



# Federal Circuit Examines the Scope of Presidential Tariff Authority

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In response to perceived unfair trade practices of other countries, the Trump Administration [imposed tariffs](#) and other trade restrictions on billions of dollars of imported products using authority that Congress delegated to the executive branch in [various provisions](#) of federal law. To justify the trade measures, the Trump Administration cited national security concerns, injury to competing domestic industries, and allegedly unfair trade practices of particular countries (e.g., [China's practices](#) with respect to intellectual property rights). The Biden Administration has kept most of these tariffs in place.

During the past few years, some industry groups and individual companies have challenged these tariff actions on constitutional and statutory grounds in U.S. courts. Federal courts have almost [uniformly rejected](#) these challenges. (This Sidebar does not discuss the challenges to certain tariffs currently pending before the World Trade Organization (WTO) or other international bodies.)

A July 14, 2020 [decision](#) by a three-judge panel of the U.S. Court of International Trade (CIT) initially marked a departure from this trend in the case law. In *Transpacific Steel LLC v. United States*, a U.S. company sought a partial refund of duties it paid on certain steel imports from Turkey. The imports were subject to tariffs that the President imposed under [Section 232](#) of the Trade Expansion Act (the Act). In a decision granting the company's motion for judgment on the agency record, the CIT held that the President's power to impose tariffs under Section 232(b), while broad, is not unlimited. Specifically, the court held that the President must closely adhere to the statute's procedural requirements, including deadlines for action, when exercising such authority.

On July 13, 2021, the Federal Circuit Court of Appeals [overturned](#) the CIT's decision. The Circuit Court held that the President did not violate Section 232's procedures when increasing tariffs on Turkish steel.

This Sidebar explores the Federal Circuit's decision in more detail. The Sidebar begins with an examination of the decision's background. It concludes with an examination of the potential implications of the Federal Circuit's decision for future tariff actions under Section 232 and similar statutes granting the President power over foreign commerce.

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## Section 232 Trade Measures

As discussed in this [CRS Report](#), [Section 232](#) authorizes the President to impose restrictions on certain imports based on the U.S. Department of Commerce's (Commerce's) affirmative determination that the product under investigation "is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." The Act establishes deadlines that Commerce and the President must meet during each phase of the investigation and implementation of any resulting action.

Specifically, under the Act, Commerce must, within 270 days of initiating an investigation, consult with other federal agencies and submit to the President a report of its findings, including a determination of whether imports of the article under investigation threaten national security, and a description of any recommendations to resolve the threat. If Commerce makes an affirmative determination of a threat, the President has 90 days after receiving the investigation report to determine whether he concurs with Commerce's findings. If the President concurs, he must also determine what actions to take to remove the threat to national security and implement any such action to "adjust imports" within 15 days.

In April 2017, the Secretary of Commerce initiated an investigation under Section 232 to determine the effect of steel and aluminum imports on national security. In January 2018, the Secretary timely submitted to President Trump a [report](#) finding that certain steel imports posed a threat to national security. On March 8, 2018, the President [proclaimed](#) a 25% tariff on imports of steel from nearly all U.S. trading partners, including Turkey, which took effect on March 23. In August 2018, the President proclaimed an [increase](#) in Section 232 tariffs from 25% to 50% on Turkish steel imports only. That increase was [lifted](#) in May 2019.

### The CIT's Decision in *Transpacific Steel*

In *Transpacific Steel*, a U.S. company that imports steel products from various countries, including Turkey, sought the refund of the allegedly unlawfully imposed duties it paid on imports of Turkish steel. The company argued that the President lacked authority to proclaim the subsequent increase in tariffs on steel imports from Turkey (i.e., from 25% to 50%) because it took effect five months after the [initial imposition](#) of steel tariffs, well beyond the statutory deadline for action in the underlying steel investigation. The company also maintained that the imposition of the tariffs lacked a sufficient national security rationale. It also alleged the tariffs violated the plaintiff's Fifth Amendment Due Process and Equal Protection rights because the action "drew an arbitrary and irrational distinction by doubling the tariff rate on Turkish steel products and was based on an impermissible purpose."

