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COMMENTARY | Economy and Trade

Preserving Liberation Day Successes

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TOPLINE POINTS

- President Trump used tariffs as a tool to address large-scale trade deficits and the continual influx of illicit drugs across the border. These issues constitute a major emergency for the economic well-being and national security of the United States.
- The Supreme Court is deciding on the constitutionality of the tariffs imposed by the Trump Administration under the International Emergency Economic Powers Act (IEEPA).
- Since implementation, the tariffs have been responsible for monumental and unprecedented wins on these issues: new and improved trade deals, substantial reductions in the trade deficit, and decreased fentanyl inflows.
- If the Supreme Court strikes down the tariffs, preserving their effects is essential for making further progress on the twin issues of trade deficits and fentanyl flows. The president possesses tariff authority from other statutes.

Background

The United States faces urgent economic and national security emergencies from ballooning trade deficits and the influx of fentanyl._The U.S. has run trade deficits for 50 consecutive years, a streak unparalleled in American history, reaching a record high goods deficit of $1.2 trillion in 2024 (Census Bureau, 2024; Census Bureau, 2025). These consistent and widening trade deficits reflect an erosion of American global shares in key industries such as semiconductors and steel, eviscerating its manufacturing base at the expense of America's most powerful geopolitical adversary, China. American towns were shuttered while China gained 3.8 million jobs between 2001 and 2018, a direct result of the trading imbalance between the two countries (Scott & Mokhiber, 2020). Underlying major trade deficits are non-reciprocal barriers imposed by other countries, both tariff and non-tariff, which make it harder for Americans to export their goods overseas, combined with domestic policies that incentivize exports to flood U.S. markets.

Additionally, as the leading cause of death for Americans aged 18-45, fentanyl has ravaged the country and destroyed families, causing national security and health crises (CDC, 2025a). The previous administration's open border policies exacerbated this problem, leading to annual records of 20,000+ pounds of fentanyl seized at the border (CBP, 2026). The human toll was a record high number of opioid deaths in 2022 at 73,838, primarily from fentanyl (GAO, 2025).

Seeing these critical emergencies inflicting harm on the United States, President Trump took decisive action mere weeks into his second term, invoking the International Emergency Economic Powers Act (IEEPA) (1977). IEEPA confers on the president the authority to use various economic tools to address a declared national emergency, more specifically an "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." (International Emergency Economic Powers Act, 1977, 50 U.S.C. § 1701(a)).

On February 1, 2025, President Trump issued Executive Orders No. 14193, 14194, and 14195, imposing a 25% tariff on all goods from Mexico and Canada, and 10% on all goods from China, citing the failure of these nations to address the trafficking of opioids into the United States (Exec. Order No. 14193, 2025; Exec. Order No. 14194, 2025; Exec. Order No. 14195, 2025). On April 2, 2025, famously dubbed "Liberation Day", the President, via Executive Order No. 14257, imposed a baseline 10% tariff on all goods of all U.S. trading partners and additional tariffs of up to 50% on imports from many of those countries, citing the "lack of reciprocity in our bilateral trade relationships… as indicated by large and persistent annual U.S. goods trade deficits" (Exec. Order No. 14257, 2025).

Immediately after Liberation Day, two companies, V.O.S. Selections and Learning Resources, filed suit against the Trump administration in federal court, arguing that IEEPA does not authorize the tariffs in question. The two cases were consolidated and eventually brought before the Supreme Court. The court heard oral arguments on November 5th over whether IEEPA authorizes tariffs and is expected to release a decision in the coming weeks (*Learning Resources, Inc. v. Trump, Trump v. V.O.S. Selections, Inc.*, Nos. 24-1287, 25-250 (Sup. Ct.)).

