Commandeering the Customs: An Economic and Legal Perspective on the President's "Emergency" Imposition of "Reciprocal Tariffs"

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Abstract

This paper analyzes the Trump administration's 2025 "reciprocal tariffs," imposed under the International Emergency Economic Powers Act (IEEPA) after a declaration of national emergency tied to U.S. trade deficits. We assess both the economic rationale and the legal implications of using IEEPA to raise U.S. tariffs and abandon Most Favored Nation (MFN) treatment. The Executive Order's claims—that trade deficits have surged, result from a lack of reciprocity, and have caused an "emergency" in manufacturing—rest on economic fallacies. Merchandise trade deficits are long-standing and largely endogenous; tariffs based on bilateral imbalances neither correct unfair foreign practices nor address any true emergency, let alone an 'unusual and extraordinary threat' as required by the statute. We further argue that the tariffs fail IEEPA's requirement that emergency measures "deal with" the asserted threat and that Congress never intended IEEPA to delegate sweeping tariff powers. The episode illustrates the perils of "commandeering the customs" through emergency powers to pursue trade policy by executive fiat.

Keywords: IEEPA, reciprocal tariffs, trade deficits, nondelegation, major questions doctrine

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On April 2, 2025, President Trump issued an Executive Order[1] announcing the imposition of substantial new tariffs on U.S. trading partners following a declaration of a "national emergency" under the International Emergency Economic Powers Act (IEEPA).[2] Pursuant to the declared emergency, the President imposed wide ranging "reciprocal tariffs," consisting of a 10% baseline tariff on imports from all countries with limited exceptions[3] along with additional tariffs ranging as high as 50% for some trading partners. Some of the tariffs have since been modified or negotiated downward, but the basic structure -- a universal baseline tariff and additional tariffs on many countries -- remains in place.[4]

The President's authority to impose these tariffs under IEEPA was subsequently challenged by various private plaintiffs and state attorneys general. The plaintiffs were successful before the Court of International Trade (CIT)[5] and the Court of Appeals for the Federal Circuit (although it remanded the case for further consideration of the proper injunctive relief).[6] Throughout the litigation, the courts have stayed any remedial action pending appeal by the administration to higher courts. At present we await a decision from the Supreme Court, which has taken the case on an expedited basis.

This paper examines the rationale for the reciprocal tariffs imposed by the Trump administration from an economic perspective and assesses the implications for some of the issues in the litigation. Although the tariffs have substantial implications for other nations, our emphasis is on the domestic case for tariffs put forward by the Trump administration.[7]

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[1] See Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits, available at https://www.whitehouse.gov/presidential-actions/2025/04/regulating-imports-with-a-reciprocal-tariff-to-rectify-trade-practices-that-contribute-to-large-and-persistent-annual-united-states-goods-trade-deficits/.

[2] 50 U.S.C. §1791 et. seq. The national emergency itself was declared subject to the National Emergencies Act, 50 U.S.C. §1601 et. seq.

[3] At present, the baseline tariff does not apply to imports from Canada and Mexico that comply with rules of origin requirements under the U.S.-Mexico-Canada Agreement (USMCA) although tariffs do apply to non-USMCA compliant goods.

[4] In addition to the "reciprocal" tariffs, the President has imposed what are termed the "trafficking tariffs" to punish China, Canada and Mexico for failure to make greater efforts to interdict the fentanyl trade. We do not focus on these tariffs here, although some of the same legal issues arise with respect to them.

[5] V.O.S. Selections, Inc. v. United States, CIT slip op. 25-66, May 28, 2025. Plaintiffs were also successful in a case before the District Court of D.C., in a decision that has been consolidated before the Supreme Court with the appeal from the Federal Circuit ruling. See Learning Resources, Inc. v. Trump, D.D.C. slip op. in Civil Action 25-1248, May 29, 2025.

[6] V.O.S. Selections v. Trump, Fed. Cir. Slip op. in case no. 25-1812, August 29, 2025.

[7] We also do not focus in this paper on the revenue implications of tariffs, as we believe that tariffs are a comparatively inefficient way to raise government revenue, and nothing in the President's Executive Order suggests that they are being imposed because of some fiscal "emergency." Likewise, we do not focus on whether tariffs might be rationalized as an effort to pursue an "optimum tariff" that exploits U.S. market power over import prices to improve the U.S. terms of trade. Once again, that objective bears no apparent connection to the declared "emergency."

We do not address all the legal issues in the case but focus on the matters on which international economics and economic history can contribute useful insights and background, starting with a series of economically fallacious claims in the Executive Order. We contest the suggestion that merchandise trade deficits have risen dramatically, that bilateral or aggregate deficits are the product of a lack of "reciprocity" on the part of U.S. trading partners, or that merchandise trade deficits can intelligibly be said to "cause" difficulties in the domestic manufacturing sector. We address the flawed logic of the reciprocal tariff calculations, and whether the reciprocal tariffs will achieve "rebalancing" in U.S. trade relations. We also note some potentially worrisome collateral consequences of using tariffs to reduce the merchandise trade deficit. We further argue that the reciprocal tariffs do not coherently address any emergency that might be imagined to exist in the manufacturing sector. Collectively, these observations imply that current circumstances in the manufacturing sector do not present an "unusual and extraordinary threat" as required by IEEPA and also imply that the reciprocal tariffs do not "deal with" any emergency as the statute further requires.

Finally, we address the question of Congressional intent under IEEPA and in relation to the "major questions doctrine." We argue that the history of Congressional involvement in tariff policy, and its delegation of targeted authority to address specific trade-related problems in U.S. industries, makes it highly implausible that Congress would wish to afford the President the authority under IEEPA to rewrite the entire U.S. tariff schedules on the basis of a nebulous assertion of a sector-wide emergency in U.S. manufacturing.

I. Legal Background

Article I, Section 8 of the Constitution provides that Congress has the power to impose tariffs and to regulate foreign commerce, but Congress has delegated elements of that authority on numerous occasions. Beginning in the 1930s, the President was authorized to negotiate tariff reduction agreements and to proclaim their effects into domestic law.[8] Congress has since provided authority for the Executive to take measures to address a number of specific issues without further Congressional approval, including industrial distress caused by import surges,[9] dumping by foreign firms,[10] subsidization of U.S. imports by foreign governments,[11]unreasonable or discriminatory trade practices by foreign governments,[12] and imports that threaten national security.[13]

At issue in the current litigation is another statute, however, that has a more general scope and has not until now played a material role in U.S. trade policy – the International Emergency Powers Act (IEEPA). It empowers the President to employ a broad range of

[8] See Reciprocal Trade Agreements Act of 1934.
[9] Trade Act of 1974, Section 201 et. seq.
[10] Tariff Act of 1930 (as amended), Section 731 et. seq.
[11] Tariff Act of 1930, Section 701 et. seq
[12] Trade Act of 1974, Section 301 et. seq.
[13] Trade Expansion Act of 1962, Section 232.

measures "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." Measures cannot be taken under IEEPA unless the President declares a national emergency under the National Emergencies Act,[14] and emergency measures must terminate unless the President extends the emergency declaration annually in accordance with that Act.

The reciprocal tariffs imposed under the purported IEEPA authority in many cases vastly exceed the tariff rates enacted by Congress into the Harmonized Tariff Schedules of the United States (HTSUS). These rates in turn are largely the product of international negotiations between the United States and its trading partners spanning three quarters of a century, embodied in the General Agreement on Tariffs and Trade (GATT) and later the World Trade Organization (WTO) in 1994 along with various modern free trade agreements such as the U.S.-Mexico-Canada Agreement. The reciprocal tariffs greatly exceed the tariff ceilings agreed to by the United States in these international treaty arrangements and disregard other international commitments such as the most-favored-nation (MFN) principle in GATT/WTO law because of the way that the tariffs discriminate among U.S. trading partners.

A. The Contested Issues Under IEEPA

Although the list of measures that the President may take under IEEPA is extensive, it makes no specific mention of the power to impose tariffs or duties. But it does authorize measures to "regulate…importation." A central issue in the litigation has been whether this phrasing is expansive enough to permit tariffs.

A second issue relates to the question whether Section 122 of the Trade Act of 1974, which affords authority for tariffs and quantitative restrictions to address "large and serious…balance of payments deficits,"[15] should be viewed as the sole statutory authority for tariffs in response to balance of *trade* deficits. The statute was passed after President Nixon imposed an import surcharge following the closure of the "gold window" in 1971, fearing a substantial depreciation of the U.S. dollar. He acted pursuant to an old statute known as the Trading with the Enemy Act, and Congress enacted Section 122 in part to limit the President's authority to impose import surcharges for that purpose both as to their magnitude and duration (with a ceiling of 15% ad valorem on tariffs, and a maximum 150 day duration unless extended by act of Congress).

