

## TRUMP'S TARIFFS & GEOPOLITICS

*Emerging Legal Backlash and Need for New Corporate & Gov't Strategies.*

[Class Discussion -- Jeffrey Joseph's Class June 17, 2025]

**Stuart S. Malawer, J.D., Ph.D.**

We have had huge changes in U.S. tariff and trade policies under Trump. This commenced in Trump 1.0, continued under Biden, and is even more so today under Trump 2.0.

*Court litigation has now become among the most important aspects of this historical change.* The Trump administration has relied upon national security and declarations of national emergencies as bases of restrictive and unilateral trade actions.

*Geopolitical risks for the trading system and international business transactions have become vastly more complex and unpredictable.*

Policymakers at all levels (state, national and international) and corporate executives are confronting new realities -- in their decisionmaking processes and in formulating strategies.

Excerpts from the following items are attached for your consideration:

- Malawer, *"Has the US Become a National Security and Protectionist Trading State?"* Journal of East Asia and International Law (2024).
- Court of International Trade— *Vos Selection and States* (May 28, 2025).
- Zhaogang, "US Law and East Asian Corporate Strategies." Journal of East Asia and International Law (June 2025).
- Malawer's Blog (May-June 2025). <https://globaltraderelations.com/>
- Three recent commentaries in *Richmond Times-Dispatch* on state economic development and foreign trade (focusing on Virginia) (2025).
- Interview with China TV "Trump's Tariffs" (Feb. 2025).  
<https://www.youtube.com/watch?v=ZA4e2okHtww>



# Has the US Become a National Security and Protectionist Trading State?

---

Stuart S. Malawer\*

*Geopolitical risk is now among the most important factors in the formulation of multinational corporate strategy and the US trade policy. The US has aggressively enacted national-security-based trade sanctions, which recently include export controls on semiconductor chips and restrictions on outbound and inbound investment. The US has also adopted major legislation providing historical subsidies and tax breaks. Congress and the courts have upheld the president's use of national security as a basis of trade actions and generally supported his protectionist policies. Trade should not be restricted or weaponized. Global and national rules need to be strengthened and, perhaps, a bit updated, but protectionism in the name of national security is a losing argument. The growing movement by the US to rely more on national security and protectionism in formulating trade policy is a very worrisome development. No one in Washington is proposing a return to pre-Trump policies. The real question is how far US trade policy will continue to change in the near future. Geopolitics will give us the answer.*

## Keywords

Protectionism, 2022 Inflation Reduction Act, Chips Act of 2022, WTO Security Exception, US and WTO Litigation, US-China Trade, US Trade Policy, State Law and Alien Ownership, Subsidies, Biden and Trump 2024

\* Distinguished Service Professor of Law and International Trade Emeritus at George Mason University. J.D. (Cornell), M.A./Ph.D. (UPenn), Diploma (The Hague Academy of International Law). The author may be contacted at: [StuartMalawer@msn.com](mailto:StuartMalawer@msn.com); <http://www.GlobalTradeRelations.net>; <http://www.US-GlobalLaw.net>. His blog is at: <https://globaltraderelations.com> / Address: 3351 Fairfax Dr., MS 3B1, Arlington, Virginia 22201 USA. All the websites cited in this paper were last visited on January 8, 2024. The paper was completed as of that date.

## 1. Introduction

Geopolitical risk is now among the most important factors in the formulation of multinational corporate strategy and the US trade policy.<sup>1</sup> This is most clearly seen in the US-China trade relations. The US has aggressively enacted national-security-based trade sanctions, which recently include export controls on semiconductor chips and restrictions on outbound and inbound investment. The US Department of Commerce and the US Department of the Treasury have implemented these actions. This implementation involves a vast increase in the US Department of Commerce's role in the field of international trade.

The US has adopted major legislation providing historical subsidies and tax breaks, for example, in promoting semiconductor chip manufacturing and supporting advanced battery technology development and production.<sup>2</sup> Congress and the courts have (somewhat unexpectedly) upheld the president's use of national security as a basis of trade actions<sup>3</sup> and generally supported his protectionist policies.

A recent article in *FOREIGN AFFAIRS* suggests that the US has become a “security state.” It concludes that Jake Sullivan, the US National Security Adviser, has a central belief “that decades of free-market zealotry has weakened the country’s national security [and that] … a simplistic faith in the magic of markets had hollowed out US industry … and riddled global supply chains with critical security vulnerabilities.”<sup>4</sup> To me, Jake Sullivan’s views have clearly become the predominant concept governing the US trade policy today – among almost all factions in the US government – and aggressively espoused by the USTR Representative Katherine Tai.<sup>5</sup> Needless to say, various corporate associations do not fully buy this worldview.<sup>6</sup> However, even this

<sup>1</sup> See *A New Corporate Approach to Geopolitical Risk*, ATLANTIC (2023), <https://www.theatlantic.com/sponsored/kpmg-2023/a-new-corporate-approach-to-geopolitical-risk/3838>.

<sup>2</sup> A. Chou, *US Moves to Choke China’s Role in Electric Vehicle Supply Chain*, FIN. TIMES (Dec. 1. 2023), <https://www.ft.com/content/7d80627e-c6a6-4216-b4c8-275f089fc447>.

