

# EMPOWERING GREEN ENERGY: UTILIZING PRESIDENTIAL EMERGENCY AUTHORITIES TO PROMOTE THE IMPORT OF RENEWABLE ENERGY EQUIPMENT

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## ABSTRACT

*The global climate crisis demands urgent action to accelerate the transition to renewable energy. In the United States, this transition depends not only on domestic production and investment but also on access to affordable renewable energy products imported from abroad. However, the trade remedies regime in the United States has raised costs on renewable energy products, slowing down the nation’s decarbonization efforts.*

*This Note explores how trade laws can be leveraged to support climate goals. It argues that the president, constrained by limited statutory authority and legislative gridlock, can invoke emergency powers under the International Emergency Economic Powers Act (IEEPA) and Section 318 of the Tariff Act of 1930 to reduce or suspend tariffs on green energy imports. By analyzing these legal tools and their historical use, the Note outlines a pragmatic strategy for promoting sustainable development through trade, offering a novel framework for reconciling trade with environmental imperatives.*

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I. INTRODUCTION

Since the Industrial Revolution, human activities have led to a significant increase in the emission of greenhouse gases (GHGs), causing a continuous rise in global temperatures. This increase can have disastrous consequences for human health and the economy by causing more frequent extreme weather events, more prevalent pandemics, and elevated sea levels.<sup>1</sup> Transitioning to renewable energy sources such as solar, wind, and hydroelectric allows countries to replace their existing power generation regimes, which primarily rely on the combustion of fossil fuels.<sup>2</sup> To avoid the dire consequences of global warming, humanity must swiftly transition to renewable energy sources and reduce carbon emissions before global warming becomes irreversible.

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1. See generally Camilo Mora et al., *Broad Threat to Humanity from Cumulative Climate Hazards Intensified by Greenhouse Gas Emissions*, 8 NAT. CLIMATE CHANGE 1062 (2018).

2. See generally Ahmed I. Osman et al., *Cost, Environmental Impact, and Resilience of Renewable Energy under a Changing Climate: A Review*, 21 ENV’T CHEM. LETTERS 741 (2022).

## EMPOWERING GREEN ENERGY

For the United States, a swift transition to green energy would require the country to promptly install renewable energy products on a large-scale basis. However, since the 2010s, the government has imposed high trade adjustment duties on renewable energy products, such as solar panels, to protect U.S. domestic producers.<sup>3</sup> By increasing the costs of renewable energy products in the United States, these duties have slowed down the country's transition to renewable energy sources.<sup>4</sup>

Trade remedies can potentially help U.S. producers develop their capacity to meet the demand for affordable renewable energy products by shielding the producers from dumped or subsidized products imported from overseas.<sup>5</sup> However, given the urgency of the global warming crisis, the world cannot afford to wait for the United States to fully develop its renewable energy industry gradually. While using trade remedies to support long-term industry growth domestically, the U.S. government must simultaneously take swift actions to ensure consumer access to affordable renewable energy products. In the absence of congressional support, the president should take discretionary executive actions to modify the existing trade remedies without entirely removing them, so that a balance can be reached between protecting the domestic industry and ensuring access to affordable renewable energy products.

This Note investigates the statutory tools that a climate-conscious administration in the United States can utilize to modify or remove remedial duties on imported renewable energy products, focusing on legal and policy issues revolving around solar energy products. However, even if the Trump Administration does not wish to follow the environmental agenda established by its predecessor, it likely will benefit from an increased level of administrative flexibility from the rigid statutory regime governing trade remedies as it seeks to negotiate trade deals with major U.S. trade partners.<sup>6</sup>

The Note first discusses the detrimental effects of imposing additional duties on imported solar energy products and how the current

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3. See The Energea Team, *U.S. Solar Panel Tariffs: A Professional History and Their Impact on the Industry*, ENERGEA (Apr. 15, 2025), <https://www.energea.com/us-solar-panel-tariffs-history-impact>.

4. See Zoë Gaston & Sylvia Leyva Martinez, *The US Solar Industry Faces a Perfect Storm of Federal Policy and Trade Challenges*, WOOD MACKENZIE (June 12, 2025), <https://www.woodmac.com/news/opinion/the-us-solar-industry-faces-a-perfect-storm-of-federal-policy-and-trade-challenges>.

5. See Amanda Mayoral, *The Importance of Tariffs on the U.S. Solar Market*, COAL FOR A PROSPEROUS AM. (July 22, 2022), <https://prosperousamerica.org/the-importance-of-tariffs-on-the-u-s-solar-market>.

6. See *U.S. Trade Representative Announces 2025 Trade Policy Agenda*, OFF. OF THE U.S. TRADE REPRESENTATIVE (Mar. 3, 2025), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2025/march/us-trade-representative-announces-2025-trade-policy-agenda>.

trade remedies regime has contributed to these impositions. It then addresses the limitations of the president's constitutional and statutory power in U.S. trade law to reform the trade remedies regime or altering existing trade remedies orders. Lastly, the Note considers the emergency powers delegated to the president and how the president can exercise these statutory authorities to exempt certain renewable energy products from remedial duties, thereby preventing retaliatory actions against green subsidies in the United States and promote the transition to renewable energy.

## II. THE U.S. SOLAR INDUSTRY REMAINS LIMITED BY ITS PRODUCTION CAPACITY AND RELIANCE ON IMPORTS

The U.S. solar industry has long struggled with low global prices and intense competition, but recent investments spurred by the tax policies of the Joseph Biden Administration may signal a turning point for domestic production.<sup>7</sup> In the last fifteen years, the world price of solar panels has dropped by 88%, making utility-scale solar arrays the least costly option for renewable electricity generation.<sup>8</sup> Many countries have begun mass development of utility-scale solar farms and encouraged the installation of residential panels.<sup>9</sup> The production of solar panels involves three key upstream components: (1) ingots, which are cylindrical blocks made from melted polysilicon chunks; (2) wafers, which are thin sheets made from sliced ingots; and (3) solar cells, which are made from wafers embellished with phosphorous and semiconductors.<sup>10</sup> Businesses widely trade each of the three upstream products. Eventually, producers bundle together solar cells to make solar panels or modules.<sup>11</sup>

In 2021, China controlled 79% of polysilicon production capacity, 85% of solar cell capacity, and 80% of solar panel capacity.<sup>12</sup> In the United States, domestic producers have retained a fraction of the

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7. See generally Lachlan Carey, *The U.S. Solar Industry Strategy*, CTR. FOR STRATEGIC & INT'L STUD. (Dec. 1, 2021), <https://www.csis.org/analysis/us-solar-industry-strategy>.

8. See Max Roser, *Why Did Renewables Become So Cheap So Fast?*, OUR WORLD IN DATA (Apr. 2025), <https://ourworldindata.org/cheap-renewables-growth>.

9. See generally WALBURGA HEMETSBERGER ET AL., GLOBAL MARKET OUTLOOK FOR SOLAR POWER 2023 - 2027 (2023). <https://www.solarpowereurope.org/insights/outlooks/global-market-outlook-for-solar-power-2023-2027/detail#global-solar-market-update-2000-2022>.