Regarding the emergency declaration itself, it has been argued that the declaration is flawed because it fails to identify an "unusual or extraordinary threat" as required by the statute. One version of this argument rests on the fact that the Executive Order attributes the manufacturing sector emergency to persistent merchandise trade deficits. Such deficits have existed every year for the past half century, the argument runs, and thus cannot be

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[14] 50 U.S.C. §1601 et. seq.
[15] Trade Act of 1974, §122(a)(1).

deemed unusual or extraordinary. The administration has responded by challenging the authority of the courts to review emergency declarations at all, and by arguing that trade deficits *per se* are not the emergency. Rather, it contends that the cumulative effects of trade deficits have had consequences in the manufacturing sector that have become acute enough to create an "unusual and extraordinary threat" today.

A further requirement under IEEPA is that the President use his statutory authority to "deal with" the emergency. IEEPA does not elaborate this requirement, but it implies a requirement of some reasonable connection between the measures undertaken and the emergency that they are intended to address.

An issue also arises in relation to the "major questions doctrine," which can be viewed as a canon of statutory construction based on the presumption that Congress does not lightly or cavalierly delegate core powers. The doctrine requires Congress to make an unambiguous delegation of power before the courts will conclude that the Executive Branch has been given the authority to address matters of "vast economic and political significance[16]" on its own. Vague and ambiguous delegations of authority do not suffice in such instances.

Finally, an issue arises under a largely moribund constitutional principle known as the "non-delegation doctrine." Some historical jurisprudence suggests that Congress is not permitted under the Constitution to delegate certain fundamental legislative powers. Modern statements of the doctrine are somewhat less restrictive but suggest that delegation requires an "intelligible principle" to guide the use of any delegated authority. On the premise that power over tariffs is a core legislative power, the question then arises whether IEEPA contains an intelligible principle to guide the exercise of tariff authority (assuming it contains any such authority at all).

B. The Rulings to Date

The CIT has exclusive jurisdiction over any civil action against the United States that "arises out of any law...providing for tariffs."[17] Challenges to the reciprocal tariffs were filed by a mix of private and state plaintiffs in several courts, where there was some doubt as to whether a challenge to tariffs imposed under IEEPA would be subject to the CIT's exclusive

[16] The doctrine was invoked to strike down the Environmental Protection Agency's claim that the Clean Air Act gave it the power to regulate carbon dioxide admissions (West Virginia v EPA, 597 U.S. 697 (2022)), and to strike down the Education Department's claim that the Higher Education Act afforded authority to forgive hundreds of billions of dollars in student loans through a provision that allowed it to "waive or modify" the statute or regulation in the event of a "national emergency" (the COVID pandemic). See Biden v. Nebraska, 600 U.S. 477 (2023).
[17] 28 U.S.C. §1581(i).

jurisdiction given the controversy over whether IEEPA authorizes tariffs.[18] The CIT ruled that it had exclusive jurisdiction over challenges to tariffs under IEEPA,[19] however, and the Court of Appeals for the Federal Circuit concurred.[20] Thus, the cases filed before the CIT have become the focus of litigation.[21]

A unanimous three judge panel of the CIT ruled against the reciprocal tariffs on several grounds. First, although it did not accept the proposition that IEEPA precludes any use of tariffs, it found that it does not authorize the "unbounded" or "unlimited" tariffs imposed by the Trump administration. Congressional delegation of the power to impose such sweeping tariffs would be an unconstitutional delegation, the Court ruled, and would fail to pass muster under the major questions doctrine. The Court thus construed IEEPA as providing at most 'limited" tariff authority, although it did not detail the precise limits. The Court further reasoned that the enactment in 1974 of Section 122 of the Trade Act of 1974, permitting tariffs and other measures in response to "large and serious…balance of payments deficits" evinces an intent to remove tariffs for balance of payments related issues from the President's emergency powers under other statutes (including the subsequently enacted IEEPA). Because an "imbalance in trade" is a "type of balance of payments deficit" according to the Court, [22] Section 122 is the exclusive authority for tariffs to address such deficits.

Given the importance of the case, the Federal Circuit addressed the matter *en banc*. Seven of the eleven participating judges joined the majority opinion affirming the CIT ruling against the administration. Like the CIT, the majority concluded that the phrase "regulate…importation" in IEEPA was not intended to delegate the authority to impose tariffs that are "unbounded in scope, magnitude and duration,"[23] resting the analysis in part on the major questions doctrine. Four of the seven judges in the majority issued a concurring opinion finding the IEEPA does not include *any* authority for tariffs, reasoning that a fundamental distinction exists between the power to "regulate" and the power to tax. The concurrence also argued that the government's construction of IEEPA would render it unconstitutional under the non-delegation doctrine for lack of an "intelligible principle" to govern the use of tariffs.[24]

Four judges dissented. The dissent argued that the power to "regulate" importation includes the power to impose tariffs, and that Section 122 of the Trade Act of 1974 was aimed

[18] The District Court for the District of Columbia ruled in one case that IEEPA does not allow tariffs, so that it had jurisdiction to hear the dispute, resulting in a ruling against the administration. See Learning Resources, Inc. v. Trump, Civil Action 25-1248, slip op. (D.D.C. May 29, 2025).

[19] V.O.S. Selections, Inc. v. United States, slip op. 25-66 (CIT May 28, 2025) (hereafter CIT slip op.).

[20] V.O.S. Selections v. Trump, Case 25-1812, slip op. (Fed. Cir. August 29,2025) (hereafter Fed. Cir. slip op.)

[21] The Learning Resources case, supra, which ruled that IEEPA does not contain the authority to impose tariffs, was subsequently consolidated with V.O.S. Selections before the Supreme Court.

[22] CIT slip op. at 34.

[23] Fed. Cir. slip op. at 41-42.

[24] Fed. Cir. slip op. at 56.

at "balance of payments" issues, not balance of trade issues, and thus could not be intended to cabin emergency authority to deal with the latter. The dissent also rejected the claim that the Executive Order did not deal with an "unusual and extraordinary threat." The plaintiffs had rested that argument on the proposition that trade deficits are not unusual and extraordinary, whereas the proper issue in the view of the dissent was whether the *consequences* of the trade deficits have become an unusual and extraordinary threat, a factual issue that cannot be resolved on summary judgment.[25] It also rejected the major questions and non-delegation findings of the majority and concurrence.

II. The Flawed Economic Logic of the Emergency Declaration and the Reciprocal Tariff Policy

The Executive Order of April 2, 2025 announcing the emergency declaration and the reciprocal tariffs states:

> *Large and persistent annual U.S. goods trade deficits have led to the hollowing out of our manufacturing base; inhibited our ability to scale advanced domestic manufacturing capacity; undermined critical supply chains; and rendered our defense-industrial base dependent on foreign adversaries. Large and persistent annual U.S. goods trade deficits are caused in substantial part by a lack of reciprocity in our bilateral trade relationships. This situation is evidenced by disparate tariff rates and non-tariff barriers that make it harder for U.S. manufacturers to sell their products in foreign markets. It is also evidenced by the economic policies of key U.S. trading partners insofar as they suppress domestic wages and consumption, and thereby demand for U.S. exports, while artificially increasing the competitiveness of their goods in global markets.*

The Order later recites: "I have declared a national emergency arising from conditions reflected in large and persistent annual U.S. goods trade deficits, which have grown over 40 percent in the past 5 years alone, reaching $1.2 trillion in 2024."

Tracing the logic of these recitations, ostensible problems in the manufacturing sector have their origin "in substantial part" with a lack of reciprocity in bilateral trading relations between the United States and the rest of the world. The result has been "large and persistent annual U.S. goods trade deficits," which have "grown over 40% in the last 5 years alone." These deficits in turn have "led to" a "hollowing out" of the manufacturing base, difficulties in "scaling" manufacturing capacity, harm to "critical supply chains," and a defense industrial base "dependent on foreign adversaries." Later, the Order states that the decline in manufacturing capacity has led to a "loss of manufacturing jobs." The Order thereby posits the existence of a causal chain that runs from a lack of reciprocity, to merchandise trade deficits, and finally to various problems in the manufacturing sector. Notably, the Order offers no detail on these problems – we are not told which industries are facing difficulties or why they have become exigent to the point of emergency. We are also

[25] Fed. Cir. Slip Op. at 85-86.

given no account of how the reciprocal tariffs imposed in conjunction with the order address the emergency conditions.