<sup>3</sup> J. Kruzel, U.S. Supreme Court Turns Away Challenge to Steel Imports, REUTERS (Oct. 30, 2023), <https://www.reuters.com/legal/us-supreme-court-turns-away-challenge-steel-import-tariffs-2023-10-30>.

<sup>4</sup> H. Farrell & A. Newman, *The New Economic Security State*, FOREIGN AFF. (Oct. 19, 2023), <https://www.foreignaffairs.com/united-states/economic-security-state-farrell-newman>.

<sup>5</sup> K. Tai, Remarks by Ambassador Katherine Tai to Discuss Updates on Biden-Harris Administration’s Worker-Centered Trade Agenda at the Center for American Progress, Office of the USTR (Oct. 10, 2023), <https://ustr.gov/about-us/policy-offices/press-office/speeches-and-remarks/2023/october/remarks-ambassador-katherine-tai-discuss-updates-biden-harris-administrations-worker-centered-trade>.

<sup>6</sup> G. Bade, *Corporate America Fights Uphill Battle Against Ant-China Push*, POLITICO (Sept. 1, 2021), <https://www.politico.com/news/2021/09/01/business-us-china-trade-508239>.

is changing.

It is interesting to note that individual states have come aboard this anti-free trade and anti-China bandwagon. For example, Arkansas recently ordered a Chinese company subsidiary to divest itself of agricultural land.<sup>7</sup> Virginia also blocked the granting of state economic incentives to a US firm from building a huge battery factory because it was considering using Chinese technology and personnel<sup>8</sup> and a new state law imposing restrictions of foreign ownership of farmland.<sup>9</sup> Most recently, Chinese bitcoin mines in the US raised national-security suspicions of state and federal officials.<sup>10</sup>

A recent analysis of state laws restricting Chinese ownership of land concluded: “And although the Supreme Court weakened racial covenants in real estate and the alien land laws in 1948, one wonders how the current spate of alien land laws would fare before the current court.”<sup>11</sup> My guess is that the Supreme Court might very well uphold these new laws.

Since the end of World War II, the Republican Party has stood for free trade, participation in international institutions, and alliances. President Trump brought this to an end.<sup>12</sup> It is not an exaggeration to state that the Republican Party has turned inward,<sup>13</sup> somewhat mirroring the Democratic Party’s focus on rebuilding local industries with an emphasis on promoting workers’ welfare.

One needs to remember the Republican Party of the 1930’s was both protectionist and isolationist. It was Herbert Hoover who signed the Smoot-Hawley tariff in 1930. It was Nixon that imposed import surcharges in the 1970’s. So, this current turning inward by the Republican party, after following Reagan’s free trade policies, can be viewed as going back to the future.

<sup>7</sup> A. Demillo, *Arkansas Orders Chinese Company’s Subsidiary to Divest Itself of Agricultural Land*, ASSOCIATE PRESS (Oct. 17, 2023), <https://apnews.com/article/china-huckabee-sanders-arkansas-farmland-467a0089a4a2f31de80ad0cbf36c634b>.

<sup>8</sup> S. Vogel, *Youngkin Halts Ford Battery Plant in Virginia Over Concerns About China*, VA. MERCURY (Jan. 12, 2023), <https://www.virginiamercury.com/2023/01/12/youngkin-halted-ford-battery-plant-plans-in-virginia-over-concerns-about-china>.

<sup>9</sup> K. Hardy, *This Land is Our Land: States Crack Down on Foreign-Owned Farm Fields*, VA. MERCURY (Dec. 5, 2023), <https://www.virginiamercury.com/2023/12/05/this-land-is-our-land-states-crack-down-on-foreign-owned-farm-fields>.

<sup>10</sup> G. Dance & M. Forsythe, *Across the U.S. Chinese Bitcoin Mines Draw National Security Scrutiny*, N.Y. TIMES (Oct. 13, 2023), <https://www.nytimes.com/2023/10/13/us/bitcoin-mines-china-united-states.html>.

<sup>11</sup> M. Ngai, *Ron DeSantis ‘Barred Chinese from Buying Land in the State of Florida., How Did we Get Here?*, N.Y. TIMES (Dec. 16, 2023), <https://www.nytimes.com/2023/12/11/opinion/chinese-people-property-sale.html?referringSource=articleShare>.

<sup>12</sup> S. Malawer, *Trump, Litigation and Threats: From Queens to the World Stage*, 6 CHINA & WTO REV. 209 (2020), [http://cwr.yiil.org/home/pdf/archives/2020v6n1/cwr\\_v6n1\\_08.pdf](http://cwr.yiil.org/home/pdf/archives/2020v6n1/cwr_v6n1_08.pdf).

<sup>13</sup> K. Shake, *The Case for Conservative Internationalism*, FOREIGN AFF. (Jan./Feb. 2024). <https://www.foreignaffairs.com/united-states/case-conservative-internationalism>.