10. See INT'L ENERGY AGENCY, SPECIAL REPORT ON SOLAR PV GLOBAL SUPPLY CHAINS (2022), <https://iea.blob.core.windows.net/assets/d2ee601d-6b1a-4cd2-a0e8-db02dc64332c/SpecialReportonSolarPVGlobalSupplyChains.pdf>.

11. See *id.*

12. See *id.*

market for the production of solar panels but no longer produce other components.<sup>13</sup> Currently, most employment opportunities within the U.S. solar industry arise from installing and servicing solar panel systems.<sup>14</sup>

As governments worldwide have begun to recognize the need to use subsidies to facilitate the development of green technologies and to help their domestic industries transition to renewable energy,<sup>15</sup> the existing trade remedies law in major trading countries can create obstacles to the effective implementation of such industrial subsidies. The imposition of remedial duties not only discourages other governments from creating green subsidy programs but could also hinder their domestic transition to renewable energy sources particularly when those transitions rely on the export of subsidized renewable energy products.

### III. U.S. TRADE REMEDIES HAVE CONSTRAINED SOLAR PANEL IMPORTS AND ITS TRANSITION TO RENEWABLE ENERGY

Trade remedies have long been a legal and policy tool for the United States to restrict its imports of solar panels.<sup>16</sup> Under U.S. law and World Trade Organization (WTO) rules, the U.S. government can apply several types of trade adjustment duties against imports.<sup>17</sup> These trade remedies tools include antidumping duties (ADD), countervailing duties (CVD), and safeguard duties.<sup>18</sup>

The U.S. government may impose ADDs on imports if the export price of the product is less than the price in the ordinary course of trade of the like product in the exporter's home market—typically referred to as the home market price—and the dumped products caused material injury to U.S. producers of comparable products.<sup>19</sup> The antidumping remedial duty can prevent dumped products from harming the importing

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13. *See id.*

14. *See id.*

15. *See* TARA LAAN ET AL., PUBLIC FINANCIAL SUPPORT FOR RENEWABLE POWER GENERATION AND INTEGRATION IN THE G20 COUNTRIES iv (2024).

16. *See* Simon Lester & K. William Watson, *Free Trade in Environmental Goods: The Trade Remedy Problem*, CATO INST. (July 22, 2013), <https://www.cato.org/free-trade-bulletin/free-trade-environmental-goods-trade-remedy-problem>.

17. *See generally* VIVIAN JONES, CONG. RSCH. SERV., TRADE REMEDIES: A PRIMER (2012).

18. *Id.*

19. *See* 19 U.S.C. § 1673; 19 U.S.C. § 1677. In trade remedies proceedings, the U.S. Department of Commerce (Commerce) determines whether imported goods are dumped or subsidized and calculates the appropriate duty margins, while the U.S. International Trade Commission (ITC) assesses whether these imports materially injure or threaten to injure a U.S. industry. Both agencies must make affirmative findings for duties to be imposed.

country's domestic industry by stopping cheap imports from undercutting local prices, leading to unfair competition.<sup>20</sup>

The U.S. government may also apply CVDs on imported products if a foreign government subsidizes these goods directly or indirectly, and those subsidized imports similarly cause material injury to U.S. producers of comparable products. This action characterizes a countervailable subsidy as (1) a financial contribution (2) granted by a government or public body that (3) confers a benefit to (4) specific groups of enterprises or industries.<sup>21</sup> The imposition of CVDs can neutralize the distortive effects of specific government subsidies on market competition.<sup>22</sup>

If the government finds foreign producers seeking to circumvent the ADDs or CVDs by transshipping—shipping goods to an intermediate destination, then to another destination—the targeted products through third countries, Commerce can initiate anti-circumvention investigations against the covered merchandise from third countries.<sup>23</sup> Commerce may find circumvention when producers slightly modify a product or complete or assemble it in a third country, then export it to the United States to avoid duties, even though the final product remains essentially the same as the covered merchandise.<sup>24</sup> Anti-circumvention investigations prevent producers from evading trade remedies by the strategic restructuring of supply chains.

Lastly, the U.S. president may impose safeguard duties or quotas if the ITC makes an affirmative finding that a domestic industry has suffered serious injury substantially caused by a surge in imports.<sup>25</sup> Safeguard duties allow the government to shield its domestic industries against these unforeseen surges in imports.

Since the 2010s, the U.S. government has levied ADDs and CVDs on various renewable energy products, including solar panels and wind towers.<sup>26</sup> In December 2012 and February 2015, the U.S. government imposed two rounds of ADDs and CVDs against solar cells (Solar I) and

20. See JONES, *supra* note 17, at 1.

21. See 19 U.S.C. § 1671; 19 U.S.C. § 1677(5).

22. See JONES, *supra* note 17, at 1.

23. See 19 U.S.C. § 1677j.

24. See *id.*

25. See 19 U.S.C. §§ 2251–55.

26. Matthew R. Nicely et al., *Policies at Cross-Purposes: U.S. Trade Policy Creates Cloudy Picture for Rapid Deployment of Solar Energy*, AKIN GUMP STRAUSS HAUER & FELD LLP (Apr. 28, 2022), <https://www.akingump.com/en/insights/blogs/speaking-sustainability/policies-at-cross-purposes-us-trade-policy-creates-cloudy-picture-for-rapid-deployment-of-solar-energy>; see also *Utility Scale Wind Towers From Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 85 Fed. Reg. 52546 (Aug. 26, 2020).

other solar products, including modules, laminates, and panels consisting of crystalline silicon photovoltaic cells (Solar II) from China.<sup>27</sup> After the imposition of these trade remedies measures, many Chinese producers relocated portions of their production facilities to Southeast Asian countries,<sup>28</sup> where the solar panels produced would not be affected by the Solar I and II measures.

In 2018, President Donald Trump imposed emergency tariff restrictions and quotas on all imported solar products.<sup>29</sup> In 2022, President Biden extended these restrictions through 2026.<sup>30</sup> However, the Biden extension created a carve-out to exclude bifacial solar panels from the safeguard restrictions.<sup>31</sup> Despite being nearly as affordable as monofacial panels,<sup>32</sup> bifacial solar panels can collect sunlight reflected off the ground or other surfaces, increasing energy production by utilizing both sides of the panel surfaces.<sup>33</sup> The higher efficacy of bifacial solar panels in capturing solar energy makes them the preferred choice for utility-scale installations.<sup>34</sup> In 2024, U.S. importers primarily imported bifacial panels instead of monofacial solar panels.<sup>35</sup>

Facing continued price competition from solar products produced in Southeast Asia, the U.S. government initiated an anti-circumvention investigation in 2023, seeking to impose the same level of remedial duties on solar products from several Southeast Asian countries as those on solar products from China.<sup>36</sup> However, before Commerce completed the circumvention investigation, President Biden

27. See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People's Republic of China: Countervailing Duty Order, 77 Fed. Reg. 73017 (Dec. 7, 2012); Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 80 Fed. Reg. 8592 (Feb. 18, 2015).