AFPI backs the administration's legal case and believes that the president had the statutory authority to impose the tariffs under IEEPA. In support, AFPI filed two amicus briefs. One, in which AFPI represented the amicus, argued that the relevant tariffs were authorized by the text of IEEPA which granted the president the right to "regulate importation." AFPI argued that the phrase was surrounded by verbs giving the president broad powers, including the power to "prohibit" all imports from a country. Therefore, the phrase "regulate importation" should be interpreted broadly to include tariffs, a historically common tool to regulate imports. The word "tax" need not occur in IEEPA because "regulate importation" was broad enough to encompass tariffs and was a more accurate description of how President Trump utilized tariffs under IEEPA (Homan, 2025).

Another amicus brief, in which AFPI was the amicus, argued that a separate statute, Section 338 of the Tariff Act of 1930, authorized virtually all the tariffs that President Trump issued under IEEPA. The brief pointed out that the executive orders at issue included a catch-all phrase that they were authorized by "the laws of the United States." It further explained that the Supreme Court has the power to consider other statutes that were not cited by the executive orders or discussed by the courts below (America First Policy Institute 2025).

Major Wins from IEEPA Tariffs

President Trump's decision to exercise presidential tariff authority under IEEPA placed the administration in a beneficial position to ameliorate the emergency problems of major trade deficits and fentanyl inflows. The tariffs have already paid enormous dividends, putting America back on a path to prosperity and security.

Due to unequal trading relationships leading to large and persistent deficits, President Trump used the IEEPA tariffs on Liberation Day as leverage to bring other countries to the negotiating table and to address structural trade issues that greatly disadvantaged the U.S. and increased its trade deficits. Immediately after Liberation Day, representatives of more than 50 countries reached out to the administration for trade negotiations, with few countries retaliating (Hagstrom & Murphy, 2025; Deppisch, 2026). The U.S., being both the largest export market and largest economy in the world, would make retaliation more harmful to those countries than to the United States. Months of negotiations yielded major benefits for the U.S., mainly in the form of new trade frameworks with over a dozen trading partners, such as the EU, Japan, South Korea, the U.K, Malaysia, and others. These agreements slashed tariff rates on American goods, abolished non-trade barriers, kept U.S. tariff rates above 10% to protect domestic workers and businesses, increased foreign purchases of American goods, and collectively secured over a trillion dollars in investment pledges into critical sectors for America's industrial base (Table 1).

Table 1: Summary of Largest Trade Deals

Country	Reciprocal Rate (Long-Term U.S. Tariff Rate)	Investment Pledge Amount (Sectors Affected)	Major Trade Barriers Eliminated /U.S. Export Benefits
Japan	15%	$550 billion (Energy, semiconductor, critical minerals, pharmaceuticals, etc.)	75% increase of U.S. rice at duty-free rates; $8 billion annual purchases of U.S. agricultural goods (corn, soybeans, fertilizer, bioethanol); purchases of defense equipment; accepting United States-safety-certified passenger vehicles
United Kingdom	10%	N/A	$700 million expansion in ethanol exports and $250 million in other agricultural products; pledge to eliminate discriminatory non-tariff barriers; streamlined customs procedures for U.S. exports
South Korea	15%	$350 billion (Shipbuilding, energy, critical minerals, artificial intelligence, etc.)	Eliminated cap on U.S. motor vehicles; eliminating non-trade barriers on food and agricultural products; streamlining approval process for agricultural biotechnology products; purchase of $36 billion of aircraft
European Union	15%	$600 billion ("strategic sectors")	Elimination of tariffs on all U.S. industrial goods; preferential access for U.S. seafood and agricultural products; procurement of $750 billion worth of U.S. liquified natural gas, oil, and nuclear energy products; pledge to not impose "network usage fees" on tech companies

Malaysia	19%	$70 billion (critical mineral, energy resources, telecommunications, etc.)	Accepting U.S.-manufactured vehicles; streamlined import licenses for U.S. steel and pipe products; streamlining imports of agricultural products; purchases of technology/aerospace components worth $150 billion