This focus on national security in the US domestic politics and trade policy is now mirrored by arguments over national security and trade in the WTO. Only recently has the WTO considered claims of national security as an excuse to evade basic trade obligations.<sup>14</sup> Separate cases involving the Russian Federation and Ukraine<sup>15</sup> and the US and its China trade sanctions<sup>16</sup> highlight this situation. Dispute over the national security issue will most likely preclude resolving the general disagreement over the dispute settlement system and the WTO as a whole. The Petersen Institute for International Economics recently published a study on the WTO security exception.<sup>17</sup> It concluded that this provision needs to be critically addressed before the US recommits to the WTO:

A major obstacle to the United States accepting any resolution of this impasse - thus permitting dispute settlement to once again be binding on all WTO members - is settling the issue of whether claims of national security to legitimize trade measures are reviewable. This is a red line for the US, which argues this claim is non-reviewable. In the emerging area of great power competition, the US is unlikely to accept a return to fully effective WTO dispute settlement absent a compromise that finds determinations of national security non-justiciable.<sup>18</sup>

## 2. Some Recent Specifics

In December 2023, the House Select Committee on the Chinese Communist Party released a report<sup>19</sup> recommending a broad range of statutory enactments refashioning the US-China trade relations. First and foremost, it called for increased tariffs and withdrawal of most-favored-nation treatment for China. As Ana Swanson and Alan

<sup>14</sup> A. Wolfe, *When Sovereigns Clash and International Rules Fail Dealing with National Security at the WTO*, PIIE (Nov. 28, 2023), <https://www.piie.com/commentary/speeches-papers/when-sovereigns-clash-and-international-rules-fail-dealing-national>.

<sup>15</sup> Panel Report, *Russia-Measures Concerning Traffic in Transit*, WTO Doc. WT/DS512/R (adopted Apr. 19, 2019), [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/DS512\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/DS512_e.htm).

<sup>16</sup> Panel Report, *United States-Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS544/R (adopted Jan. 26, 2023), [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/DS544\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/DS544_e.htm).

<sup>17</sup> W. Maruyama & A. Wolfe, *Saving the WTO from the National Security Exception* (PIIE Working Paper No. 23-2, 2023), <https://www.piie.com/sites/default/files/2023-05/wp23-2.pdf>.

<sup>18</sup> *Id.* at 22.

<sup>19</sup> Select Committee on the Strategic Competition Between the U.S. and the CCP, *Reset, Prevent, Build*, <https://selectcommitteeontheccp.house.gov/sites/evo-subsites/selectcommitteeontheccp.house.gov/files/evo-media-document/reset-prevent-build-scc-report.pdf>.

**Slip Op. 25-66**  
**UNITED STATES COURT OF INTERNATIONAL TRADE**

*VOS Selections and States v. US Gov't (re Trump's Tariffs)*

Before: Gary S. Katzmann, Judge  
Timothy M. Reif, Judge  
Jane A. Restani, Judge  
Court No. 25-00066  
(May 28, 2025)

**Per Curiam:** The Constitution assigns Congress the exclusive powers to “lay and collect Taxes, Duties, Imposts and Excises,” and to “regulate Commerce with foreign Nations.” U.S. Const. art. I, § 8, cl. 1, 3. The question in the two cases before the court is whether the International Emergency Economic Powers Act of 1977 (“IEEPA”) delegates these powers to the President in the form of authority to impose unlimited tariffs on goods from nearly every country in the world. The court does not read IEEPA to confer such unbounded authority and sets aside the challenged tariffs imposed thereunder.

**CONCLUSION**

The court holds for the foregoing reasons that IEEPA does not authorize any of the Worldwide, Retaliatory, or Trafficking Tariff Orders. The Worldwide and Retaliatory Tariff Orders exceed any authority granted to the President by IEEPA to regulate importation by means of tariffs. The Trafficking Tariffs fail because they do not deal with the threats set forth in those orders. This conclusion entitles Plaintiffs to judgment as a matter of law; as the court further finds no genuine dispute as to any material fact, summary judgment will enter against the United States. See USCIT R. 56. The challenged Tariff Orders will be vacated and their operation permanently enjoined.

There is no question here of narrowly tailored relief; if the challenged Tariff Orders are unlawful as to Plaintiffs they are unlawful as to all. “[A]ll Duties, Imposts and Excises shall be uniform throughout the United States,” U.S. Const. art. I, § 8, cl. 1, and “[t]he tax is uniform when it operates with the same force and effect in every place where the subject of it is found.

**Plaintiffs' Motions for Summary Judgment are granted, and their Motions for Preliminary Injunction are denied as moot. Judgment will enter accordingly.**

By the panel.  
Dated: May 28, 2025  
New York,

# **The US Law and East Asian Corporate Strategies in Light of Tariffs and Political Developments**

**Gang Zhao\***

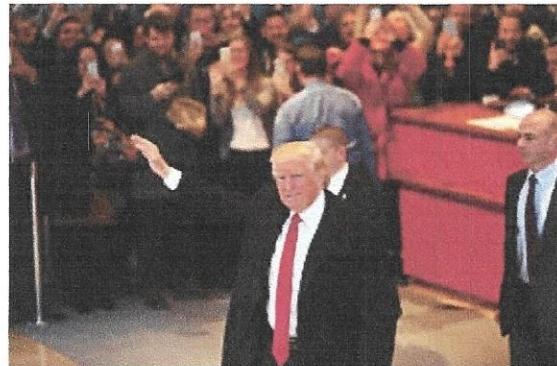
*The current US tariff policy has become a focal point of the global trade order, signaling a restructuring of the international economic system established after World War II. The global trade regime is shifting from multilateral cooperation to a landscape increasingly defined by economic and geopolitical competition. The US domestic law is increasingly replacing multilateral mechanisms such as the WTO as the primary legal point at issue and center of gravity influencing and shaping the global trade order. In this transitional phase of order reconstruction, East Asian enterprises should allocate resources to closely monitor geopolitical developments, the US domestic politics, legal frameworks, and ideological trends. They should also establish mechanisms for geopolitical risk management and prioritize risk management over business expansion as a core strategic principle. However, this is not entirely negative; the new research, understanding, and strategic adjustments undertaken by enterprises may lay a deeper foundation for the next wave of globalization.*

