain findings. A lawsuit filed by a coalition of 24 states on March 5 **contends** that the president failed to make requisite findings to impose tariffs under one of these alternate authorities, Section 122.

So, while the three-digit tariff laws may yield an overall tariff level close to that of the IEEPA tariffs, the end result will be a patchwork of varying tariff levels, duration, applicability and scope.

Replacing the IEEPA Tariffs

The current administration aggressively relied on IEEPA to impose tariffs in response to declared national emergencies. The president placed IEEPA tariffs on almost all U.S. trading partners due to the lack of reciprocity in bilateral trade relationships. Trump also imposed IEEPA tariffs on goods from Canada, Mexico and China due to opioid trafficking into the United States.

The administration has frequently adjusted tariff levels and suspended their application based on the state of negotiations with foreign countries. The IEEPA tariffs were central to the administration's trade policy and its most nimble tool for calibrating tariff levels to accomplish its agenda.

So, will the Supreme Court's ruling change much?

Justice Brett Kavanaugh, at least, doesn't seem to think so. In his dissenting opinion, Kavanaugh stated, "with respect to tariffs in particular, the Court's decision **might not prevent Presidents from imposing most if not all of these same sorts of tariffs under other statutory authorities.**"

The administration agreed and has moved swiftly to replace the IEEPA tariffs under alternative three-digit tariff laws. Just hours after the Supreme Court's ruling, Trump announced global tariffs of 10% under Section 122. He subsequently stated he would raise that amount to 15%, but has yet to do so.

Section 122 allows the president to impose tariffs "to deal with large and serious United States balance-of-payments deficits," which the president originally sought to address via the IEEPA tariffs.

While Section 122 allowed the president to act quickly, it **caps tariff levels at 15%, and limits their**

duration to five months. Congress can extend these tariffs — but it's unclear whether there would be sufficient support from Capitol Hill.

Even so, Trump claimed in the State of the Union that "congressional action will not be necessary." For now, it appears the administration intends to continue pursuing its trade agenda without the legislative branch.

More Investigations to Come

Because Section 122 tariffs are capped at 15% and limited to five months, the administration is moving swiftly to ensure tariffs are in place under alternative authorities.

On the same day the Supreme Court struck down the IEEPA tariffs, U.S. Trade Representative Jamieson Greer announced plans to initiate new Section 301 investigations of U.S. trading partners. The investigations are expected to address a wide variety of issues, ranging from industrial excess capacity and pharmaceutical pricing practices to ocean pollution and discrimination against U.S. technology companies.

The USTR also confirmed the administration "is committed to continue implementing the President's trade policy, which was at the core of his campaign and agenda." Tariffs, of course, are central to that policy. As such, new investigations under Section 301 and Section 232 will likely begin soon.

Section 301 — Unfair Trade Practices

Section 301 grants the USTR wide discretion to address a foreign country's unfair trade practices or failure to comply with a trade agreement.

Section 301 investigations generally require an opportunity for notice and comment, and culminate in a report with findings and recommended actions. Historically, these investigations take months and involve significant agency resources, interagency coordination, and participation from the public and stakeholders.

Once tariffs or other remedial measures are imposed, the USTR can modify them, triggering certain congressional reporting requirements.

Finally, Section 301 tariffs expire after four years unless they are reviewed and renewed by the USTR.

For example, the first Trump administration imposed Section 301 tariffs on China to address the forced transfer of American intellectual property and technology to Chinese companies. During the administration of former President Joe Biden, the USTR renewed and expanded these tariffs. During his second administration, Trump again modified them based on the status of the U.S.-China relationship.

Challenges to the USTR's authority have focused on whether the USTR provided the requisite public notice and opportunity to comment on modifications to the Section 301 tariffs on China. Plaintiffs have also challenged USTR actions for alleged failure to engage in reasoned decision-making, a standard under the Administrative Procedure Act that requires agencies to make decisions in a logical and rational manner.

Section 232 — National Security Threats

Like Section 301, the administration is reportedly considering initiating new Section 232 investigations on batteries, iron products and industrial chemicals, among other industries. Section 232 authorizes the president to impose tariffs if imports of a good "threaten to impair the U.S. national security."

The president can only impose tariffs under Section 232 after the U.S. Department of Commerce has conducted an investigation pursuant to statutory and regulatory procedures, and submits its findings to the president.

Currently, Section 232 duties apply to various products including steel, aluminum, copper, and automobiles and auto parts from most trading partners. Trump has modified these measures, such as by adjusting tariff levels and the scope of covered products.

The Commerce Department's Bureau of Industry and Security previously administered a process for granting exclusions to certain 232 duties, but that process has ceased.

In *Universal Steel Products v. U.S.*, a prior challenge to Section 232 duties, the U.S. Court of Appeals for the Federal Circuit reviewed the Commerce Department's actions for "clear misconstruction of the governing statute, a significant procedural violation, or action outside delegated authority."

In 2022, the court held neither the president nor the Commerce Department violated the statute in determining that steel imports threatened to impair national security or by imposing indefinite tariffs in response to that threat. More broadly, courts generally defer to the president's national security determinations.[1]

Litigation involving Section 232 and Section 301 demonstrates that courts are less likely to scrutinize an agency's policy determinations regarding economic and national security interests. Even in the IEEPA context, the Supreme Court did not address the president's declared national emergencies underpinning the tariffs.

Thus, challenges to replacement tariffs are likely to focus on whether the administration adhered to statutory procedural requirements, and whether it made the appropriate requisite findings, as in the 24 states' challenge to the Section 122 tariffs.

The president is known to act quickly — that's one of the reasons why IEEPA was invoked. The administration must now balance speed with procedural requirements under the alternate trade laws.

Less-Utilized Tools

On March 5, a coalition of attorneys general from 24 states filed a complaint in the Court of International Trade challenging the president's Section 122 tariffs. The complaint alleges the president failed to meet Section 122's statutory requirements by conflating the term "balance-of-payments deficit" with "trade deficit," among other arguments.

Challenges to the new tariffs notwithstanding, there are additional, less-used authorities that confer tariff power.

If the U.S. International Trade Commission determines that increased import quantities of a particular good have caused or threaten to cause serious harm to the domestic industry, under Section 201 of the Trade Act, the president may impose safeguard measures in the form of tariffs to prevent or remedy that harm.

For example, Section 201 duties have been imposed on solar products, and the trade commission is currently investigating whether imports of quartz products have injured the domestic industry, a process involving various formal opportunities for stakeholder input and public participation.

Section 338 of the Tariff Act grants the power to impose tariffs if a foreign country discriminates against U.S. trade, though no president has used it. Section 338 empowers the president to impose duties to "offset the disadvantage or burden" of such discrimination if doing so would serve the public interest.

Section 338 duties may not exceed 50%, and the offset language suggests the statute requires a degree of proportionality.

Thus, Section 201 and Section 338 provide additional authority to impose tariffs, with limitations.

The New Tariff Patchwork

While Trump routinely applied tariffs to broad swaths of countries and products under IEEPA, the

alternate authorities require additional levels of compliance with statutory procedure and impose various other limitations. And it remains to be seen whether overall tariff levels will be all that different from those imposed under IEEPA.

So, while Trump may continue to regard tariffs as a beautiful thing, the resulting patchwork of differing tariff levels, duration and applicability may not make for a pretty picture.

Joseph Grossman-Trawick is an associate at King & Spalding LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] See e.g., *Ziglar v. Abbasi*, 582 U.S. 120, 142 (2017); *USP Holdings, Inc. v. United States*, 36 F.4th 1359, 1371 (Fed. Cir. 2022).