Major benefits to the American economy and trading position have already materialized from the tariffs and new trade deals, despite not being fully implemented. The U.S. monthly goods and services deficit in October 2025, the latest available monthly data, reached the lowest level since June 2009, marking a 60% decrease from the same month in 2024 (BEA, 2026). In the long term, key economic indicators herald a domestic industry revival: real wages for blue-collar workers saw their largest increase in 60 years, while manufacturing productivity increased 3.3 percent in the third quarter of 2025 and experienced the largest four-quarter gain since 2021 (White House, 2025 ; BLS, 2026). Qualitatively, American towns and cities are witnessing the reshoring of jobs, factories, and critical supply chains; The first rare earth magnet production in North America in the 21st century occurred in a manufacturing facility in Sumter, South Carolina, and a Philadelphia shipyard saw a foreign order of a liquified natural gas (LNG) carrier worth $250 million, the first such order for export from the U.S. in nearly 50 years (Greer, 2025; Kim, 2025). The investment pledges in the trade deals listed above should further augment the strength of industrial sectors vital to national security, which means stronger defense, enhanced innovation, and more well-paid jobs. Finally, the tariffs led to $287 billion in additional revenue in the 2025 calendar year, with over a third of that amount, $97.5 billion, collected in the final quarter alone (Azzimonti et al., 2026). The $287 billion figure represents a 192 percent increase in customs revenue from the previous year.

On fentanyl deaths, the tariffs have contributed to suppressing the flows of these lethal drugs across U.S. borders. Two days after President Trump announced tariffs on Canada, Mexico, and China to curb fentanyl inflows, the Canadian government announced accelerated plans to enhance border security, which included launching a joint strike force to combat drug trafficking and designating seven cartels as terrorist entities (Kitamura & Meyer, 2025). A few days later, Mexico followed suit by committing 10,000 National Guard troops to the U.S.-Mexico border specifically to stop fentanyl (Wagner, 2025).

The Chinese government, in a joint framework agreed to in November, also committed to strictly controlling the export of chemical precursors (White House, 2025). The positive benefits of these developments are abundantly clear: Fentanyl trafficking at the southern border between January and August 2025 was down 56% from the same period in 2024, and there was a decrease in 33 million lethal doses seized from 2024 to 2025. Overdose deaths have also plummeted in the 12-month period between September 2024 and August 2025 compared to the same period ending the year before (DEA, 2025; CDC, 2025b).

President Trump's IEEPA tariffs induced foreign governments to act on two issues that posed an emergency threat to the national security and economy of the United States: underlying trade barriers causing large and persistent trade deficits, and lax enforcement of fentanyl flows. These tariffs directly resulted in historic improvements in the lives of the American people. Prohibiting the president from exercising his tariff authority, in a similar scope and manner as President Trump did under IEEPA, could extinguish much of the important progress made thus far. Foreign governments no longer facing high tariff rates could renege on their promises, especially on the new trade agreements, running a major risk of the recrudescence of major economic and national security threats.

Alternatives to IEEPA Tariffs

Maintaining the groundbreaking policy successes under the IEEPA tariffs is crucial for America's immediate and long-term flourishing. Even if the Supreme Court invalidates the tariffs issued under IEEPA, the Trump administration could replicate many of the original tariffs through other means, primarily from other trade laws that confer tariff authority to the president. Fully replicating the IEEPA tariffs would mean that the prevailing import restrictions issued under the statute via tariffs, across all goods and all countries subject to them, are preserved. These alternatives are not incompatible; the president can combine them to attempt to mirror the total effects of the IEEPA tariffs.

Presidential Tariff Authority

While Congress has explicit authority to authorize tariffs under Article I, Section 8 of the Constitution: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises", they delegated broad tariff authority to the executive via legislation throughout the 20th century, allowing it to impose tariffs for a wide variety of reasons. The administration could utilize the following three trading provisions to revive much of the IEEPA tariffs, especially the ones issued on Liberation Day to address trade deficits.