28. Kenneth Rapoza, *Southeast Asia Now a Trio of Mini-Chinas Producing Solar for US Market*, COAL FOR A PROSPEROUS AM. (Mar. 1, 2024), <https://prosperousamerica.org/southeast-asia-now-a-trio-of-mini-chinas-producing-solar-for-us-market>.

29. See Proclamation No. 9693, 83 Fed. Reg. 3541 (Jan. 23, 2018).

30. See Proclamation No. 10339, 87 Fed. Reg. 7357 (Feb. 9, 2022).

31. See *id.* at 9(c).

32. See *Bifacial Market to Grow Tenfold by 2024*, WOOD MACKENZIE (Sep. 24, 2019), <https://www.woodmac.com/news/editorial/bifacial-2019>.

33. See generally J.S. STEIN, PERFORMANCE MODELS AND STANDARDS FOR BIFACIAL PV MODULE TECHNOLOGIES, (2018).

34. See *Bifacial Solar Panels: How You Catch Sunlight from Different Directions*, CNET (Aug. 21, 2023), <https://www.cnet.com/home/energy-and-utilities/bifacial-solar-panels/>.

35. See Anne Fischer & Ryan Kennedy, *Bifacial Panels, Representing 98% of U.S. Solar Imports, May Soon Be Subject to Tariffs*, PV MAG. (Apr. 18, 2024), <https://www.pv-magazine.com/2024/04/18/bifacial-panels-representing-98-of-u-s-solar-imports-may-soon-be-subject-to-tariffs/>.

36. See generally Antidumping and Countervailing Duty Orders on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of

suspended the collection of trade remedy duties on solar panels from the covered Southeast Asian countries on the grounds that the tariffs on solar panels produced in these countries would lead to an energy crisis in the United States.<sup>37</sup>

Frustrated by President Biden's move to suspend the trade remedies proceeding against solar panels from Southeast Asia, two members of the U.S. domestic industry filed a lawsuit against Commerce and Customs and Border Protection (CBP) for not completing the proceedings as required by the applicable statutes.<sup>38</sup> In April 2025, after receiving another petition from the domestic industry, Commerce imposed ADD and CVD against solar panel products from Cambodia, Malaysia, Thailand, and Vietnam.<sup>39</sup>

Since the government has resorted to these protectionist measures, import duties have constrained the flow of affordable solar panels into the U.S. market, driving up costs for downstream industries and consumers alike.<sup>40</sup> By limiting access to competitively priced imports, the United States has slowed the deployment of solar energy infrastructure.<sup>41</sup> This constraint not only weakens the country's ability to meet its climate commitments but also risks delaying the broader transition to renewable energy,<sup>42</sup> leaving the United States reliant on fossil fuels longer than necessary.

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China: Preliminary Affirmative Determinations of Circumvention With Respect to Cambodia, Malaysia, Thailand, and Vietnam, 87 Fed. Reg. 75221 (Dec. 8, 2022).

37. Proclamation No. 10414, 87 Fed. Reg. 35067 (June 9, 2022).

38. See *Auxin Solar, Inc. v. United States*, No. 23-00274, 2025 LX 394651, at \*14-24 (Ct. Int'l Trade Aug. 22, 2025) (holding the emergency statute 19 U.S.C. § 1318(a) does not authorize the duty-free importation of solar panel cells and modules because these goods are not "supplies for use in emergency relief work" that are eligible for duty-free treatment under the statute relying on traditional tools of statutory construction).

39. *Final Affirmative Determinations in the Antidumping and Countervailing Duty Investigations of Crystalline Photovoltaic Cells Whether or Not Assembled into Modules from Cambodia, Malaysia, Thailand, and the Socialist Republic of Vietnam*, INT'L TRADE ADMIN. (Apr. 21, 2025), <https://www.trade.gov/final-affirmative-determinations-antidumping-and-countervailing-duty-investigations-crystalline>.

40. See *The High Cost of Tariffs*, SOLAR ENERGY INDUS. ASS'N (Dec. 3, 2019), <https://seia.org/research-resources/high-cost-tariffs>.

41. See, e.g., Katherine Antonio & Tyler Hodge, *Utility-scale Solar Projects Report Delays*, U.S. ENERGY INFO. ADMIN. (Aug. 11, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=53400>.

42. See Zoë Gaston & Sylvia Leyva Martinez, *The US Solar Industry Faces a Perfect Storm of Federal Policy and Trade Challenges*, WOOD MACKENZIE (June 12, 2025), <https://www.woodmac.com/news/opinion/the-us-solar-industry-faces-a-perfect-storm-of-federal-policy-and-trade-challenges>; see also Simon Lester & K. William Watson, *Free Trade in Environmental Goods: The Trade Remedy Problem*, CATO INST. (July 22, 2013), <https://www.cato.org/free-trade-bulletin/free-trade-environmental-goods-trade-remedy-problem>

IV. THE CASE FOR REFORMING U.S. TRADE REMEDIES FOR A SUSTAINABLE ENERGY FUTURE

While trade remedies have protected domestic producers of renewable energy products in the United States, they have also prevented U.S. manufacturers from competing globally, making renewable energy products and their components less affordable in the U.S. market.<sup>43</sup> Adjusting these remedies could enhance the competitiveness of U.S. industries, creating jobs in manufacturing, installation, and maintenance. Reforming trade remedies can help lower the cost of renewable energy products, making clean energy more accessible in the United States and encouraging other countries to adopt green subsidies without fear of trade enforcement.

A. *Reducing Costs to Enhance Access to Renewable Energy Products*

Reducing the cost of solar energy products can play an important role in helping the United States to meet its past climate commitments. In early 2021, the United States rejoined the Paris Agreement, with President Biden committing to a 50-52% reduction in GHG emissions from 2005 levels by 2030.<sup>44</sup> Although President Trump has since withdrawn from the Paris Agreement for a second time,<sup>45</sup> future administrations may rejoin, considering the global momentum toward decarbonization and the growing economic competitiveness of clean energy. While electricity production generates around 25% of U.S. GHG emissions, in 2020, coal and natural gas fueled 60% of the U.S. electricity output, with nuclear and renewable sources contributing nearly 40%.<sup>46</sup> If the United States again seeks to meet its Nationally Determined Contributions (NDC) under the Paris Agreement, the production of carbon-neutral electricity must increase to 80% by 2030,<sup>47</sup> and increasing the use of

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43. *See id.*

44. *See* Joseph R. Biden Jr., President, U.S., Statement on Acceptance of the Paris Agreement on Climate Change on Behalf of the United States (Jan. 20, 2021); *FACT SHEET: President Biden Sets 2030 Greenhouse Gas Pollution Reduction Target Aimed at Creating Good-Paying Union Jobs and Securing U.S. Leadership on Clean Energy Technologies*, The White House (Apr. 22, 2021), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

45. *See* Exec. Order No. 14162, 90 Fed. Reg. 8455 (Jan. 30, 2025).

46. *See* David Kidd, *US Regulatory Barriers to an Ambitious Paris Agreement Commitment*, HARV. L. SCH. (Apr. 22, 2021), <https://celp.law.harvard.edu/2021/04/us-paris-commitment/>.