**. Keywords** Tariff, WTO, US Law, US Political Developments, Corporate Strategies

\* Attorney-at-Law. Partner of the Beijing Jincheng Tongda Law Firm; Visiting Scholar at George Mason University(Schar School) where the research for this article was conducted. LL.B./LL.M. (CUPU). ORCID: <https://orcid.org/0009 0000-7937-1696>.

## **Trump & Trade — More Litigation, More Export Controls, More Presidential Emergency Powers.**

Posted on June 11, 2025 by Stuart Malawer



Trade continues to be one of the biggest issues in U.S. politics today. Another federal court decision (continuing Trump's tariffs temporarily), greater use of export controls, as well as broader use of emergency powers of the president. Both the United States and the global trading system will be impacted depending how these items are handled by the federal courts (and hopefully by Congress). The latest Trump walk-back on tariffs demonstrate he doesn't really have a viable China export policy.

<https://globaltraderelations.com/2025/06/11/trump-trade-more-litigation-more-export-controls-more-presidential-emergency-powers/>

## **Tariff Cases — Much More Important than Just Tariffs — Unconstitutional and Excessive Executive Action.**

Posted on June 8, 2025 by Stuart Malawer



More on the illegality of Trump's tariffs and recent court cases — Need to realize, tariffs are not going to bring back jobs. Also basic constitutional doctrines are in play here — *the "nondelegation doctrine" and the "major question doctrine."* In other words, certain things

the Congress cannot delegate *without being precise* and if they do delegate permissible authorities, they need to be clearly and *specifically relied upon by the executive*.

Litigation is continuing with appeals and more appeals. Recently the Federal Court for the Federal Circuit has extended a temporary order allowing the tariffs to remain in effect until a further hearing. They raise various issues (in addition to construing IEEPA), including perhaps eventually the ‘national emergency power’ of the president generally as well as ‘non-tariff issues,’ for example, export controls.

However, what is really at stake is aggressive use of executive authority that is unsustainable and unconstitutional.

<https://globaltraderelations.com/2025/06/08/tariffs-cases-much-more-important-than-just-tariffs-unconstitutional-and-excessive-executive-action/>

## Multiple Legal Tools for Trump’s International Economic Warfare — Still Questionable.

Posted on June 3, 2025 by Stuart Malawer



In addition to IEEPA, Trump’s *has multiple legal tools he can utilize in his international economic warfare*. Which may, in fact, withstand court challenges. Namely, Section 232 (national security) of the Trade Expansion Act of 1962 and Section 122 (balance-of-payments) of the Trade Act of 1974. Because Section 232 deals specifically with national security, where presidents have great constitutional authority and because Section 122 provides specific legislative delegation. Of course, the President can use *export controls, other financial measures, authority to review foreign direct investment under CFIUS and perhaps new legislation to tax foreign direct investment*.

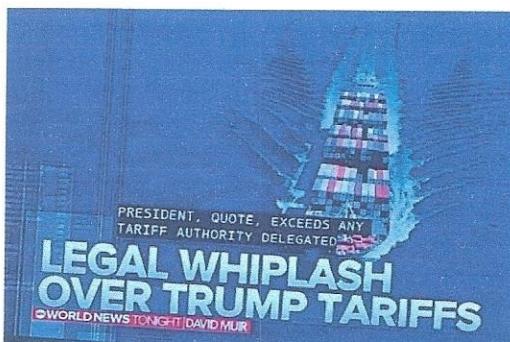
It is clear to me the issues of geopolitics are at the heart of Trump's trade actions — involving much more than trade and economics. And foreign policy is a great executive constitutional power. However, Congress has a great say also.

Nevertheless, it will be up to the federal courts to decide if Trump's actions are lawful. Many conservative legal scholars have opposed Trump's tariffs and actions. If Trump stays true to form and exaggerates his actions and authority, once again, the courts will have an easier time of ruling against him. We'll see .....

<https://globaltraderelations.com/2025/06/03/multiple-legal-tools-for-trumps-international-economic-warfare-still-questionable/>

## Court Declares Trump's Tariffs Illegal, Finally! At Least for a Few Hours.

Posted on May 29, 2025 by Stuart Malawer



This is good news, finally. Here's the conclusion of yesterday's [decision of the Court of International Trade declaring unlawful many of Trump's tariffs \(global tariffs\)](#).

*"The court holds for the foregoing reasons that IEEPA does not authorize any of the Worldwide, Retaliatory, or Trafficking Tariff Orders. The Worldwide and Retaliatory Tariff Orders exceed any authority granted to the President by IEEPA to regulate importation by means of tariffs. The Trafficking Tariffs fail because they do not deal with the threats set forth in those orders. This conclusion entitles Plaintiffs to judgment as a matter of law; as the court further finds no genuine dispute as to any material fact, summary judgment will enter against the United States. See USCIT R. 56. The challenged Tariff Orders will be vacated and their operation permanently enjoined."*

Unfortunately, the decision of the Court of International Trade was stayed the next day when the Trump administration appealed to the U.S. Court of Appeals for the Federal Circuit. Undoubtedly, this will go to the Supreme Court.