In this Section, we engage with each of these issues. We contest the claim that trade deficits have grown dramatically of late and deny that a lack of "reciprocity" is responsible for the modest growth that has occurred. We explain why trade deficits occur, why they are not "causal" in relation to conditions in the manufacturing sector. Accordingly, in our view, the core claims in the Executive Order about the nature of any "unusual and extraordinary threat" are incoherent on their face and cannot establish the existence of such a threat. We next discuss how the use of tariffs to curtail merchandise trade deficits can have adverse collateral consequences for the manufacturing sector, as well as for services sectors and for inbound international investment. Further, the reciprocal tariffs amount to little more than a randomized tax on all merchandise imports from all foreign sources, which can address any true emergency in the manufacturing sector only by coincidence. Accordingly, the tariffs imposed under IEEPA do not coherently "deal with" any putative emergency as the statute requires.

A. The Magnitude of the Merchandise Trade Deficit

The Executive Order characterizes the merchandise trade deficit as a rapidly burgeoning problem, increasing "40% in the last 5 years alone." In fact, as others have noted, U.S. merchandise trade deficits have existed every year for the past half century, and the suggestion that they have grown rapidly of late is highly misleading.

Focusing on the past five years of available data (as does the Executive Order), it is true that the merchandise trade deficit in nominal dollars rose 41.8% from 2019 to 2024.[26] Over the same period, however, the consumer price index rose 22.7%[27] and the producer price index for all manufacturing rose nearly 26%,[28] indicating that roughly half of the nominal growth in the deficit was due to inflation.

Much of the further increase can be attributed to the growth of the economy. Using the same data sources, the ratio of the merchandise trade deficit to GDP was 3.98% in 2019, and 4.16% in 2024, a percentage increase of only 4.5% over five years. And taking a broader historical perspective, the merchandise trade deficit was at a maximum relative to the size of the U.S. economy nearly two decades ago in 2006, when it reached 5.7% of GDP.[29] Even if one embraces the notion that merchandise trade deficits are somehow a "problem" – a notion that we contest – they have not changed much of late in relation to the size of the economy.

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[26] Merchandise trade deficit data available at https://www.bea.gov/data/intl-trade-investment/international-trade-goods-and-services.

[27] Consumer price index data available at https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1913-.

[28] Producer price index data available at https://fred.stlouisfed.org/series/PCUOMFGOMFG.

[29] GDP data available at https://fred.stlouisfed.org/series/GDP.

B. The Purported Lack of Reciprocity in Bilateral Trade Relations

The President's Executive order recites that "goods trade deficits are caused in substantial part by a lack of reciprocity in our bilateral trade relationships. This situation is evidenced by disparate tariff rates and non-tariff barriers that make it harder for U.S. manufacturers to sell their products in foreign markets." The Executive Order also states that "the trading relationship between the United States and its trading partners has become highly unbalanced, particularly in recent years." On numerous occasions, the President has gone farther to suggest that our trading partners are "ripping us off.[30]"

On the premise that bilateral deficits reflect a denial of reciprocity to the United States, the United States Trade Representative (USTR) calculated the "reciprocal" tariffs announced on April 2 by asking the following question -- what increase in the average tariff rate on goods from each country that runs a merchandise trade surplus with the United States will cause its exports to the United States to decline by an amount sufficient to balance bilateral merchandise trade?[31] Based on a number of (questionable) assumptions,[32] the analysis yielded a formula implying that the requisite average tariff increase on goods from each country was equal to the ratio of the bilateral trade deficit to the initial quantity of (bilateral) U.S. imports. (For countries with which the United States ran a trade surplus, an arbitrary 10% tariff was applied.) The result of this calculation was a set of highly discriminatory tariffs, with their magnitude tied to the proportionate size of the bilateral deficit. This section examines the underlying premise of the reciprocal tariff calculation – that a bilateral trade deficit reflects a lack of "reciprocity" in bilateral trading relations, defined in some meaningful way.

Bilateral trade between countries is no more likely to be balanced than bilateral trade among individual economic actors. Most of us run trade surpluses with our employers and trade deficits with our grocers, yet no one imagines these relationships to be unfair or non-

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[30] See ABC News, They're Ripping Us Off: Trump's Longstanding Grievance Driving His Risky Tariffs, available at https://abcnews.go.com/Politics/theyre-ripping-us-off-trumps-long-standing-grievance/story?id=120447216.

[31] See the USTR fact sheet, available at https://ustr.gov/sites/default/files/files/Issue_Areas/Presidential%20Tariff%20Action/Reciprocal%20Tariff%20Calculations.pdf.

[32] The calculation assumed that the price elasticity of demand for imports is 4 from every country, only 25% of any tariff passes through to the buyers of imports, exchange rates are unaffected by tariffs, foreign governments do not retaliate following new tariffs, and nothing else happens that would cause U.S. exports to decline. It further ignored the fact that a higher tariff on imports from one country might divert U.S. purchases to a third country, thereby worsening the bilateral deficit with that country.

All these issues raise serious questions about the tariff calculations. To take one example, if USTR had assumed that the pass through of tariffs to importers is close to 100%, in keeping with the empirical evidence in the literature, their calculations would have generated tariffs only one-fourth as large. See Mary Amiti, Stephen J. Redding & David E. Weinstein, The Impact of the 2018 Tariffs on Prices and Welfare, 33 J. Econ. Persp. 187 (2019).

reciprocal. International trade allows countries to specialize in what they do best in comparative terms. They will export the products in which they specialize and import the products that are best made elsewhere. If the United States specializes in high technology products and agriculture, it will export heavily to countries that desire high technology products and food. If U.S. import requirements include substantial amounts of textiles and clothing, it will import from countries that produce them. There is simply no reason to expect that the countries demanding a lot of U.S. exports will be the same ones that supply a lot of U.S. imports.

The Executive Order purports to demonstrate an absence of reciprocity by pointing to tariff disparities on individual items, such as a lower tariff historically on automobile imports into the United States than on U.S. auto exports to Europe and certain other countries. These anecdotal comparisons are unhelpful, however, as one can readily find anecdotal examples where U.S. tariffs and trade restrictions are higher on individual items. U.S. sugar tariffs and quotas, for example, lead to sugar prices roughly twice as high as those on world markets, a situation that has persisted for many years.[33] The United States has also long imposed a higher tariff on light duty trucks (25%) than trading partners, dating back to the "chicken war" of the 1960s that arose following European tariffs on U.S. chicken exports. The growth and popularity of the SUV segment of the auto industry in the United States is often attributed to this 60-year period of special protection for light truck producers.

The Executive Order also points to the United States having lower "simple average tariff rates" than various trading partners. Average tariff rates, however, are potentially misleading as well. A "simple average" does not consider the commercial importance of the tariff – for example, a tariff might be high on a product that a country would not import to any extent even with a low tariff. Trade-weighted average tariff rates address this issue to a degree but can also mislead. A prohibitively high tariff that chokes off trade in a product will receive little or no weight in the average because the volume of trade is negligible due to the tariff. Even with these caveats, the differences in the average tariff rates across developed country trading partners tends to be small. WTO data on average applied tariff rates for 2024 indicate that the average rate for Australia was 2.4%, for Canada 3.81%, for Japan 3.9%, for the European Union 5.1%, and for the United States 3.4%.[34]

Thus, we question whether persuasive evidence about any lack of reciprocity can be drawn from anecdotal tariff differences on individual products or average tariff computations. To the contrary, the concept of reciprocity has a different and storied meaning in the history of international trade negotiations. Following the U.S. Tariff Act of 1930 and the ensuing trade wars during the Great Depression, the U.S. Congress passed the Reciprocal Trade Agreements Act of 1934, authorizing the President to negotiate mutual tariff reduction agreements with foreign governments. The notion of reciprocity introduced by the 1934 Act later became central to multilateral trade negotiations under the auspices

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[33] See https://sweetenerusers.org/wp-content/uploads/2024/08/SUA-White-Paper-on-U.S.-Sugar-Prices-UPDATED-FINAL-2.pdf.