Section 338

Section 338 of the Tariff Act of 1930 authorizes the president to impose tariffs on any country up to 50%, whenever another country (1) has an "unreasonable charge, exaction, regulation, or limitation" on U.S. products "which is not equally enforced upon the like articles of every foreign country" or (2) "discriminates in fact against" U.S. commerce "by law or administrative regulation or practice, by or in respect to any customs, tonnage, or port duty, fee, charge, exaction, classification, regulation, condition, restriction, or prohibition" so as to disadvantage U.S. commerce "compared with the commerce of any foreign country" (§1338). Unlike the other options, Section 338 does not require an executive agency to conduct a fact-finding proceeding to authorize the tariffs, affording the president the flexibility to immediately reissue the tariffs. One disadvantage, however, is that tariffs have never been issued under Section 338 in its 96-year history, making a legal challenge likely to follow.

Section 338 could cover virtually all the tariffs imposed since Liberation Day, as foreign countries discriminate against U.S. commerce through tariff and non-tariff barriers, including policies that disproportionately affect American exports, such as the digital services tax (DST), which contributes to the unbalanced trading relationship, begetting massive trade deficits (Computer & Communications Industry Association, 2025). AFPI's amicus brief made Section 338 the focus of the argument on why the tariffs were constitutional, explaining that the legislation was designed to counter the issues President Trump identified on Liberation Day.

Section 301

Section 301 of the Trade Act of 1974 authorizes the president to impose duties against foreign governments via the United States Trade Representative (USTR), if the USTR finds that a country, violated "the rights of the United States" under trade agreements or engaged in practices which are "unjustifiable and burdens or restricts United States commerce" (§2411). There is no upper limit to the tariff rate, and they can be extended beyond the statutory limit of 4 years by the USTR upon request.

President Trump has used Section 301 previously, most notably on hundreds of billions of dollars' worth of goods from China in his first term, such as robotics, chemicals, and machinery, etc. (USTR, 2018). The Trump administration first imposed tariffs under 301 pursuant to an USTR investigation, which concluded after seven months. Like Section 338, Section 301 could cover the Liberation Day tariffs as unequal trading barriers prevent American exporters from accessing foreign markets and erode American productive capacity, necessarily burdening U.S. commerce. The requirement for a USTR investigation, however, would likely preclude the president from immediately recreating the IEEPA tariffs under Section 301.

Section 122

Section 122 of the Trade Act of 1974 grants the president the authority to impose a "temporary import surcharge" (i.e. tariff) up to 15 percent for 150 days, along with quotas, to address "large and serious United States balance-of-payments deficits" (§2132). This mechanism does not require a separate agency investigation. The language of "balance-of-payments" could cover major trade deficits, the exact rationale for the Liberation Day tariffs. However, the duration and rate limit, along with a lack of precedent, also work against the viability of the provision as an effective tool. Combining Section 122 and other provisions that afford the president more flexibility could be a more workable approach, using the provision as a temporary backstop until the agency investigations required of methods like Section 301 conclude or if other tariffing methods face additional legal obstacles.

Non-Executive/Non-Tariff Option

If the president exhausts all alternatives related to his tariff authority and does not manage to fully replicate the IEEPA tariffs in terms of rates, or countries and goods subject to the tariff, he could implement non-tariff remedies or look towards congressional authority. These methods may be needed, especially for import restrictions to combat fentanyl flows, given that the trade statutes listed above are more germane to the problems regarding the trade deficit and discriminatory barriers.