A second case decided the same day also declared the tariffs unconstitutional. Of course, Trump can try other statutory avenues such as Section 122 (balance of payments) and Section 301 (retaliation for trade restrictions) of the 1974 Trade Act, as well as imposing additional duties under Section 232(b) of the 1962 Trade Expansion Act, to enact even greater mercantilist and predatory tariffs and trade policies.

This story is far from over. The once obscure issue of tariffs has now morphed into the geopolitical and legal issue of the day — with grave economic and financial consequences. The appeal raises the question of a 50-year-old case from the Nixon era upholding a limited tariff surcharge. The question comes down to the proper interpretation of the statutory language of IEEPA and the willingness of the courts to review excessive executive actions under newer statutory rules of interpretation.

<https://globaltraderelations.com/2025/05/29/court-declares-trumps-tariffs-illegal-finally/>

## Surprise! Litigation Against Trump's Tariffs — Six Interesting Facts (Update).

Posted on May 28, 2025 by Stuart Malawer



What's really interesting in tariff litigation against Trump's tariffs? Six very interesting facts.

One, there is an *expanding legal campaign* against these tariffs. Two, litigation has been filed by *small firms* (not large firms or multinational corporations) and various states — in both federal district courts and the Court of International Trade. Three, most interesting, it's *conservative non-profits funded by Koch and others that have funded many of these cases*. Four, states (Oregon and California) have also brought litigation. Five, also to be noted is that attorney-generals of numerous states have signed off on amicus briefs. Six, needless to say, the administration is claiming reliance on tariffs is a necessary part of carrying out trade negotiations and foreign policy generally.

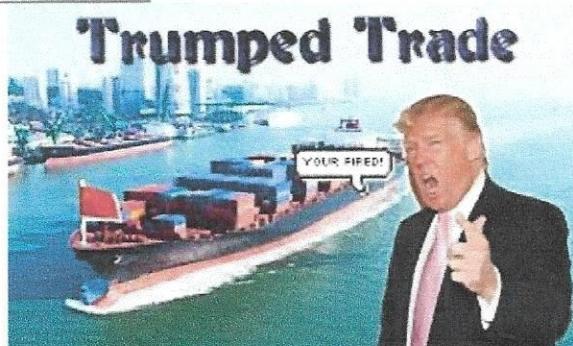
Need to keep in mind that various presidents got the U.S. involved in wars (Korea, Vietnam, Iraq and Afghanistan) without a declaration of war — contrary to the fact that it's Congress that has the exclusive right to declare war. Indeed, the Trump administration is already claiming in court that the president has broad tariff power as part of his extensive foreign affairs and diplomatic powers under the Constitution.

We'll see how all this plays out in the federal district courts and the Court of International trade and then the Supreme Court.

<https://globaltraderelations.com/2025/05/28/surprise-litigation-against-trumps-tariffs-six-interesting-facts-update/>

## **Surprise! Litigation Against Trump's Tariffs — Led by Small Business, Conservative Funding (Koch) and Western States — Six Interesting Facts.**

Posted on May 20, 2025 by Stuart Malawer



What's really interesting in tariff litigation against Trump's tariffs? Six very interesting facts.

One, there is an *expanding legal campaign* against these tariffs. Two, litigation has been filed by *small firms* (not large firms or multinational corporations) and various states — in both federal district courts and the Court of International Trade. Three, most interesting, it's *conservative non-profits funded by Koch and others that have funded many of these cases*. Four, states (Oregon and California) have also brought litigation. Five, also to be noted is that attorney-generals of over numerous states have signed off on amicus briefs. Six, needless to say, the administration is claiming reliance on tariffs is a necessary part of carrying out trade negotiations and foreign policy generally.

Need to keep in mind that various presidents got the U.S. involved in wars (Korea, Vietnam, Iraq and Afghanistan) without a declaration of war — contrary to the fact that it's Congress that has the exclusive right to declare war.

We'll see how all this plays out in the federal district courts and the Court of International trade and then the Supreme Court.

<https://globaltraderelations.com/2025/05/20/surprise-litigation-against-trumps-tariffs-led-by-small-business-conservative-funding-koch-and-western-states/>

# Richmond Times-Dispatch

Sunday, May 11, 2025, Section D.