[34] Available at https://ttd.wto.org/en.

of GATT and its successor the WTO. From the outset of GATT, negotiators sought to exchange "reciprocal" tariff concessions, understanding "reciprocity" to refer to a balance of trade concessions that would allow each country to increase its *aggregate* exports to other GATT members by an amount approximately equal to the increase in its aggregate imports from those members.[35] This approach allowed each member country to seek improved market access for its exports of greatest importance, whether economically or politically. Negotiators took this reciprocity norm seriously – the U.S. State Department, for example, made calculations during the rounds of tariff negotiations under GATT to confirm that aggregate U.S. exports could be expected to increase due to tariff cuts abroad by an extent roughly equal to the increase in U.S. imports expected to result from U.S. tariff cuts.[36] At no point did reciprocity imply that each party would have identical tariff rates on individual goods. Likewise, reciprocity at no time was taken to mean that bilateral trade would balance or that bilateral trade opportunities would expand equally.[37]

The commitment to reciprocity throughout the history of multilateral negotiations is at odds with the claim that the trading relationship between the United States and its trading partners has "become highly unbalanced, particularly in recent years." It instead points to the opposite proposition – any asymmetry in market access opportunities arose many years ago. Such asymmetries may have been preserved by trade negotiations grounded in the norm of reciprocity, but not exacerbated by them.

Although we reject the claim that bilateral or aggregate deficits indicate a lack of "reciprocity" in U.S. trading relations,[38] it bears noting that the history of the GATT/WTO system does reflect "special and differential treatment" for developing countries. Developed country members held the view that tariff preferences for developing country members could foster their economic development, which would promote the mutual interest of all

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[35] See Kyle Bagwell & Robert W. Staiger, The Economics of the World Trading System (2002), ch. 1.

[36] See Kyle Bagwell, Robert W. Staiger & Ali Yurokoglu, Multilateral Tariff Bargaining: A First Look at the GATT Bargaining Records, 12 Am. Econ. J.: Applied Econ. 72 (2020).

[37] Although tariff bargains were expected to be "reciprocal" in the above sense, GATT members recognized that the expectations of negotiators regarding the resulting volume of imports and exports might prove mistaken *ex post*. For that reason, trade agreements such as GATT from the outset contained provisions to facilitate the renegotiation of tariff commitments (GATT Article XXVIII), to authorize "safeguards" allowing members to revoke tariff concessions in response to unexpected import surges (GATT Article XIX), and to bring disputes based on a frustration of reasonable expectations for market access (GATT Article XXIII). These provisions facilitated adjustment of the bargain *ex post* in response to economically or politically problematic developments in individual industries.

[38] One recent study concludes that bilateral current account (as opposed to merchandise trade) imbalances are caused in substantial part by asymmetries in trade barriers between countries. See Alejandro Cuñat & Robert Zymek, Bilateral Trade Imbalances, 91 Rev. Econ. Stud. 1537 (2024). If correct, this finding does not undermine the proposition that tariff negotiations delivered reciprocity as to the expected change in aggregate exports and imports for each country. It simply suggests that the starting point for the exchange of tariff concessions may have been asymmetric – reciprocity in negotiations expanded trade in reciprocal fashion but did not eliminate pre-existing asymmetries in trade impediments. Any asymmetries that persist today may thus date back many years, and do not suggest any newly exigent circumstances.

member nations, and agreed to tariff preferences and other legal flexibilities for developing countries.[39]

In the intervening years, some of these developing countries have become much more important players in the world economy and may now be perceived to have been "free riders" to an extent on historical tariff concessions by the developed economies. The President's Executive Order notes that average tariff rates for some of these countries are materially higher than average rates for the United States – India at 17%, for example, and Brazil at 11.2%. But once again, any attendant absence of "reciprocity" due to a history of special and differential treatment was a product of U.S. policies that supported such treatment and is not systematically reflected in the bilateral merchandise trade balance. Indeed, to take the example of Brazil, the United States has had a merchandise trade surplus with Brazil every year since 2007.[40] And the administration's reciprocal tariffs are plainly not targeted in any systematic way at the historical beneficiaries of special and differential treatment.

We conclude this section with a conceptual point about the relationship between "reciprocity" and conditions in the labor market of an importing nation. Economic theory offers an interpretation of reciprocity based on the effects of trade agreements on the terms of trade – the relative prices of a nation's imports and exports at the border. Agreements that reduce the price that nationals receive from foreign customers for exports relative to what they pay foreign suppliers for their imports worsen the terms of trade and reduce national income, other things being equal, because what the nation sells has become relatively cheaper and what it buys has become relatively more expensive. Agreements that improve the terms of trade have the opposite effect. "Reciprocity" in an economic sense occurs when trade agreements open markets in both directions while leaving the terms of trade unchanged – a considerable body of theoretical work establishes that tariff negotiations in accordance with the reciprocity norm of GATT do exactly that.[41] One recent study focused on trade between China and the rest of the world after China's accession to the WTO finds that China "over-reciprocated" the concessions it received from other WTO members from the Uruguay Round of tariff cuts (negotiated at the formation of the WTO), worsening China's terms of trade. This was beneficial to the rest of the world as measured by its aggregate national income but <u>worsened</u> the impact on firms and workers in the manufacturing sector that compete with Chinese exports.[42]

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[39] The tariff preferences are embodied in the "Generalized System of Preferences," which was approved by the GATT membership as an exception to the MFN obligation.

[40] See U.S. Census Bureau, Trade in Goods with Brazil, available at https://www.census.gov/foreign-trade/balance/c3510.html.

[41] See Kyle Bagwell & Robert W. Staiger, An Economic Theory of GATT, 89 Am. Econ. Rev. 215 (1989).

[42] See Chad P. Bown, Lorenzo Caliendo, Fernando Parro, Robert W. Staiger & Alan O. Sykes, Reciprocity and the Labor Market Effects of Trade Liberalization (mimeo 2025), earlier version circulated as NBER Working Paper 32835.

The lesson here goes beyond the impact of China's WTO accession. Even where reciprocity exists in trading relations, it hardly follows that manufacturing industries or other industries affected by trade will thrive. Trade liberalization creates winners and losers – winners in the form of exporters and consumers, losers in the form of import-competing industries, which may well lie in the manufacturing sector. Difficulties in import-competing industries do not establish a lack of reciprocity, nor are they attributable to trade deficits.

C. Merchandise Trade Deficits: Cause and Effect

Because bilateral and aggregate merchandise trade deficits do not reflect an absence of reciprocity in trading relations, the administration's calculation of "reciprocal" tariff rates based on bilateral deficits is economically unfounded.[43] We now turn to the next step in the reasoning of the Executive Order – the proposition that merchandise trade deficits, whether aggregate or bilateral, have "led to" the difficulties in the U.S. manufacturing sector.

Economics (as well as other fields such as Philosophy) distinguishes between "exogenous" and "endogenous" variables, also often termed "causes" and "effects." To elaborate, consider the basic supply and demand diagram for a competitive market. The intersection of the supply and demand curves determines the equilibrium price in the market and the equilibrium quantity purchased at that price by buyers. Price does not "cause" quantity and quantity does not "cause" price, they are simultaneously and "endogenously" determined by the underlying factors that determine industry supply and consumer demand. Those factors include production technology and input costs (on the supply side) as well as consumer tastes and income (on the demand side). The underlying factors may be viewed as "exogenous," such that a change in one of them will affect either demand or supply and lead to a new equilibrium price and quantity. A change in price or quantity can thus sensibly be said to be caused by changes in the underlying determinants of supply and demand.

Merchandise trade deficits are endogenous -- they are simultaneously determined with other things, including manufacturing output and employment. To illustrate, an increase in foreign demand for products manufactured in the United States due to shifting tastes or rising incomes abroad will, other things being equal, lead to more U.S. exports and greater U.S. production and employment by exporting firms, with a concurrent decline in any merchandise trade imbalance. An extended strike in a U.S. manufacturing industry can lead to more imports of substitute goods to replace domestic production, with a concurrent increase in the merchandise trade deficit and diminished domestic employment. In each of these examples, the changing merchandise trade deficit is an "effect" not a "cause." The

[43] Following the announcement of the reciprocal tariffs, some observers speculated that the true goal of the administration was to use tariffs as negotiating leverage to open foreign markets to U.S. exports. On that theory, higher tariffs on countries with which the United States has a larger bilateral merchandise trade deficit might be seen as generating more negotiating leverage with the countries that have more to lose in a tariff war with the United States. Of course, if that account captures the true underlying logic of the tariffs, the purported import-related emergency in the U.S. manufacturing sector is pure pretense.

causal variables are the factors that affect foreign demand in the first case, and the labor strike in the second case.