IEEPA Import Licenses and Quotas

Even if the Supreme Court adjudicates that the president doesn't have tariff authority under IEEPA, he may be able to unlock a different regulatory mechanism under the same statute: import licenses and/or quotas. The administration, under the same declared emergency, would set quotas for certain goods entering the country and grant licenses to importers at a fee per unit. By setting a limit on a good entering the U.S., and charging fees for the privilege to import, the scheme can mimic the effects of the post-Liberation Day trading arrangement, limiting some imports, and collecting revenue. An existing trade policy that provides a framework for implementing licenses is tariff rate quotas (TRQs), where goods below the quota receive a reduced rate, and goods above the threshold face a higher tariff; TRQs are common across many agricultural products, from sugar to beef (USTR, 2025). Licenses could also work similarly in determining what an importer would need to remit and track how much of the quota for a good has been used. If the Supreme Court ruling invalidates the tariffs on the basis that any policy under the statute may not raise revenue, even incidentally, the legal basis for import licenses would be tenuous, and a strict quota on some goods may be a better alternative.

The president may be able to invoke IEEPA to use this remedy, given that IEEPA authorizes that the president may "by means of instructions, licenses, or otherwise", "regulate, direct and compel… importation" regarding property of a foreign country. The policy could be covered under the phrase "by means of license". Besides uncertainty in the legal argument, concerns over import licenses and quotas exist in their inherent bureaucratic complexity and the chance of introducing inefficiency in the import process.

Congressional Action

Outside of executive action, Congress can also choose to exercise its Article I Section 8 authority to "To lay and collect Taxes, Duties" by simply granting the full scale of the authority the Trump administration found under IEEPA. There is some precedent for Congress contemplating granting broad tariff powers to the president to counter trade barriers by other countries. The Reciprocal Trade and Investment Act of 1982, legislation which was co-sponsored by 32 senators but ultimately failed to pass, authorized the president to impose tariffs on any good from any country provided the United States Trade Representative (USTR) found that said country's practices "constitute significant barriers to or distortions of U.S. exports of goods or services", regardless of whether the good or sector were involved in the unfair practice**.** More recently, the United States Reciprocal Trade Act of 2019, sponsored by current Secretary of Transportation Sean Duffy when he was a member of the House of Representatives, also permitted the president to impose tariffs on goods from foreign nations if determined that a country "imposes other, nontariff trade restrictions on that good."

Legislation of this scope would ensure the president has sufficiently broad authority to correct trading imbalances via tariffs, just as President Trump has done successfully since Liberation Day. Regarding fentanyl, Congress can elect to impose the existing tariff rates on countries the administration has deemed not to have taken adequate measures to curb fentanyl flows. The manifest flaw in this course of action exists in the high degree of uncertainty over whether a majority of both houses of Congress has the appetite to enact President Trump's trade agenda.

Conclusion

Decades of harmful policies by foreign countries and domestic inertia created two unsustainable emergency threats to American prosperity and security: a hollowed-out American industrial base as indicated by historic trade deficits, and uncontrolled fentanyl trafficking causing record opioid deaths. To combat these threats, President Trump implemented tariff rates of historic proportions under the International Emergency Economic Powers Act (IEEPA). Less than a full year into the new tariff regime, the outcome has been a complete and resounding success. By using the tariffs as leverage to prompt other countries into addressing structural trade barriers and their inadequate enforcement against fentanyl trafficking, the U.S. has seen major progress in the form of improved trade agreements, a 15-year low trade deficit, and reduced overdose deaths.

The legality of the IEEPA tariffs is now being challenged before the Supreme Court. AFPI is wholly supportive of the administration's legal case, believing that the president had the statutory authority to impose tariffs under IEEPA. The Supreme Court upholding the tariffs will clear the path for further victories on persistent trade deficits and fentanyl inflows. If the Supreme Court invalidates the IEEPA tariffs and the tariff rates return to where they were before, foreign countries, no longer facing the threat of high tariffs, may back out of their commitments, and all the attendant policy successes can vanish. In that scenario, it is an economic and national security imperative that the tariffs be recreated through methods other than tariffs under IEEPA. The president could do this by applying a mixture of trade statutes that confer upon him tariff authority, and if insufficient to fully mirror the IEEPA tariffs, he can also turn to non-tariff economic tools or seek congressional action. Whatever the means used, the legacy of Liberation Day can and must live on.

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