## COMMENTARY: a 'SHINING CITY ON A HILL'? Not anymore.

Stuart S. Malawer, *JD, Ph.D.*

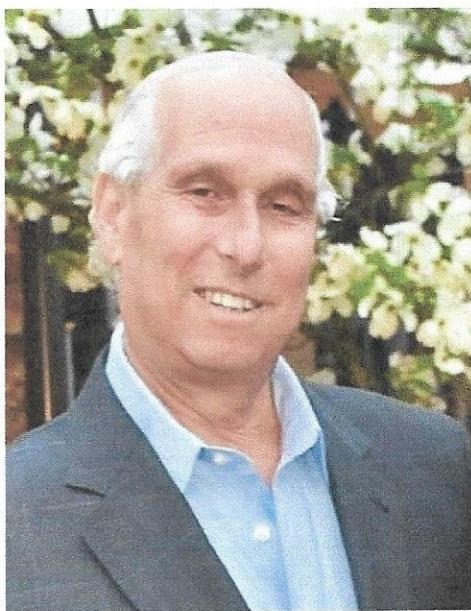


The de minimis exemption, which exempts from tariffs imports under \$800 sent directly to individuals, has been terminated by the Trump administration for goods originating from China and Hong Kong. These imports are now subject to either a 30% tariff or a flat fee of \$25, which will rise to \$50 on June 1. Rates and restrictions may vary slightly depending on whether the goods are delivered via private carriers or the U.S. Postal Service.

Trump's stated rationale is to combat fentanyl imports, declaring it an international emergency. This new rule also applies to transshipped goods — Chinese products routed through intermediate countries.

Trump has promised to extend this policy to other nations. This new move marks yet another unfortunate escalation in Trump's ongoing trade war with China and a broader attack on the rules-based global trading system. Of course, the looming 145% minimum tariff on Chinese imports remains an even greater threat.

To me, the hastily announced U.S.-China talks to be held in Geneva to discuss Trump's erratic trade actions are more smoke and mirrors by the Trump administration.



Stuart S. Malawer

The de minimis exemption dates back to the Tariff Act of 1930, enacted during the Hoover administration as part of the infamous Smoot-Hawley legislation, which deepened the Great Depression and fueled global protectionism. Ironically, the exemption was created to allow the secretary of the treasury some discretion to ease the burden of such protectionist tariffs. Trump's move

blatantly contradicts that original purpose — it tightens trade flows rather than eases them — and it delivers a serious blow to global commerce.

This new tariff policy will restrict consumer access, limit small business operations, increase inflation and disproportionately hurt low-income Americans. It has already disrupted supply chains, container shipping and U.S. port operations.

The damage is already being felt — and more is coming. Businesses, merchants and consumers are reacting quickly. Even foreign consumers in Canada and the EU are turning away from American products. As always, economic data lags behind reality, but the next round of figures will surely expose the fallout. This is, plainly put, unfortunate protectionism.

Historically, trade sanctions and economic restrictions rarely succeed. More often, they backfire — triggering retaliation through counter tariffs, or worse. (Consider Pearl Harbor, a partial response to the U.S. embargo on oil shipments to Japan.) Upon announcing his retirement, Warren Buffett aptly stated: “Trade should not be weaponized. Let countries do what they do best.” That’s classical economic logic and it has worked for decades.

So why impose a 46% tariff on Vietnam today? Despite a devastating war in which millions of Vietnamese died in what they call the “American War,” Vietnamese today love Americans. Since the 1970s, the U.S.-Vietnam relationship has been a rare diplomatic success. But one must ask: Can the boy from Queens even locate Vietnam, India or Shenzhen on a map?

Trump’s tariffs will restructure global trade to America’s grave disadvantage. Domestically produced goods will become more expensive and lower in quality. Worse still, mechanisms like “exemptions” enable cronyism, benefiting the well-connected while bypassing the broader public interest. This is not good governance — it’s a scheme for self-enrichment, for family and friends. The administration has already begun to unravel into a chaotic mess — more

resembling the cast of a true crime mystery series than a functioning executive branch.

Disturbingly, some Republicans continue to support these policies, abandoning their party's longstanding commitment to free trade. Gov. Glenn Youngkin has inexplicably continued to support Trump's tariffs, despite the clear damage China's retaliatory tariffs are already causing Virginia farmers, particularly soybean exporters.

However, opposition is growing. More than 200 legal cases have been filed against various actions of the Trump administration, with over 100 temporary restraining orders issued. And some in the GOP are pushing back. Virginia Republican George Allen, a former governor and U.S. senator, publicly condemned Trump's tariffs last week, calling them glaringly unconstitutional and a usurpation of Congress' constitutional authority over taxation and trade.

#### Commentary: Virginia must stand up to Trump on trade (Malawer)

Even the Senate has begun questioning the administration's use of obscure laws and self-serving legal interpretations, a recent anti-tariff resolution (supported by Virginia Sen. Tim Kaine) only failed because two pro-trade senators were not available to vote. The resolution would have condemned the misuse of national security and national emergency provisions under the International Emergency Economic Powers Act (IEEPA) to justify tariffs. Trump has now suggested needing tariffs on foreign movies to protect national security. Seriously?

Fortunately, Congress and the courts are beginning to push back against Trump's destructive policies. Most recently, courts have ruled against Trump's absurd reliance on foreign invasions, under the 1798 Alien Enemies Act, as a basis for deporting migrants.

The revocation of the de minimis exemption opens the door to illicit trade, while undermining the business models of modern e-commerce platforms like Shein, Temu and Amazon. It will do nothing to revive U.S. textile production. There is no new investment coming to textiles in North Carolina, Virginia or Mississippi. That industry has been dead for decades.

A personal note: my father was the founder and CEO of an apparel manufacturing company located in New York City. It was a nonunion shop, employing mostly immigrants at the lowest possible wages. Even then, jobs began to disappear in the early 1970s and 1980s. First to Mississippi, and then to China under long-term supply contracts. Even rock-bottom wages couldn't save the industry. The jobs are gone and they're not coming back.