It is thus erroneous to claim that trade deficits "cause" or have "led to" whatever difficulties in the manufacturing sector serve as the predicate for the purported "emergency," just as it would be erroneous to claim that difficulties in the manufacturing sector have "led to" increased merchandise trade deficits. Both are determined as a result of other factors. The only "other factor" mentioned in the Executive Order is an asserted lack of reciprocity in bilateral trading relations, but we have already demonstrated that the claimed lack of reciprocity has little foundation, and in any event bears no systematic relation to merchandise trade deficits. In these respects, the causal reasoning of the Executive Order, and its emphasis on the consequences of trade deficits, is economically incoherent.[44]

The discussion in the Federal Circuit dissent concerning the existence of an "unusual and extraordinary threat" is confused for the same reason. The dissent responds to the argument that trade deficits are not unusual or extraordinary by observing that trade deficits *per se* are not the emergency according to the President, but rather their *consequences* for the domestic manufacturing sector. That proposition presupposes, however, that trade deficits may be conceptualized as the cause of domestic problems in the manufacturing sector, which they cannot be.

The analysis to this point may be summarized as follows: The claim in the Executive Order to the effect that merchandise trade deficits are growing rapidly is unfounded, its claim that such deficits are attributable to a lack of bilateral reciprocity is both illogical and inconsistent with the historical record of tariff negotiations, and its claim that merchandise trade deficits have "led to" difficulties in the manufacturing sector embodies a fundamental confusion about cause and effect. Because these foundational claims about the existence of an "unusual and extraordinary threat" to the U.S. manufacturing sector are fundamentally misguided, we believe that the statutory requirement that such a threat exists as the basis for the exercise of emergency powers is plainly not met.

In the remainder of this section, we turn to a set of issues raised by another statutory requirement. Assuming *arguendo* that an "unusual and extraordinary threat" exists, can the reciprocal tariff policy plausibly "deal with" that threat constructively?

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[44] One exogenous factor related to U.S. trade deficits is foreign demand for savings. An increase in savings abroad can lower borrowing rates for the United States and make it cheaper to finance trade deficits with inbound foreign investment (see the discussion in the next section), leading to a larger trade deficit. In a recent paper, the authors find that a "foreign savings glut" has contributed to a larger U.S. trade deficit, and that its contribution could explain roughly 15 percent of the decline in U.S. manufacturing jobs from 1992-2012. The remaining decline was attributed to other factors, primarily growth in manufacturing productivity (as through automation). See Timothy J. Kehoe, Kim J. Ruhl & Joseph B. Steinberg, Global Imbalances and Structural Change in the United States, 126 J. Pol. Econ. 761 (2018).

D. The Effects of Tariffs on the Balance of Merchandise Trade, Services Trade, and Investment

In announcing the reciprocal tariffs, the Executive Order states: "It is the policy of the United States to rebalance global trade flows by imposing an additional ad valorem duty on all imports from all trading partners except as otherwise provided herein." Although we have questioned the causal connection between the merchandise trade deficit and any worrisome conditions in the U.S. manufacturing sector, this section takes the Order at face value and assumes that the goal of the reciprocal tariffs is to "rebalance" merchandise trade. We thus begin by considering the extent to which the reciprocal tariffs may be expected to reduce the merchandise trade deficit. We then discuss potentially worrisome collateral effects of reducing that deficit through tariffs.

1. The Effect of Reciprocal Tariffs on the Merchandise Trade Balance

Other things being equal, tariffs tend to reduce imports and reduce the merchandise trade deficit. For a variety of reasons, however, other factors may dampen this effect, perhaps substantially, and might conceivably reverse it.

First, many of the administration's tariffs fall on intermediate goods (such as auto parts). Intermediate goods tariffs raise costs for downstream U.S. manufacturers and damage their competitive position relative to imports, potentially leading to an increase in downstream imports unless downstream tariffs avert the increase. Evidence of this problem has already emerged in the form of substantial profit reductions for certain downstream firms.[45] Depending on the relative labor intensity of downstream and upstream production, intermediate goods tariffs can cause a net loss of manufacturing jobs as some recent studies have documented in relation to tariffs imposed during the first Trump administration.[46] Moreover, tariffs on intermediate goods that are used to produce U.S.

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[45] General Motors, for example, has indicated that it expects a $4-5 billion dollar reduction in profits this fiscal year because of tariffs on input products, including auto parts. See Forbes, GM: Tariffs Cost Automaker $1.1 billion Last Quarter, available at https://www.forbes.com/sites/zacharyfolk/2025/07/22/gm-tariffs-cost-automaker-11-billion-last-quarter/.

[46] See Aaron Flaaen & Justin Pierce, Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector (mimeo January 25, 2024), available at http://www.justinrpierce.com/index_files/flaaen_pierce_tariffs_manufacturing.pdf.

Prior administrations have recognized this danger. During the Reagan administration, the U.S. copper mining and refining industry sought protective tariffs under Section 201 of the Trade Act of 1974, which provides temporary protection for industries "seriously injured" by import competition. The U.S. International Trade Commission recommended tariffs or quotas to assist the industry, but the President declined to impose them, following a campaign by downstream firms to demonstrate that job losses in firms making products such as copper wire and brass would exceed job gains in raw copper production. See Letter to the Speaker of the House and the President of the Senate on the Denial of Import Relief for the Copper Industry, September 6, 1984, available at https://www.reaganlibrary.gov/archives/speech/letter-speaker-house-and-president-senate-denial-import-relief-copper-industry#:~:text=the%20Copper%20Industry-,Letter%20to%20the%20Speaker%20of%20the%20House%20and%20the%20President,highly%20dependent%20on%20copper%20exports.

exports will reduce the competitiveness of those exports, harm exporting firms,[47] and increase the merchandise trade deficit, other things being equal.

Second, the reciprocal tariffs currently in place are highly discriminatory. They will lead to a rearrangement of suppliers, with U.S. importers shifting to those benefitting from lower tariffs. U.S. merchandise trade deficits may decline with the countries subject to higher tariffs, only to be replaced in significant part by new or larger bilateral deficits with countries that enjoy lower tariffs. Evidence of such shifts has emerged, particularly in regard to China, where U.S. supply chains have reduced their reliance on Chinese goods and shifted toward alternative suppliers such as Vietnam and Mexico.[48]

Third, foreign retaliation, if it arises, will also lower exports. The experience of the 1930s following the Smoot Hawley Tariff highlights the potential for sizeable retaliatory responses abroad. More recent experience with China, and its retaliatory responses to U.S. tariffs, also underscores the threat of retaliation. China's decision to reduce imports of U.S. soybeans has led to talk of a $10 billion bailout for U.S. soybean producers,[49] and the recent announcement of new export restrictions on rare Earth minerals threatens critical supply problems for many U.S. manufacturing industries.[50]

Finally, tariffs reduce the demand for foreign currency to buy imports and typically induce some degree of domestic currency appreciation[51] relative to the exchange rates that would prevail otherwise. Any appreciation of the U.S. dollar will lead to fewer U.S. exports as they become more expensive for foreign purchasers and will reduce the price of U.S. imports in dollar terms potentially offsetting some of the effects of the tariffs on U.S. import prices. Both effects moderate the effects of the tariffs on the merchandise trade balance.

This list of potentially offsetting factors is not exhaustive, as it omits (for example) the possibility that tariffs may have collateral effects in asset markets that can affect trade. The

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[47] See Kyle Handley, Fariha Kamal & Ryan Monarch, Rising Import Tariffs, Falling Export Growth: When Modern Supply Chains Meet Old-Style Protectionism, 17 Am. Econ. J: Applied Econ. 208 (2025).

[48] See Laura Alfaro & Davin Chor, Global Supply Chains: The Looming "Great Reallocation" (mimeo August 30, 2023), available at https://drive.google.com/file/d/1KYqW0IrWLEyXnu39hKxDGoxQY18-CNZ9/view; Pablo Fajgelbaum, Penelopi Goldberg, Patrick Kennedy, Amit Khandelwal & Daria Taglioni, The U.S. China Trade War and Global Reallocations, 6 Am. Econ. Rev.: Insights 295 (2024).

[49] See Trump Considers $10 billion Bailout for Farmers as Tariffs Disrupt the Market, October 7, 2025, available at https://www.pbs.org/newshour/show/trump-considers-10-billion-bailout-for-farmers-as-tariffs-disrupt-the-market.

[50] See New York Times, Cars to Fighter Jets: China's New Export Curbs May Level a Heavy Blow Worldwide, October 12, 2025, available at https://www.nytimes.com/2025/10/12/business/china-rare-earth-export-controls.html.