47. *See* Ari Natter et al., *White House Considering Nearly Doubling Obama's Climate Vow*, BLOOMBERG (Apr. 8, 2021), <https://www.bloomberg.com/news/articles/2021-04-07/white-house-considering-nearly-doubling-obama-s-climate-pledge>.

solar and wind power presents the cheapest and fastest methods to achieve this objective.<sup>48</sup>

The easiest way to effectuate this transition would be to source these products from the place where they are most cheaply made: China. By the end of 2023, the factory price of solar modules in China was 60% lower than that of the United States.<sup>49</sup> Due to the imposition of Solar I and II duties, U.S. importers who purchase Chinese solar panels must pay the corresponding trade remedy duties and pass the additional costs to U.S. consumers.<sup>50</sup> Since the trade remedy measures on solar energy products have substantially raised the cost for U.S. consumers to switch to green energy, solar energy has become less competitive against traditional fossil fuels, slowing the transition to clean energy.<sup>51</sup> In 2019, the price of a solar panel in the U.S. market was 43% to 57% higher than the world price.<sup>52</sup> Reversing the downward trajectory of solar panel pricing, which had lasted for more than a decade, the price of U.S. solar panels modestly increased from 2020 to 2021.<sup>53</sup>

Adopting solar energy plays a crucial role in reducing carbon emissions from the U.S. electricity sector,<sup>54</sup> and the acceleration of the shift towards solar energy rests on access to affordable solar products.<sup>55</sup> As of 2022, the cost of solar energy in the United States remains higher than in most other major economies, due to the high price of equipment.<sup>56</sup> Although solar panel prices have steadily decreased since 2009, high costs remain a significant barrier to the adoption of residential solar

48. Chelsea Bruce-Lockhart et al., *Why Wind and Solar Are Key Solutions to Combat Climate Change*, EMBER (Feb. 9, 2024), <https://ember-energy.org/latest-insights/why-wind-and-solar-are-key-solutions-to-combat-climate-change>.

49. See MALCOLM FORBES-CABLE & STEVEN KNELL, TOP OF THE CHARTS: FIVE LOW-CARBON TECH TRENDS WORTH TRACKING (2023), <https://www.woodmac.com/siteassets/horizons/december-2023/horizons-december-2023-whitepaper.pdf>.

50. See Christine McDaniel & Veronique de Ruyg, *The Downstream Costs of Trade Remedy Regulations*, MERCATUS CTR. (June 6, 2018), <https://www.mercatus.org/research/policy-briefs/downstream-costs-trade-remedy-regulations>.

51. See Robert Y. Shum, *Heliopolitics: The International Political Economy of Solar Supply Chains*, 26 ENERGY STRATEGY REVS. 1, 2 (2019); *The High Cost of Tariffs*, SOLAR ENERGY INDUS. ASS'N (Dec. 3, 2019), <https://seia.org/research-resources/high-cost-tariffs/>.

52. See SOLAR ENERGY INDUSTRIES ASSOCIATION, THE HIGH COST OF TARIFFS (2019).

53. See Colite Technologies, *Why is the Cost of Solar Increasing?*, COLITE TECHS. (Apr. 29, 2022), <https://colitetechnologies.com/blog/why-is-the-cost-of-solar-increasing>.

54. See U.S. DEP'T ENERGY, SUNSHOT VISION STUDY 157-163 (2012).

55. See Shum, *supra* note 51, at 2.

56. See INT'L RENEWABLE ENERGY AGENCY (IREEA), RENEWABLE POWER GENERATION COSTS IN 2022 101 (2023).

energy in the U.S.<sup>57</sup> Also, in 2021 to 2022, the insufficient supply of and price hikes components reportedly delayed large-scale installation panel projects in the United States.<sup>58</sup>

It should be acknowledged that importing solar panels manufactured in China may be counterproductive to the goal of reducing global GHG emissions. Studies indicate that solar product manufacturers in China use less energy-efficient production methods than those in the United States or European Union (EU).<sup>59</sup> Furthermore, CVD and other trade adjustment measures on Chinese solar products have helped increase U.S. solar production capacity, potentially leading to lower prices in the U.S. market, which is an alternative route of promoting green energy transition in the United States.<sup>60</sup> Nonetheless, in 2022, the Department of Energy reported that the United States was experiencing an acute solar products shortage, which would significantly delay its solar energy deployments.<sup>61</sup> The delayed deployments would likely create a gap between U.S. energy needs and generation capacity that most other power generation technologies, except conventional fossil-fueled plants, cannot timely address.<sup>62</sup>

### B. *Encouraging Global Adoption of Green Subsidies*

Reforming the U.S. trade remedies regime, which penalizes green and dirty subsidies alike, could encourage countries worldwide to increase their investments in green energy equipment production. In recent years, governments in major market economies, such as the United States and the EU, have recognized the importance of utilizing

57. See *id.* at 20; JENNY HEETER ET AL., NAT'L RENEWABLE ENERGY LAB'Y, AFFORDABLE AND ACCESSIBLE SOLAR FOR ALL: BARRIERS, SOLUTIONS, AND ON-SITE ADOPTION POTENTIAL 5–6 (2021).

58. See Katherine Antonio & Tyler Hodge, *Utility-scale Solar Projects Report Delays*, U.S. ENERGY INFO. ADMIN. (Aug. 11, 2022), <https://www.eia.gov/todayinenergy/detail.php?id=53400>; see also SOLAR ENERGY INDUS. ASS'N, SOLAR MARKET INSIGHT REPORT 2021 YEAR IN REVIEW (2022). <https://seia.org/research-resources/solar-market-insight-report-2021-year-review>.

59. See Dajun Yue et al., *Domestic and Overseas Manufacturing Scenarios of Silicon-Based Photovoltaics: Life Cycle Energy and Environmental Comparative Analysis*, 105 SOLAR ENERGY 669, 676 (2014); Hope M. Wikoff et al., *Embodied Energy and Carbon from the Manufacture of Cadmium Telluride and Silicon Photovoltaics*, 6 JOULE 1710, 1716–18, 1720 (2022).

60. See Amanda Mayoral, *The Importance of Tariffs on the U.S. Solar Market*, COAL. FOR A PROSPEROUS AM. (July 22, 2022), <https://prosperousamerica.org/the-importance-of-tariffs-on-the-u-s-solar-market>.

61. See U.S. DEP'T OF ENERGY, ACUTE SHORTAGE OF SOLAR EQUIPMENT POSES RISKS TO THE POWER SECTOR 2–3 (2022). This is a report prepared by the U.S. Department of Energy.