Those displaced workers adapted. New York City evolved further into a global center for trade, finance and technology. Many former factory workers leveraged their foreign backgrounds into import-export businesses, logistics and international investment. Meanwhile, the president from Queens — who once faced housing discrimination charges in the 1970s — still does not understand the dynamic economies of American cities.

[Commentary: Federal courts, Congress standing up to Trump on tariffs? There's hope \(Malawer\)](#)

The future of the U.S. economy lies in innovation, technology, services and global trade. This is especially true for Virginia, which was founded as a trading colony and today is deeply meshed with the global economy. For example, each Virginia-class submarine has almost 10,000 pounds of magnates processed from rare earth minerals from outside of the United States. Through the outstanding efforts of county and state economic development agencies, such as the Virginia Economic Development Partnership, as well as the outstanding public university system, Virginia is aggressively preparing our workforce for a hyper-competitive global market.

Boeing already has enough problems without new retaliatory tariffs by China or the EU. What's worse? Trump's misplaced national security rationale for tariffs or the actual dangers he is creating to U.S. national security? We need thoughtful, forward-looking policies, not reactionary measures driven by grievance and resentment. Protectionism, isolationism and the abandonment of a rules-based global trade system will only lead to economic decline.

We have a crisis, not of tariffs nor economics, but of geopolitics.

The post-World War II rules-based trading system, long championed by the United States, has been undermined by the Trump administration. Now is the time to reinvigorate that system and recommit to the trade rules enacted by Congress and embraced by our global partners. The prosperity of the U.S. and the world depends on it.

To quote the late President Ronald Reagan: Is America still the “shining city on a hill”?

*Stuart Malawer is the Distinguished Service Professor of Law and International Trade Emeritus at George Mason University. He is a former board member of the Virginia Economic Development Partnership (VEDP) and a former member of the Virginia Advisory Committee on International Trade. He has been a delegate on various Virginia gubernatorial trade missions to China, India and Japan. Contact Malawer at [stuartmalawer@msn.com](mailto:stuartmalawer@msn.com)*

# Richmond Times-Dispatch

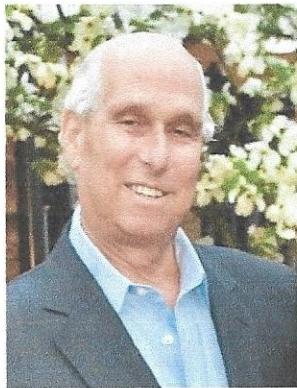
Sunday, April 13, 2025, Section D.

## Commentary: Federal courts, Congress standing up to Trump on Tariffs? There's Hope.

Stuart Malawer, JD, Ph.D.



President Donald Trump holds a signed executive order announcing new tariffs during an event April 2 in the White House Rose Garden. Evan Vucci, Associated Press



**Dr. Stuart Malawer**

**Increasingly obscure legal doctrines and antiquated laws are being invoked — and misused — by President Donald Trump to justify a range of controversial trade measures and noneconomic policies. Examples include the International Emergency Economic Powers Act, the 1798 Alien Enemies Act and the 1950s-era state secrets privilege. Ironically, the more outdated and obscure these laws are, the more likely federal courts are to invalidate Trump's actions. It's that straightforward.**

**Additionally, Congress' exclusive constitutional authority over trade, along with the nondelegation doctrine, further weakens the administration's legal position as to tariffs. The result is likely to be extensive legal costs to the Trump administration with little success — leading only to domestic disruption, international instability and, ultimately, self-inflicted damage.**

**Federal courts are now taking a leading role in restoring the domestic and international legal order that once defined the post-World War II era and U.S. global leadership. Congress, too, is increasingly likely to follow. The Trump administration's threat to withdraw from or to defund the World Trade Organization (WTO) represents a striking**

departure from decades of bipartisan commitment to international law and postwar foreign policy norms. Legal challenges to Trump's tariffs have already been initiated at the WTO.

The Senate is examining potential challenges as well. Notably, it recently voted to overturn the national emergency declaration used to justify Trump's 25% tariff on Canadian imports. Several lawsuits have already been filed in federal courts attacking Trump's tariffs. For example, a new lawsuit in Florida is contesting the use of an "international emergency" as grounds for imposing new tariffs. This was funded by conservative legal groups.

Both the Senate vote and the Florida federal court case revolve around the 1977 International Emergency Economic Powers Act (IEEPA). Key elements of trade legislation used in Trump's executive actions — including IEEPA, Section 232 (national security exception), and Section 301 (retaliation measures) — are increasingly becoming subject to judicial and legislative scrutiny.

*Commentary: Virginia must stand up to Trump on trade (Dr. Malawer)*

There is a growing consensus that presidential tariff authority should be limited to specific trade laws enacted by Congress, such as those concerning anti-dumping measures, countervailing duties, Section 201 safeguard provisions, and Section 122 as to tariffs and deficits — and even then, only after appropriate administrative processes are followed.