[51] The dollar has not yet appreciated in absolute terms in response to the reciprocal tariffs, apparently because administration policies (including its fiscal policies) have created uncertainty about the future stability of the dollar, thereby causing foreign investors to sell dollar denominated assets. The long-term picture in that regard is unclear, but it remains possible that continuing high tariffs will eventually lead to dollar appreciation. Further, as noted in the text, the tariffs may have caused the value of the dollar to be higher than it would have been otherwise, thus reducing U.S. exports relative to the level that would have otherwise prevailed.

question of how and why tariffs may impact trade deficits has in fact become something of a cottage industry among economists of late, with a growing number of theoretical[52] and empirical contributions.[53]

In sum, we expect that the reciprocal tariffs will have *some* impact in reducing the aggregate merchandise trade deficit, but other factors can diminish their impact considerably and it is difficult to predict how much "rebalancing" will ultimately result. We would also be remiss not to note that eliminating the aggregate merchandise trade deficit through tariffs will lead to a reduction in the national income of the United States due to the familiar deadweight costs of trade protectionism.[54]

2. The Balance of Payments, the Balance of Trade and the Collateral Effects of "Rebalancing"

Because the ongoing litigation raises the question whether Section 122 of the Trade Act of 1974 removes from IEEPA any authority to address problems attributed to balance of trade deficits, we briefly address in this section the relationship between the balance of payments and the balance of merchandise trade. Along the way, we will highlight the collateral consequences of "rebalancing" merchandise trade, which can work at cross purposes with the objective of aiding the U.S. manufacturing sector and damage the U.S. services sector. To develop these points, we require a brief digression on balance of payments accounting.

a. The Balance of Payments Accounts

The balance of payments accounts of the United States (and other nations) are an accounting construct built on double entry bookkeeping. As suggested by the title, they track "payments" between the United States and other countries. For example, consider how the double entry bookkeeping system functions for a typical U.S. import transaction involving $1,000 worth of goods. The U.S. buyer makes a wire transfer drawn on a U.S. bank to the foreign seller for $1,000, resulting in a debit for the United States (a net outflow of money). The foreign recipient of the wire transfer thereby acquires a $1,000 claim on a U.S. bank, which will be recorded as a credit. The bank's liability to the foreign seller may be thought of as a "credit" (inflow of money) because it is analogous to a bank deposit that generates a future claim on the bank owed to a foreign entity. Merchandise export transactions simply reverse the role of these offsetting debits and credits.

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[52] See, e.g., Ivan Werning & Arnaud Costinot, How Tariffs Affect Trade Deficits (NBER Working Paper 33709 June 2025) (deriving theoretical conditions under which permanent tariff increases may increase, reduce, or leave unaffected the trade deficit in goods and services).

[53] See, e.g., Lorenzo Caliendo, Samuel Kortum & Fernando Parro, Tariffs and Trade Deficits (mimeo June 13, 2025) (finding that recent U.S. tariffs, particularly against China, have reduced the U.S. trade deficit in goods and services while lowering aggregate U.S. economic welfare); available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5350334.

[54] See Id.

Because debits in the balance of payments account are always offset by equal credits elsewhere in the accounts, the balance of payments is always in balance. The foundation for this statement is not an empirical claim but an accounting identity.[55] We explain later what is meant by the term "balance of payments deficit," which refers to an imbalance of payments in the private sector that must be made up by the government.

The balance of payments accounts are divided into three components – the current account, the financial account, and the capital account. The current account reflects current period transactions in goods and services, net income earned abroad during the period, and net transfers abroad (such as foreign aid and family remittances). The bulk of the current account is comprised of transactions in goods and services, and it is these transactions that place a country into a trade surplus or deficit. If the aggregate imports of goods and services during the current period exceeds the aggregate value of exports, the country has a "balance of trade deficit," while a "surplus" arises when exports exceed imports. Further, because goods and services transactions constitute the bulk of the current account, a trade deficit or surplus will generally imply a current account deficit or surplus as well.

Within the current account, one can further distinguish the balance of services trade and the balance of merchandise trade. In recent years, the United States has run a persistent deficit in goods ("merchandise trade"), and a persistent surplus in services trade.[56]

The financial account and the capital account together record transfers of financial and other capital assets and liabilities, such as transactions in stocks, bonds, business investments, sale of assets such as land, and so on. The details of what is recorded in the capital account versus the financial account need not detain us, but one can think of the combined balance in these accounts as the obverse of the current account balance. If the current account is in deficit, then the combined capital and financial accounts will be in surplus in an equivalent amount, thus achieving "balance" in the balance of payments. A surplus in these combined accounts reflects the fact that the United States is borrowing money from abroad to finance the deficit that arises because current period imports exceed exports. This borrowing entails net exports of capital and financial assets, giving foreigners increasing net future claims on the United States. Accordingly, a surplus in the combined capital and financial accounts represents net inbound investment from abroad. Combining this observation with the fact that the combined surplus in these accounts is equal to the deficit in the current account, it follows that a reduction in the current account deficit implies a reduction in net inbound foreign investment, and vice versa.

[55] In practice, data for the balance of payments accounts are imperfect, resulting in a modest "imbalance" due to a "statistical discrepancy." An extended discussion may be found in Paul R. Krugman, Maurice Obstfeld and Marc J. Melitz, International Economics: Theory and Policy (11th ed.) 2018, ch. 13.
[56] In 2024, the merchandise trade deficit was roughly $1.22 trillion, while the services trade surplus was roughly $311 billion.

b. What Is a Balance of Payments Deficit?

If the balance of payments is always in balance by virtue of an accounting identity, what is meant by the phrase "balance of payments deficit?" The answer relates to the role of governments in foreign exchange markets. To explain, we digress briefly on the connection between the balance of payments and exchange rates.

Historically, nations often sought to maintain fixed or at least relatively stable exchange rates, on the belief that instability creates uncertainty that depresses international commerce and can also lead to macroeconomic shocks when the value of a currency (and thus the prices of imports, exports and foreign currency-denominated assets) fluctuates excessively. The International Monetary Fund was devised after World War II to oversee a system of fixed exchange rates, but that system collapsed when the United States ended the convertibility of dollars into gold in 1971. Countries then gravitated toward "floating" exchange rates, which would be determined by market forces.

Nevertheless, national governments remain concerned about excessive instability in the value of their currencies and will intervene in foreign exchange markets to moderate instability. Intervention to prevent undue currency appreciation is generally a trivial matter as it simply requires governments to sell their own currency (which they can create themselves) to depress its price. But if currency depreciation is the problem, intervention requires government reserves of foreign currency (or the ability to borrow them) that can be used to buy the national currency on world markets and support its price. These foreign currency holdings in the hands of governments are known as "official international reserves."

A "balance of payments deficit" refers to circumstances in which a government's official international reserves are in decline because of an effort to prevent or moderate the devaluation of its own currency.[57] The problem arises because the private sector's demand for the national currency is weak in relation to the supply, leading the government to bring additional demand to the market using its international reserves.

Why might private sector demand for a currency weaken? Suppose that the United States imports more goods and services than it exports. Then, the foreign currency needed to pay for the imports will exceed the foreign currency earned from exports. If foreign exporters are happy to accept dollar-denominated IOUs (such as bonds), then the current account deficit need not affect the value of the dollar. But if foreigners are not content to hold IOUs, at least not at the current rates of return on them, there will be excess demand for foreign currency relative to its supply due to the current account deficit. This situation will put downward pressure on the value of the dollar. If the US government wishes to avoid this movement in the value of the dollar, it can reach into its reserves (i.e., its own holdings of foreign currency) to meet the private sector's excess demand.

[57] An extended discussion may be found in Krugman, Obstfeld & Melitz, op. cit., ch. 13.

Modest balance of payments deficits can be transitory and of little consequence, but if a government faces substantial declines in reserves over an extended period, it may run out of them and become unable to prevent a substantial currency devaluation. Thus, balance of payments deficits can become concerning if they are expected to be large and persistent and may portend a substantial future decline in the value of the currency.