The CIT granted the plaintiff's motion for judgment on the agency record, determining the President failed to follow Section 232's procedural requirements when imposing the tariffs. Specifically, the court concluded that the President lacked power to act beyond the deadline to impose additional tariffs without initiating a new investigation, deeming such an "expansive view of [presidential] power under section 232" to be "mistaken, and at odds with the language of the statute, its legislative history, and its purpose." The court also noted that, while the President retains significant discretion to impose duties under Section 232, Congress intended the President to adhere strictly to the statutory timelines.

The court also determined that the executive branch violated constitutional guarantees of equal protection protected by the Fifth Amendment's Due Process Clause when imposing, without a rational basis, the additional steel tariffs on imports only from Turkey. The court observed that while the equal protection standard is not demanding in the context of economic regulation, the government had not offered a sufficient justification for treating imports of steel from Turkey differently than those of other countries.

## The Federal Circuit's Decision Reversing the CIT

In July 2021, the Federal Circuit overturned the CIT's decision in *Transpacific Steel*. The Circuit Court held that the President had not violated Section 232's procedures by increasing tariffs on Turkish steel after the statutory deadline for action. Rather, Congress intended for the President to retain at least some authority to modify a tariff action even after that deadline passed. In reaching this result, the court engaged in a lengthy examination of Section 232's text, purpose, and legislative history. It concluded that the "authority of the President [under Section 232] includes authority to adopt and carry out a plan of action that allows adjustments of specific measures, including by increasing import restrictions, in carrying out the plan over time." The court indicated that, under Section 232, the President has the authority to adjust national security tariffs even if Commerce has not conducted a new investigation and issued a new report recommending action.

The Circuit Court also overturned the CIT's determination that the executive branch violated *Transpacific's* equal protection rights under the Fifth Amendment's Due Process Clause. The court determined that the executive branch had a rational basis for treating Turkish steel importers differently: maintaining the viability of domestic steel plants for national security purposes.

Judge Jimmie Reyna dissented from the court's decision. He argued that the majority effectively expanded the executive branch's authority over tariffs beyond the boundaries established by Congress and the Constitution. He also maintained that the majority's interpretation of Section 232's procedures ignored relevant legislative history and the plain meaning of the statutory text, resulting in "statutory leapfrog, hopping here and there but ignoring what [the interpreter] has skipped."

## Implications of the Federal Circuit's Decision

The Federal Circuit's decision in *Transpacific Steel* is the latest in a series of decisions in which courts have declined to limit [presidential tariff authority](#) and have preserved significant flexibility for the executive branch to impose tariffs. For example, courts have previously [rejected challenges](#) to the President's use of fact-finding and selection of a remedy under various trade statutes. A court has also [denied preliminary injunctive relief](#) to a company that argued that the President exceeded his authority under Section 232 by imposing tariffs for purely economic reasons rather than for national security purposes. Relying on Supreme Court [precedent](#), the CIT also [rejected](#) arguments that Congress delegated too much of its legislative power to the President in Section 232 in violation of the Constitution's separation of powers.

In *Transpacific Steel*, the Federal Circuit stated that its decision did not address "other circumstances that would present other issues about presidential authority to adjust initially taken actions" under Section 232. Nonetheless, the Federal Circuit's precedential decision may make it more difficult for parties in upcoming cases, including pending appeals, to argue successfully that the President has failed to follow statutory procedures in [Section 232](#), [Section 301 of the Trade Act of 1974](#), and other [trade statutes](#). By contrast, plaintiffs have had some [success](#) challenging the government's denial of a request for an administrative exclusion from the Section 232 tariffs on certain product imports.

Although it is possible that the federal courts will further clarify the scope of the President's authority to impose national security tariffs, Congress could also consider enacting legislation to alter or clarify the executive branch's existing authority under Section 232. [Bills](#) introduced in the 117th Congress aim to address concerns about Section 232, including expanding, limiting, or revising existing authority.

## Author Information

Brandon J. Murrill  
Legislative Attorney

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