Now, consider last week's stunning reversal by Trump on reciprocal tariffs and the imposition of even higher tariffs on

**China. The result? Nothing more than wild swings in stock markets in the United States and worldwide. To me, this further evidences the unsustainable nature of Trump's tariff policies, which mirror his broader disorganization and unpredictability. Policy driven by grievance, threats and dramatic reversals is unsustainable. Global transactions, diplomatic relations and domestic economic policy require predictability — not shock and awe. Otherwise, chaos will prevail.**

**What does all this mean for state and local economies in the United States, for consumers and economic development? Take Virginia, for example. China's recently announced retaliatory tariffs on agriculture will decimate Virginia's agricultural sector — the largest sector of the state's economy. China is a leading export destination for Virginia agriculture. U.S. tariffs on imports from Mexico and Canada and other countries — such as Canadian lumber and foreign steel — will severely impact the shipbuilding industry in Tidewater and automobile manufacturing in Southwest Virginia.**

**The recent assertion of judicial review by the federal courts and the early reassertion by Congress of its exclusive authority over tariffs holds great hope for rebalancing the executive abuse and overreach of the last few months.**

*Stuart Malawer is the Distinguished Service Professor of Law and International Trade Emeritus at George Mason University. He is a former board member of the Virginia Economic Development Partnership (VEDP) and a former member of the Virginia Advisory Committee on International Trade. He has been a delegate on various Virginia gubernatorial trade missions to China, India and Japan. Contact Malawer at [stuartmalawer@msn.com](mailto:stuartmalawer@msn.com)*

# Richmond Times-Dispatch

Sunday, January 17, 2025, Section D.

## VIRGINIA, TRADE & TRUMP TARIFFS 2.0

Stuart Malawer, JD, Ph.D.



**Tariffs and trade have become one of the most politicized set of issues in Washington, D.C., today. The advent of Trump 2.0 promises dramatic and chaotic changes – from newer and higher**

**tariffs, more controls on foreign investment and sales by U.S. firms, more control on crossborder mergers, demise of international trade institutions, trade agreements and alliances and a host of other related areas impacting global trade.**

**These actions will most certainly impact Virginia firms, farmers and consumers.**

**There is a great need for Virginians to support trade generally and not get lost in the spurious political arguments of the day. The Commonwealth ought to take the lead in educating its citizens and firms as to the grave importance trade is for business success and economic development.**

**The last time Trump was president he instigated a number of trade wars that he claimed were easy to win. They were not. The U.S. did not win.**

**For example, as a response to U.S. trade actions against China, China instituted retaliatory actions gravely impacting Virginia exports. In particular, export of agricultural commodities (and especially soy bean) to China dropped to almost zero. Causing great harm to Virginia farmers. In general, U.S. farmers were only bailed out by huge federal payments as compensation for their losses. There were no winners, only losers and higher prices for all.**

**Trump's recent threatening of our closest allies such as Mexico, Canada, the EU and Japan is no way of promoting better trade relations. Denigrating trade agreements and trade institutions is outrageous.**

**It is time for the Congress and state governments to stand up for better trade relations and diplomacy. It is also time for the federal courts to uphold the powers of the Congress to regulate international trade as was intended by the Constitution.**

**My basic point is that most Virginians, as most Americans, do not fully realize the grave economic importance of trade. Many get lost in populist economic claims, often wrapped in even more spurious national security arguments.**

However, many state governors recognize the importance of states being active in the global trading system and not getting lost in politicized arguments. For example, historically, even governors in the Midwest states during the hyper-isolationist period of the 1930's and the Great Depression with high tariffs reigning throughout the world, forcefully promoted the export of their agricultural commodities.

Almost all of the Virginia governors, starting with Governor Gerald Baliles, who established and funded the Virginia Dept. of World Trade, up through Governors Kaine, Warner, McAuliffe vigorously promoted trade and investment as essential for state economic development.

They often led gubernatorial trade missions to a large number of countries. Governor McAuliffe often proclaimed he visited 35 different countries promoting Virginia exports and foreign direct investment into Virginia.

In a sense focusing on international trade is a return the roots of the founding of Virginia in 1607 by The Virginia Company, a global trading company.

What is needed today, more than ever, is a form of public diplomacy by the Commonwealth to spur on greater public understanding and support of the interaction of Virginia firms with the global economy. Virginia, to its great credit, has been named as the best state for doing business and its economic development agency (Virginia Economic Development Partnership) as the best in the country.

One small thing the next Virginia governor should do is to include members of the public in his trade missions. They should be from the private sector (from tech and non-tech companies and the agricultural sector) as well as other institutions such as universities.

Another item that could be on the next governor's to-do-list is to promote better coordination with county development agencies, especially in their international activities. One more thing, the next governor should encourage foreign students to study in the

**Virginia public universities. Virginia firms can leverage their presence into great global contacts. These students come here to learn and to set up businesses.**

**Virginia needs to stand up to the forces today that are threatening the welfare of its people. States have a great role in promoting global trade. State governments can lead the way for greater international transactions with an informed public. The emerging era of nationalist and populist economic policies cannot be allowed to hamper state economic development and prosperity for Virginians.**

*Stuart Malawer is the Distinguished Service Professor of Law and International Trade Emeritus at George Mason University. He is a former board member of the Virginia Economic Development Partnership (VEDP) and a former member of the Virginia Advisory Committee on International Trade. He has been a delegate on various Virginia gubernatorial trade missions to China, India and Japan. Contact Malawer at [stuartmalawer@msn.com](mailto:stuartmalawer@msn.com)*