62. See *Procedures Covering Suspension of Liquidation*, 87 Fed. Reg. 56882 (Sep. 16, 2022) (to be codified at 19 C.F.R. pt. 362).

green subsidies to facilitate the transition to renewable energy.<sup>63</sup> However, current WTO rules under the Agreement on Subsidies and Countervailing Measures (ASCM) may classify these subsidies as actionable, allowing the importing countries' governments to impose countervailing duties against these subsidies.<sup>64</sup> Some experts advocate reforming the ASCM by adopting a new subsidy analysis framework.<sup>65</sup> This framework would presume inconsistency with WTO law for trade-distorting subsidies with negative sustainability impacts and a rebuttable presumption of consistency when the subsidy has positive sustainability impacts.<sup>66</sup> However, amending the ASCM requires consensus among all WTO members.<sup>67</sup> Since one country can block otherwise widespread consensus to execute an amendment, the WTO likely will not adopt fundamental reforms to one of its most consequential agreements soon.<sup>68</sup> Considering the institutional constraints at the WTO, countries must take unilateral actions to modify their domestic trade remedies regimes to welcome the increase in import and deployment of affordable renewable energy products, which are currently affected by the remedial duties, to facilitate the transition to green energy.

Under U.S. CVD law, Commerce does not consider the environmental impacts of a subsidy when determining whether it should be countervailed. Consistent with the ASCM, U.S. law characterizes a countervailable subsidy as a financial contribution granted by a government or public body that

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63. See European Commission Press Release IP/23/510, *The Green Deal Industrial Plan: Putting Europe's Net-Zero Industry in the Lead* (Feb. 1, 2023) (After the U.S. government implemented the IRA, the EU announced its Green Deal Industrial Plan, aiming to use public financing to bolster its clean energy industries' competitiveness while advancing towards carbon neutrality).

64. See Agreement on Subsidies and Countervailing Measures Part III Actionable Subsidies, Apr. 15, 1994, 1869 U.N.T.S. 31874 [hereinafter ASCM]; see also Appellate Body Report, *United States — Countervailing Duty Measures on Certain Products from China*, ¶ 4.2-4.3, 4.2.2-4.2.3, WTO Doc. WT/DS437/AB/R (adopted Jan. 16, 2015) (noting that although the WTO ultimately found the US CVD determinations in the 2012 solar investigation WTO-inconsistent, because Commerce used an improper out-of-country benchmark to calculate the benefit and wrongly treated Chinese state-owned enterprises as "public bodies" under ASCM art. 1.1(a)(1), the parties did not dispute that a subsidy actually conferred by a government on specific solar-panel producers would constitute an actionable subsidy under the ASCM).

65. See JOEL P. TRACHTMAN ET AL., *VILLARS FRAMEWORK FOR A SUSTAINABLE GLOBAL TRADE SYSTEM* 42–49 (2024).

66. See *id.* at 47.

67. Marrakesh Agreement Establishing the World Trade Organization art. X(8), Apr. 15, 1994, 1867 U.N.T.S. 154.

68. See Keith M. Rockwell, *A Moment of Truth for the WTO*, HINRICH FOUND. (Feb. 6, 2024), <https://www.hinrichfoundation.com/research/article/wto/a-moment-of-truth-for-the-wto/>.

confers a benefit to specific groups of enterprises or industries.<sup>69</sup> In both the Solar I and II proceedings, among other subsidy programs, Commerce found certain preferential lending to Chinese solar cell producers from state-owned banks countervailable during both investigations.<sup>70</sup> According to the statutory language of China's Renewable Energy Law, the countervailed measures were passed to "[promote] the development and utilization of renewable energy, increas[e] the supply of energy, improv[e] the structure of energy, safeguard[] the safety of energy, protect[] the environment and realiz[e] a sustainable economic and social development."<sup>71</sup> Article 25 of the Renewable Energy Law called for financial institutions to offer favorable loans for renewable energy projects listed in the Catalogue for the Guidance of the Renewable Energy Industry Development, which includes various solar energy products, such as solar energy generation systems and heating and lighting systems.<sup>72</sup> One of the implementing regulations of the Renewable Energy Law states that the Chinese Ministry of Finance has established special funds to subsidize projects with great potential in developing renewable energy utilization, including solar, through grants or preferential loans.<sup>73</sup> Commerce cited the Renewable Energy Law and its implementation regulations as evidence supporting its finding that the Chinese government conferred *de jure* specific benefits to certain Chinese producers through preferential lending.<sup>74</sup>

69. 19 U.S.C. § 1677(5).

70. See *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China*, Inv. No. C-570-980, 2010, 12 (Int'l Trade Admin. Oct. 9, 2012) [hereinafter *Solar I IDM*]; *Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China*, Inv. No. C-570-980, 2012, 24–25 (Int'l Trade Admin. Dec. 15, 2014) [hereinafter *Solar II IDM*].

71. *Zhonghua Renmin Gongheguo Kezaisheng Nengyuan Fa* (中华人民共和国可再生能源法) [Renewable Energy Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 26, 2009, effective Apr. 1, 2010), art. 1, (Lawinfochina) [hereinafter *Renewable Energy Law*].

72. Renewable Energy Law art. 25, *supra* note 71; see generally *Kezaisheng Nengyuan Chanye Fazhan Zhidao Mulu* (可再生能源产业发展指导目录) [Catalog for the Guidance of the Industrial Development of Renewable Energy] (promulgated by the Nat'l Dev. & Reform Comm., Nov. 29, 2005, effective Nov. 29, 2005), Part II, (Lawinfochina).

73. See *Kezaisheng Nengyuan Fazhan Zhuanxiang Zijin Guanli Zanzing Banfa* (可再生能源发展专项资金管理暂行办法) [Interim Measures for the Administration of Special Funds for the Development of Renewable Energy] (promulgated by the Ministry of Finance, May 30, 2006, effective May 30, 2006, expired Apr. 2, 2015) (China).

74. See *Solar I IDM*, *supra* note 70, at 12; *Solar II IDM*, *supra* note 70, at 24–25; 19 U.S.C. § 1677(5) (D)(i) (stipulating that a subsidy is *de jure* specific if the implementation instrument expressly limits its access to a group of enterprise or industry).

The U.S. trade remedies regime has countervailed a variety of subsidies that the Chinese government offered to its green energy industry. In both the Solar I and II proceedings, Commerce found the Golden Sun Demonstration Program, established under the Renewable Energy Law, countervailable.<sup>75</sup> This program combines financial assistance, technological support, and market-based mechanisms designed to accelerate the development of China's domestic photovoltaic power industry and to promote the development of solar power generation.<sup>76</sup> The program includes various eligibility requirements limiting the provision of subsidies to enterprises that have developed technologically advanced photovoltaic projects with an installed capacity of not less than 300 kilowatt-hours.<sup>77</sup> Commerce found the subsidies provided under the Golden Sun Demonstration Program countervailable because the Chinese government conferred a benefit, in the form of grants, to specific groups of Chinese solar cell producers.<sup>78</sup>

Additionally, Commerce found a preferential tax program mandated by China's Enterprise Income Tax Law countervailable in both investigations.<sup>79</sup> Article 28 of that law allows companies recognized as High or New Technology Enterprises to enjoy a reduced income tax rate of 15% instead of the regular rate of 25%.<sup>80</sup> One of the implementation regulations of that law lists various high-tech sectors eligible for the preferential tax rate in its annex.<sup>81</sup> Almost all sectors listed in the annex, except for the gas-fueled automobiles sector, have positive or neutral environmental impacts.<sup>82</sup> The annex explicitly excluded any energy-intensive or high-pollution projects under the metal material processing sectors.<sup>83</sup> Commerce found that the annex includes renewable, clean energy technologies such

75. See *Solar I IDM*, *supra* note 70, at 11; *Solar II IDM*, *supra* note 70, at 17–18.

76. Jintaiyang Shifan Gongcheng Caizheng Buzhu Zijin Guanli Zaxing Banfa (金太阳示范工程财政补助资金管理暂行办法) [Interim Measures for the Management of Financial Subsidy Funds for the Golden Sun Demonstration Project] (promulgated by the Ministry of Finance, July 6, 2009, effective July 6, 2009, expired Aug. 8, 2016), art. 2 (China).

