



Legal Trade War

March 6, 2025

Donald Trump's imposition and changing of tariffs, all by his lonesome—without Congress—vexes more than a few critics.

His authority to do this, however, derives directly from laws passed by Congress.

The U.S. Constitution gives Congress the power to “lay and collect Taxes, Duties, Imposts and Excises” under Article I, Section 8, which includes tariffs, since they are taxes on imported goods. But Congress has legislated hand-offs to presidents, allowing significant flexibility on tariffs.

The idea seems to be that, as Commander-in-Chief, the president should handle trade because ... like war, it has to do with foreign countries.

Laws allowing presidential discretion include Section 232 of the Trade Expansion Act, Section 301 of the Trade Act of

1974, and the International Emergency Economic Powers Act of 1977.

The first says that the president has broad discretion to define as threats to national security all sorts of things and then impose tariffs and other trade restrictions in response.

The 1974 legislation authorizes further along Trump's favored line, the power to retaliate against “unfair” foreign trade practices.

The IEEPA grants sweeping powers in a declared national emergency.

So if free traders and others are alarmed at Trump's seemingly dictatorial powers regarding tariffs, it isn't new. It has been built into the Imperial Presidency. While Congress could take its constitutional authority back, there is certainly no groundswell to do so.

Also not new?

What setting up high tariffs have historically done: elicit similar tariffs in retaliation.

Yikes: the kind of trade war that made the Great Depression “great.”

This is Common Sense. I'm Paul Jacob.