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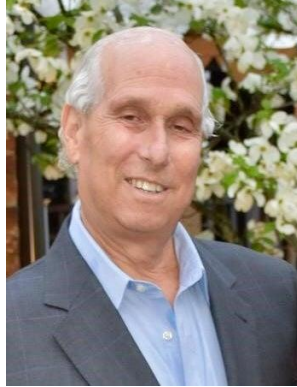
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Commentary: Federal courts, Congress standing up to Trump on Tariffs? There's Hope.

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



Dr. Stuart Malawer

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 Ironically, the more outdated and obscure these laws are, the more likely federal courts are to invalidate Trump’s actions.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

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

Federal courts are now taking a leading role in restoring the domestic and international legal order that once defined the post–World War II era and U.S. global leadership. Congress, too, is increasingly likely to follow. The Trump

administration's threat to withdraw from or to defund the World Trade Organization (WTO) represents a striking departure from decades of bipartisan commitment to international law and postwar foreign policy norms. Legal challenges to Trump's tariffs have already been initiated at the WTO.

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

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

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

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

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

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

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

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