As an alternative to intervention in the foreign exchange market through the sale of official reserves, a government can endeavor to reduce its nation's demand for imports and thereby demand for foreign currency to purchase them, which will result in an appreciation of its own currency. Tariffs and quantitative restrictions can be used for that purpose. The 10% import surcharge imposed by President Nixon following the closure of the gold window in 1971 was motivated by this thinking. Section 122(a) of the Trade Act of 1974, which authorizes import surcharges and quantitative restrictions in the face of "large and serious…balance of payments" is squarely aimed at this class of problems.

c. Collateral Effects of "Rebalancing"

The brief review of balance of payments accounting above highlights the linkages among the various accounts. The current account balance is (for the most part) the sum of the merchandise trade balance and the services trade balance. The combined balance in the capital and financial accounts is the opposite of the current account balance, and thus net inbound foreign investment is tied to the current account balance – a current account deficit requires positive net inbound investment as noted above. Net inbound foreign investment is also equal to the difference between total investment in the United States and U.S. national savings. When investment exceeds domestic savings, the difference must be supplied by foreign investors.

The conventional view of macroeconomists is that the gap between investment and savings is a product of macroeconomic forces that will be little affected by changes in trade policy.[58] The United States has a modest national savings rate compared to many other countries, yet it is a comparatively attractive place to invest because of its dynamic and relatively stable economy. U.S. government debt is thought historically to have a low risk of default, and inflation has been moderate most of the time. These factors have led to steady net inbound investment in the past and seem unlikely to be affected dramatically by tariffs (although other concerns about the U.S. economy may affect investment going forward). Ultimately the issue is an empirical one, however, and economists are actively involved in studying the effects of tariffs on the overall balance of trade in goods and services as we discussed earlier.

We do not seek to resolve the empirical questions regarding how much tariffs will affect the various components of the balance of payments accounts. We simply offer some

[58] N. Greg Mankiw, Principles of Economics 696 (7th ed. 2015.

analytical observations about the collateral effects of "rebalancing" merchandise trade that follow inexorably from the linkages among the balance of payments accounts described above.

Our point of departure is the fact that, if tariffs lead to "rebalancing" of the merchandise trade deficit in accordance with the stated goal of the reciprocal tariffs, then either the U.S. services trade surplus must decline, net inbound investment into the United States must decline, or both. We consider each possibility in turn.

If the conventional wisdom that tariffs will have little effect on national savings or aggregate national investment is correct, it follows that rebalancing will not affect the current account balance. When the merchandise trade deficit declines, therefore, the services trade surplus must decline commensurately. Merchandise trade rebalancing will thus tend to go hand in hand with a shift of productive resources from the services sector to the manufacturing sector.[59]

We do not dispute the importance of manufacturing to the economy in some settings, but it is hardly obvious that shifting resources away from the services sector -- where the United States has proven to have considerable comparative advantage based on our steadily expanding services output and trade surplus in services -- offers net benefits. Much of the dynamism in the U.S. economy lies in service sectors including medicine, finance, applications of artificial intelligence, platform markets and so forth.

To be sure, the Executive Order includes some claims about problems in the manufacturing sector that ostensibly require attention. One such claim is that supply chains important to economic security are threatened. Another is that problems in the manufacturing sector pose a threat to national security. Such arguments may well have some foundation for individual firms or industries (although the Executive Order does not identify them), but they do not plausibly apply to the entire manufacturing sector and are not sensibly addressed by broad, non-targeted tariffs, as we discuss further below.

Consider now the possibility that a reduction in the merchandise trade deficit will also reduce the current account deficit, contrary to the usual view of macroeconomists. If that is correct, net inbound investment will decline. How will that affect the manufacturing sector?

To answer that question, we turn to the administration's own pronouncements touting the virtues of "deals" it has struck since announcing the reciprocal tariffs, some of which contain commitments for increased foreign investment in the United States. These

[59] Conceivably, tariffs could induce a decline in the consumption of goods equal to the reduction in goods imports, and an increase in consumption of services supplied by services imports, such that the current account deficit remains unchanged and domestic production of both goods and services remains the same, but this outcome seems highly unlikely.

include a reported promise of $600 billion in new investment from the EU,[60] a $550 billion investment fund created by Japan to provide funding for investment projects selected by the administration,[61] and a $350 billion investment commitment from Korea, including $150 billion for U.S. shipbuilding.[62] The administration has also touted multi-billion-dollar investment commitments from several foreign firms, including Taiwan Semiconductor, Roche, and Novartis.[63]

Based on public reports, many if not most of these new investments will be in the manufacturing sector, indicating that new foreign investment in that sector is desirable in the view of the administration. But these new inbound investments must be financed, and the current account deficit must <u>increase</u> for that purpose, other things being equal. By this logic, because merchandise trade is the portion of US trade in goods and services that is in deficit today, it is highly likely that the promised new investments, assuming they materialize, will be accompanied by an increase in the merchandise trade deficit. Thus, if one takes seriously the policy goal of reducing persistent merchandise trade deficits through "rebalancing," the administration's emphasis on attracting new foreign investment is at cross purposes.

We agree with the administration that new capital investments in the United States, financed with foreign capital, can benefit the manufacturing sector and advance the national interest. But for the reasons above, this proposition simply underscores the folly of focusing on the merchandise trade deficit as the cause of difficulties in the U.S. manufacturing sector, and the absurdity of basing country-specific tariff rates on bilateral merchandise trade imbalances.

D. Do the Reciprocal Tariffs "Deal With" Emergency Conditions in the Manufacturing Sector?

The President's Executive Order contains various general claims about exigent circumstances in the manufacturing sector involving threats to national security, unstable supply chains, inadequate defense production capacity, loss of manufacturing jobs, and other matters. But the order is devoid of detail on these claims. We are not told which firms or industries are involved, or when and why the challenges in manufacturing sector became so exigent as to require the use of emergency powers.

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[60] See https://www.cnbc.com/2025/08/06/trump-trade-tariffs-investment-pledge.html.

[61] See https://www.wsj.com/politics/policy/trump-manufacturing-federal-land-ef3c02ba?mod=hp_lead_pos2.

[62] See Victor Cha, South Korea's Response to U.S. Demands: Minimize Risk, Maximize Reward, October 6, 2025, available at https://www.csis.org/analysis/south-koreas-response-us-demands-minimize-risk-maximize-reward.

[63] See https://www.whitehouse.gov/articles/2025/08/trump-effect-a-running-list-of-new-u-s-investment-in-president-trumps-second-term/.

As noted, IEEPA not only requires an "unusual and extraordinary threat" as a predicate for the use of emergency powers but further requires that the measures taken "deal with" that threat. Thus, even if one defers to the President and accepts *arguendo* that emergency conditions of some sort exist in the manufacturing sector, it is still appropriate to ask whether the reciprocal tariffs can plausibly address those conditions. To this question we offer four observations.

First, the reciprocal tariffs apply to all merchandise imports, not just the ones that might have some relation to emergency conditions affecting individual manufacturing firms or industries. If one defers to the President on the existence of exigent difficulties in some parts of the manufacturing sector, it is nevertheless highly implausible that the entire sector is facing an emergency.

Second, and related, many of the reciprocal tariffs will clearly harm U.S. manufacturing. We have already discussed how tariffs on input products used by U.S. manufacturers reduce their competitiveness. Such tariffs can lead to more imports of substitute goods, and a reduction of U.S. manufacturing exports. Retaliation against U.S. exports further aggravates the problem. Discriminatory tariffs can further complicate the matter as firms incur costs to restructure their supply chains and abandon sunk investments in countries that are burdened by higher tariffs.

Third, just as the President's Executive Order confuses cause and effect when it attributes manufacturing sector difficulties to the merchandise trade deficit, it neglects to consider the true causes of challenges in domestic manufacturing and how tariffs might affect them. To give one example, the Order laments the loss of manufacturing jobs in the U.S. economy but ignores the widely documented finding that most of the decline in U.S. manufacturing jobs in recent years has been attributable to productivity growth.[64] One important study in this regard goes on to find that even if foreign savings were to decline so as to reduce foreign investment in the United States and eliminate the trade deficit, manufacturing employment would continue to decline given productivity trends.

Finally, recall that the reciprocal tariffs (apart from the arbitrary 10% baseline tariff) are based on a calculation that yields higher tariffs in accordance with the proportional size of the bilateral merchandise trade deficit between the United States and the country subject to the tariff. We explained earlier why this calculation rests on mistaken premises regarding a lack of bilateral trade reciprocity and a confused understanding of cause and effect. The level of the tariff on each country, and the variation in the tariff levels across countries, has no discernible connection to any emergency or to any other coherent economic objective. If such a policy does any good at all, it would be entirely by coincidence.

[64] See Kehoe, Ruhl & Steinberg, supra.