77. *Id.* art. 5.

78. See *Solar I IDM*, *supra* note 70, at 11; *Solar II IDM*, *supra* note 70, at 17–18.

79. See *Solar II IDM*, *supra* note 70, at 25–26.

80. Zhonghua Renmin Gongheguo Qiye Suodeshui Fa (中华人民共和国企业所得税法) [Enterprise Income Tax Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 16, 2007, effective Apr. 1, 2008), art. 28 (Lawinfochina).

81. See Gaoxin Jishu Qiye Rending Guanli Banfa (高新技术企业认定管理办法) [Administrative Measures for the Determination of High and New Tech Enterprises] (promulgated by the Ministry of Science & Technology et al., Apr. 14, 2008, effective Jan. 1, 2008, expired Jan. 1, 2016), Annex (Lawinfochina).

82. See *id.*

83. See *id.* at Annex Part IV.

as solar photovoltaic technologies and determined that the Chinese producers who enjoyed the preferential tax rate under the program received a countervailable tax deduction.<sup>84</sup>

In both Solar I and II, U.S. authorities did not consider the positive environmental impacts of any of the subsidy programs. Suppose a government adopts a new CVD framework that would discriminately tolerate subsidy programs with positive environmental impacts. The authorities could exclude the Renewable Energy Law and the preferential tax programs from the countervailable programs. Officially, the foreign government created these programs to protect the environment by facilitating the displacement of energy-intensive industries with more environmentally friendly ones. Although these subsidies create trade distortions, which the U.S. CVD regime (consistent with the ASCM) seeks to redress, they also allow affordable solar energy to become a viable alternative to fossil energy. However, the current CVD regime, which counteracts existing and future green subsidies, would discourage other governments from adopting them, hindering their transition to renewable energy.

While some argue that importing solar panels threatens the national security of the United States, such critics lack evidentiary support.<sup>85</sup> Manufacturers across many countries in Asia produce solar panels and their components in large volumes. The United States can manage supply chain risk through strategic diversification rather than by enforcing domestic exclusivity. In fact, in 2024, the United States imported most of its solar panels from several ASEAN countries, rather than relying on exports from a single adversarial country.<sup>86</sup> By maintaining diversified access to solar equipment made in many countries, the United States can preserve its supply chain resilience while accelerating the shift toward a renewable power infrastructure.

#### V. RECOMMENDATION: RESORTING TO PRESIDENTIAL AUTHORITY TO MODIFY TRADE ACTIONS TO PROMOTE THE U.S. TRANSITION TO GREEN ENERGY

Through its trade remedies regime, the U.S. government has imposed a large number of remedial duties against solar panels from China and the

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84. See *Solar II IDM*, *supra* note 70, at 25–26.

85. See, e.g., Adam Sabes, *Chinese-made Solar Panels Used on American Farms Puts US Power Grid at Risk: Former NSA Official*, FOX NEWS (June 5, 2025), <https://www.foxnews.com/us/chinese-made-solar-panels-used-american-farms-puts-us-power-grid-risk-former-nsa-official>.

86. See Quill Robinson & Ryan Featherston, *Assessing the United States' Solar Power Play*, CTR. STRATEGIC & INT'L. STUD. (July 1, 2024), <https://www.csis.org/analysis/assessing-united-states-solar-power-play>.

rest of the world.<sup>87</sup> So far, the U.S. government has imposed CVD on renewable energy products irrespective of the environmental impacts of the targeted subsidies.<sup>88</sup> This indiscriminate imposition can stall the United States' progress toward carbon neutrality and discourage other governments from using green subsidies. Should the U.S. government look to facilitate its transition to green energy, it should modify its trade remedies regime to allow consumers greater access to more affordable renewable energy products produced in China and elsewhere.

Although this Note was initially developed with a climate-conscious administration in mind, the recommendations outlined herein provide pragmatic solutions for any administration striving to balance economic growth, safeguard employment, and enhance international competitiveness. In 2025, President Trump announced his 2025 Trade Policy Agenda, affirming the administration's consistent emphasis on reshoring manufacturing.<sup>89</sup> As the administration continues to bolster domestic production and overhaul the U.S. trade regime, it may recognize that certain imports, particularly in critical sectors like energy, may play a strategic role in furthering U.S. energy self-sufficiency. Achieving this balance would require the president to use any legal tools available to implement temporary duty adjustments on these selected imports.

Moreover, the administration's protectionist agenda may lead to renewed enthusiasm among domestic industries to petition for trade remedies. While these measures protect domestic producers, they can unintentionally harm downstream sectors in the United States that rely on affordable imports. For example, 2021 ADD and CVD investigations against chassis manufactured in China resulted in duties exceeding 220%,<sup>90</sup> significantly increasing costs for U.S. businesses relying on such components during a time of supply chain disruptions. The United States should reform the trade remedies regime or seek to obtain the authority to modify its effects to allow for micro-adjustments of duty levels in response to market conditions to avoid similar unintended consequences.

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87. See The Energea Team, *U.S. Solar Panel Tariffs: A Professional History and Their Impact on the Industry*, ENERGEA (Apr. 15, 2025), <https://www.energea.com/us-solar-panel-tariffs-history-impact>.

88. See Simon Lester & K. William Watson, *Free Trade in Environmental Goods: The Trade Remedy Problem*, CATO INST. (July 22, 2013), <https://www.cato.org/free-trade-bulletin/free-trade-environmental-goods-trade-remedy-problem>.

89. See U.S. TRADE REPRESENTATIVE, 2025 TRADE POLICY AGENDA AND 2024 ANNUAL REPORT OF THE PRESIDENT OF THE UNITED STATES ON THE TRADE AGREEMENTS PROGRAM 1–4 (2025).

90. Ryan Mulholland, *Revitalizing U.S. Trade Remedy Tools for an Era of Industrial Policy in an Interconnected World*, CTR. AM. PROGRESS (June 3, 2024), <https://www.americanprogress.org/article/revitalizing-us-trade-remedy-tools-for-an-era-of-industrial-policy-in-an-interconnected-world/>.

This flexibility would mitigate downstream impacts while maintaining the ability to counter unfair trade practices.

However, the Trump Administration cannot reform trade remedies on the statutory level without approval from Congress. Considering the level of congressional polarization on various trade-related issues,<sup>91</sup> the president may face difficulties obtaining congressional support to realize fundamental reforms to the U.S. trade remedies regime through trade agreements or domestic legislation. Looking for a solution to bypass legislative deadlocks, this Note then discusses the president's authorities under existing legislation to modify U.S. trade actions, which an administration can utilize as credible bargaining chips when negotiating with other trading partners.

## VI. LIMITATIONS IN THE PRESIDENT'S AUTHORITY OVER TRADE

The president's authority over trade is constrained by the Constitution, statutes, and the federal government's system of checks and balances, leaving him limited legal capacity to interfere with trade remedies proceedings, let alone alter the result of ADD or CVD investigations. The following subsections examine the specific constitutional and statutory constraints that restrict the president's ability to modify trade remedy outcomes.

### A. *Limitations in the President's Constitutional Authority*

The Constitution provides limited support for the president to regulate international trade. Article I of the Constitution grants Congress the power to "regulate commerce with foreign nations" and "collect taxes, duties, imposts, and excises,"<sup>92</sup> offering express textual support for Congress to impose or modify tariffs on internationally traded goods. Article II of the Constitution grants the president the power to make treaties with foreign governments, but only when the president can secure the consent of two-thirds of the senators.<sup>93</sup> If the president enters into a sole executive agreement with a foreign government without obtaining congressional approval, courts will only uphold the legality of such an agreement if it addresses an area that falls under the

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91. See generally Yuka Hayashi, *Biden's 'Go It Alone' Trade Deals Draw Warnings from Congress*, WALL ST. J. (Mar. 19, 2023), <https://www.wsj.com/articles/bidens-go-it-alone-trade-deals-draw-warnings-from-congress-a08833d4>; see generally Ana Swanson, *Biden's Pacific Trade Pact Suffers Setback After Criticism from Congress*, N.Y. TIMES (Nov. 13, 2023), <https://www.nytimes.com/2023/11/13/business/economy/indo-pacific-trade-delay.html>.

92. U.S. CONST. art. I, § 8, cl. 18.

93. U.S. CONST. art. II, § 2, cl. 2.

exclusive constitutional authority of the president, such as forming diplomatic relations or conducting military affairs.

In past cases, the Supreme Court has recognized that the president has the constitutional authority to recognize foreign states and settle claims of U.S. nationals over properties belonging to foreign entities.<sup>94</sup> However, courts do not recognize that the president has the constitutional authority to regulate foreign commerce directly. In *United States v. Guy W. Capps, Inc.*, the U.S. Court of Appeals for the Fourth Circuit held that an agriculture agreement reached between the United States and Canada regulating the import of Canadian potatoes was void because “the power to regulate interstate and foreign commerce is not among the powers incident to the Presidential office.”<sup>95</sup> Considering that neither the text of the Constitution nor case law extends any express constitutional authority to the president to regulate international trade directly, the executive branch must rely on statutory authorities when regulating tariffs.

#### B. *Limitations in the President’s Statutory Authority*

The existing statutes similarly leave the president with a limited pathway to alter the outcomes of trade remedy proceedings. Before the 1930s, Congress held a strong protectionist agenda and remained reluctant to grant any statutory authority to the president to regulate trade.<sup>96</sup> In the 1970s, through legislation, Congress created specific procedural requirements for ADD and CVD investigations, making trade remedies a semi-judicial process, to limit executive discretion by allowing private parties to initiate proceedings, requiring the executive agencies to act according to an explicit statutory requirements, such as a fixed timetable, and subjecting agency decisions to judicial review.<sup>97</sup>

The U.S. trade remedies statutes confer different levels of discretionary authority to the executive branch for different types of trade adjustment measures. Compared with ADD and CVD, the safeguard regime affords the president significantly more flexibility, allowing him to modify safeguard orders by altering the amounts of duties or the scope of products covered by the measures through executive proclamations or rescind the measures entirely.<sup>98</sup> The safeguard regime, commonly referred to as the

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94. See *Dames & Moore v. Regan*, 453 U.S. 654, 680 (1981); *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2086 (2015).

95. See *United States v. Guy W. Capps, Inc.*, 204 F.2d 655, 657-59 (4th Cir. 1953).

96. See *The Economic Effects of Significant U.S. Import Restraints*, Inv. No. 332-325, USITC Pub. 4094 (Aug. 2009) (Sixth Update).

97. See Peter D. Ehrenhaft, *Judicialization of Trade Law*, 56 NOTRE DAME L. REV. 595, 601 (1981).

98. 19 U.S.C. § 2254(b).

escape clause, additionally allows the president to consider the welfare of consumers and foreign policy concerns when contemplating the appropriate trade adjustment measures.<sup>99</sup>

Unlike safeguards, the ADD or CVD regime confers much less discretionary authority to the president in conducting investigations or modifying orders. After Commerce issues its ADD or CVD orders mandating importers to pay a certain percentage of *ad valorem* duties for products covered by the orders, the president has no discretionary authority to unilaterally modify the scope, rate, or duration of the orders, with minor exceptions.<sup>100</sup> Commerce also cannot suspend an investigation unless the facts of the case meet the strict procedural hurdles established in the statutes. For investigations that arise from private petitions, Commerce can suspend an investigation only if the relevant foreign government or major exporters agree to eliminate the subsidy or dumping, counteract the exports' injurious effects on U.S. industry, or agree to cease exporting to the United States provided that such a suspension agreement is reached before the completion of the investigation and issuance of an order.<sup>101</sup> Once Commerce issues an order, the government cannot unilaterally modify or revoke it before the sunset review process. At that stage, the order remains in effect unless the review results in a determination that dumping or subsidies would not resume, or no interested party requests its continuation.<sup>102</sup> Therefore, the existing ADD and CVD regimes provide no statutory avenue for the president to interfere with its process or modify its results to promote the use and recognition of green subsidies.

#### VII. THE PRESIDENT SHOULD RESORT TO HIS EMERGENCY AUTHORITIES OVER TRADE TO MODIFY THE EFFECTS OF TRADE REMEDIES ON GREEN ENERGY PRODUCTS

Any administration that seeks flexibility in the design of its trade policy should modify the trade remedies regime, considering the adverse impacts of the current statutory framework. However, since neither Article II of the Constitution nor the existing ADD or CVD statutes allow the president to interfere with the investigation process or their final orders, the president must find authorities conferred upon him under different statutory regimes should he seek to modify ADD or CVD orders.

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99. See BERNARD D. REAMS & JON S. SCHULTZ, URUGUAY ROUND AGREEMENTS ACT: A LEGISLATIVE HISTORY OF PUBLIC LAW NO. 103-465 56-57 (1994).

100. See JONES, *supra* note 17, at 10-11.

101. 19 U.S.C. § 1671c(b)-(c); 19 U.S.C. § 1673c(b)-(c).

102. JONES, *supra* note 17, at 10-11.

A. *Policy Recommendations on Using IEEPA to Lower Tariffs on Renewable Energy Products*

The International Emergency Economic Powers Act (“IEEPA”) provides a viable legal pathway for the president to use to lower tariffs on renewable energy products, such as solar panels. From World War II to the War on Terror, Congress has granted the president various emergency powers through legislation.<sup>103</sup> IEEPA confers expansive authority on the president to regulate various international financial transactions and the transportation of goods once the president declares a national emergency.<sup>104</sup> Given how broad the statutory language is and the courts’ general unwillingness to limit the president’s foreign affairs power, the president can likely invoke the powers granted by IEEPA to modify ADD and CVD orders.