III. The "Major Questions" Question and Congressional Intent

The major questions doctrine, which requires a clear delegation of authority to the Executive when it acts outside of its inherent authority to address matters of "vast economic and political significance," can be viewed as a canon of construction governing inferences about Congressional intent. Both the CIT and the Federal Circuit majority concluded that the broad tariff authority under IEEPA claimed by administration would run afoul of the major questions doctrine, and thus gave the statute a narrower interpretation to avoid the problem. We too are persuaded that Congress did not intend through IEEPA to authorize the President to rewrite the tariff schedules of the United States upon a vague assertion of "emergency" throughout the entire manufacturing sector. In this concluding section, we offer a few historical considerations not heretofore emphasized in the litigation to bolster this inference regarding the intent of Congress.

First, regarding the question whether the reciprocal tariffs implicate a "major question," others have emphasized the magnitude of the changes to the tariff schedules resulting from the Executive Order and their revenue implications, which over time would dwarf the revenue implications of the "major question" found to exist in in relation to the Biden administration plan forgive over 400 billion dollars of student loans.[65] To these observations, we add that the reciprocal tariffs represent a near complete and unilateral repudiation of U.S. obligations under international trade law. Many of the tariffs exceed the ceilings on U.S. tariff rates painstakingly negotiated over the 75-year history of the GATT and its successor the WTO. Further, because the tariffs vary considerably across U.S. trading partners, they violate the core commitment of the GATT/WTO system to non-discrimination among trading partners known as the most-favored-nation obligation. The approach of the administration also pays no attention to the elaborate international rules for adjusting previously negotiated tariffs. The reciprocal tariffs are thus much more than just a major economic and political issue domestically – they represent a fundamental rejection of the multilateral trading order by the United States as embodied in international legal instruments negotiated over decades dating back to the Roosevelt administration. Such a sweeping, unilateral abandonment of U.S. commitments under international law surely involves a "major question," and indeed the current U.S. Trade Representative characterizes the policy as one that "remade the world order.[66]"

Second, as to whether the Congress would plausibly intend to entrust the President with the power to "remake the world trading order" under a general emergency powers statute, we note that the Congress has provided the Executive with the authority to address the problems enumerated in the Executive Order under other, more limited statutes. Import trade threatening national security is covered by Section 232 of the Trade Expansion Act of 1962, which requires an investigation and appropriate findings by the Commerce

[65] See Biden v. Nebraska, supra.
[66] See Jamieson Greer, Trump Trade Representative: Why We Remade the Global Order, New York Times, August 7, 2025.

Department before measures to limit imports can be undertaken. The President has already utilized this authority to impose tariffs on imports of steel, aluminum, downstream products of steel and aluminum, automobiles and parts, copper, pharmaceuticals, and timber and wood products such as furniture, with numerous other investigations in progress. Section 201 of the Trade Act of 1974 authorizes the President to impose tariffs and other measures to assist U.S. industries suffering "serious injury" or threat thereof due to "increased imports," following an investigation by the International Trade Commission. This statute permits tariffs to assist any domestic industry determined to be facing serious distress from rising import competition. Section 301 of the Trade Act of 1974 authorizes import restrictions to retaliate for any breach of a trade agreement by a trading partner, as well as for any "act, policy or practice by a foreign country" that is "unreasonable or discriminatory and burdens of restricts United States commerce," an exceedingly broad standard. An identification and investigation of the practices in question by the United States Trade Representative is required before action can be taken.

The authority under these statutes is capacious enough to address the kinds of problems in the manufacturing sector claimed to exist in the Executive Order. The difference is that in each instance an Executive agency must identify the industry or country in question and the problems that are being addressed with specificity, and an investigation must be conducted with public findings. If the administrative investigations are undertaken in good faith with reference to the statutory standards, they will establish that the conditions for import restrictions laid out in the pertinent statute have been satisfied. The administrative findings also indicate how the trade measures being taken will address the underlying problem. It is altogether implausible in our view that Congress would wish to authorize the President to discard these carefully constructed statutory limits on Executive authority with a vague and diffuse assertion of "emergency" relating to the entirety of U.S. manufacturing, followed by tariffs on all merchandise imports from all sources, in amounts unilaterally determined by the President, to remain in place for as long as the President chooses to renew the emergency declaration at the required annual intervals. This conclusion is reinforced by the fact that Congress can no longer override an emergency declaration through majority vote. After the legislative veto was ruled unconstitutional in *Immigration and Naturalization Service v. Chadha*,[67] a veto proof majority is required to overrule an emergency declaration that the President seeks to maintain.

Finally, the modern history of Congressional involvement with U.S. tariff policy at large evinces a clear desire on the part of Congress to maintain a considerable degree of control over tariffs. Beginning with the Reciprocal Trade Agreements Act of 1934, the President received temporary authority to negotiate trade agreements and to "proclaim" changes in the U.S. tariff schedules to implement the negotiated commitments. But any changes in duties were subject to quantitative limits, and the President's authority for this purpose typically expired after three to five years. Its renewal was often controversial, forcing the President to negotiate with Congress and agree on general negotiating objectives

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[67] 469 U.S. 919 (1993).

before Congress would delegate any authority to implement an agreement into domestic law.[68] Further, the implementation of agreements on non-tariff barriers has always required subsequent Congressional approval and, since the Omnibus Trade and Competitiveness Act of 1988, any bilateral agreements concerning tariffs, non-tariff barriers or both has required subsequent Congressional approval[69] -- we note that the "deals" recently negotiated by the administration with a handful of countries following the imposition of the reciprocal tariffs fall into the bilateral category.

The President's power to "proclaim" negotiated changes in tariffs into domestic law under various statutes dating back to 1934 does not suggest that Congress is unconcerned about tariff levels. To the contrary, the President's proclamation authority became largely illusory many years ago. By the 1960s and 70s, important agreements on non-tariff barriers were bundled with tariff agreements as a negotiated package. U.S. trading partners had bargained for the United States to implement the entire package, and Congress had to approve all non-tariff aspects of the agreements before they could be implemented. Congress thus had a *de facto* power to scuttle any tariff agreement to which it objected notwithstanding any nominal "proclamation" power of the President.

The steady assertion of Congressional control over trade policy through the years is hardly surprising, as significant changes in U.S. commercial policy can have dramatic consequences for important constituents. The President's reciprocal tariffs, pursuant to a vague and sweeping declaration of emergency in the entire manufacturing sector, flies in the face of this manifest desire on the part of Congress to maintain close involvement.

IV. Conclusion

The Trump administration has undertaken to "remake" the world trading order, imposing massive, discriminatory tariffs on all U.S. trading partners without Congressional approval and in violation of U.S. obligations under international law. To do so, it has invoked emergency powers under a statute that has not previously been used to set tariff policy (IEEPA). It does so subject to a declaration of "national emergency" in the U.S. manufacturing sector, supported by an Executive Order that purports to justify the need for "reciprocal tariffs" to address it.

In this essay, we evaluate the claims in the Executive Order drawing on international economics and international economic history. We deliberately steer clear of controversial empirical issues, focusing on theoretical points that follow from simple economic logic, factual issues that require only publicly available data, and legal and historical observations regarding the relationship between the President and the Congress in the formulation of trade policy. Among other things, we show that the predicate for the ostensible emergency

[68] For an example illustrating the role of this pre-negotiation with Congress, see Omnibus Trade and Competitiveness Act of 1988, §1101.
[69] See id. §1102(c).

– an exploding merchandise trade deficit – is fiction, and that merchandise trade deficits do not "cause" difficulties in the manufacturing sector as a matter of economic logic, contrary to the core claims of the administration. Further, bilateral trade deficits are not evidence of a lack of reciprocity in trading relations, and the administration's calculation of tariff rates based on such deficits is devoid of economic logic. It is unclear whether the reciprocal tariffs will materially reduce the manufacturing trade deficit as the administration asserts, and many of the tariffs – particularly those on manufacturing inputs – will harm U.S. manufacturing interests rather than help them. To the degree that tariffs do succeed at reducing the merchandise trade imbalance, they will have adverse collateral consequences for the U.S. services sector and for inbound foreign investment. Further, because the tariffs affect all merchandise trade and are not targeted at any specific problems in the manufacturing sector, they will abate any exigent circumstances in manufacturing only by chance. For all of these reasons, we conclude that the President's Executive Order has not offered a coherent account of how the U.S. manufacturing sector faces an "unusual and extraordinary threat," or how the reciprocal tariffs can plausibly "deal with" such a threat if one assumes *arguendo* that it exists at all. Finally, the history of U.S. commercial policy and the relation between Congress and the President in its formulation strongly indicate that Congress did not intend to confer on the President the sweeping authority that he has claimed under IEEPA.