Before exercising IEEPA authorities, the National Emergencies Act (NEA) requires the president to declare the existence of a national emergency.<sup>105</sup> After making the declaration, IEEPA authorizes the president to

investigate, *regulate*, direct and compel, nullify, void, prevent or prohibit any acquisition, holding, withholding, use, transfer, withdrawal, transportation, *importation or exportation of*, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest; by any person, or with respect to any property, subject to the jurisdiction of the United States.<sup>106</sup>

Congress can terminate a national emergency declared by the president only through a joint resolution, which the president can veto.<sup>107</sup>

In ADD or CVD investigations, once Commerce issues an order specifying subsidy rates or dumping margins, current trade remedies law does not grant the president statutory authority to modify the order.<sup>108</sup> However, a plain reading of IEEPA suggests that, following an emergency declaration, the statute empowers the president to “regulate . . . importation,”<sup>109</sup> giving the president the power to modify the scope of

103. See generally Nataliya S. Latypova, *History of Emergency Powers of the US Presidents: From Abraham Lincoln to Donald Trump*, 26 SCI. J. VOLGOGRAD STATE U. HIST. AREA STUD. INT’L RELS. 193 (2021).

104. See 50 U.S.C. §§ 1701–07 (2018).

105. 50 U.S.C. § 1621.

106. 50 U.S.C. § 1702(a)(1)(B) (emphasis added).

107. See 50 U.S.C. § 1622.

108. See 19 C.F.R. § 351.225(a) (2024); see generally 19 U.S.C. §§ 1671–77n.

109. 50 U.S.C. § 1702(a)(1)(B).

duty rates under any existing ADD or CVD orders after the president declares an emergency. Alternatively, the president could engage in trade negotiations with other countries, seeking their acquiescence to U.S. subsidy programs by leveraging potential exclusions of products imported from their countries from ADD or CVD orders. Using IEEPA powers would enable the president to make concessions in the form of tariff reductions during negotiations without obtaining additional trade promotion authority from Congress.

By leveraging IEEPA, the president can adopt a strategic carrot-and-stick approach to incentivize global climate action and balance tariff adjustments with domestic political challenges to advance renewable energy goals. Existing literature has explored the potential use of IEEPA to target and sanction high-emitting entities overseas, including countries that fail to meet their international climate commitments. Unlike the use of IEEPA as a sanctioning tool, the president will likely face significant domestic political pressure if he invokes this emergency power to reduce tariffs on certain imported products.<sup>110</sup> The political landscape in the United States makes it difficult for a president to prioritize environmental concerns over protecting domestic industries.<sup>111</sup> Consequently, the president likely will not directly suspend an ADD or CVD investigation or unilaterally revoke an order against imported renewable energy products.

To effectively address climate change, the president can employ a calibrated carrot-and-stick approach by offering lower tariffs as incentives for countries that meet their emission goals while maintaining tariffs for those that do not. This method could incentivize foreign governments, such as China, to enter into binding bilateral agreements with the United States by offering reduced tariffs on selected imports from countries that achieve their predefined NDCs. Parties to the agreement can establish periodic assessments to monitor progress towards the agreed-upon environmental targets.

After declaring global warming to be a national emergency, the president should rely on the statutory powers under IEEPA to adjust the rate of existing trade remedies programs and obtain credible leverage to promote the reduction of GHG emissions abroad through diplomatic

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110. See, e.g., *CPA Commends Trade Court for Overturning Biden's Illegal Solar Tariff Moratorium*, COAL. FOR A PROSPEROUS AM. (Aug. 28, 2025), <https://prosperousamerica.org/cpa-commends-trade-court-for-overturning-bidens-illegal-solar-tariff-moratorium> (noting that a representative of the domestic solar industry argued that President Biden's moratorium on the collection of duties on imported solar products was devastating to the America's solar manufacturing base).

111. See generally Aaron McCright et al., *Political Polarization on Support for Government Spending on Environmental Protection in the USA, 1974–2012*, 48 Soc. Sci. Rsch. 251 (2014).

channels. When selecting products to receive tariff reductions or exclusions from existing trade remedies programs, the president can establish an interagency task force to help select products for import duty adjustment based on their climate impacts. Criteria for selection could include the carbon footprint of the product and its potential to contribute to the mitigation of or adaptation to climate change. In such scenarios, the president could prioritize reducing tariffs on renewable energy products like solar panels, thereby fostering a shift towards more sustainable energy sources.

B. *The Legality of Using IEEPA to Modify Trade Remedies Orders*

In 2025, President Trump's decision to impose worldwide tariffs by claiming general tariff authority under IEEPA came under intense judicial scrutiny.<sup>112</sup> Since taking office, the president has declared multiple national emergencies and imposed broad tariff measures under IEEPA.<sup>113</sup> In February, President Trump declared a national emergency caused by transnational fentanyl inflow.<sup>114</sup> The emergency arose from the alleged failure of Canada, China, and Mexico to curb the outflow of these illicit drugs.<sup>115</sup> As a response, the president imposed hefty duties on imports from these three nations.<sup>116</sup> Later, in April, the president imposed a general 10% *ad valorem* duty on all imports, with increased rates up to 50% for fifty-seven specified countries.<sup>117</sup> The president justified this action by citing a national emergency rooted in structural trade imbalances, non-reciprocal trade practices, and foreign economic policies that depress wages and consumption, all of which allegedly pose an unusual and extraordinary threat to U.S. national security and economic stability.<sup>118</sup> In response, state governments and U.S. importers filed lawsuits challenging the legality of President Trump's indefinite use of IEEPA to impose sweeping tariffs on nearly all U.S. trading partners.<sup>119</sup>

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112. See generally CHRISTOPHER ZIRPOLI, CONG. RSCH. SERV., LSB11332, COURT DECISIONS REGARDING TARIFFS IMPOSED UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT (IEEPA) (2025).

113. See, e.g., Exec. Order No. 14,193, 90 Fed. Reg. 9113 (Feb. 7, 2025); Exec. Order No. 14,194, 90 Fed. Reg. 9117 (Feb. 7, 2025); Exec. Order No. 14,195, 90 Fed. Reg. 9121 (Feb. 7, 2025).

114. See Exec. Order No. 14,195, 90 Fed. Reg. 9121 (Feb. 7, 2025).

115. See *id.*

116. See *id.*

117. See Exec. Order No. 14,257, 90 Fed. Reg. 15 041 (Apr. 7, 2025).

118. See *id.*

119. Danielle Myles, *US Importers Promise to Take Trump Tariffs to Supreme Court*, FDI INTEL. (July 8, 2025), <https://www.fdiintelligence.com/content/510c9285-6f19-41b6-8613-06b298d6be9c>;

By May 2025, two federal district courts had decided that President Trump exceeded the scope of IEEPA's authority by issuing worldwide tariffs in *V.O.S. Selections v. Trump* and *Learning Resources v. Trump*.<sup>120</sup> The Federal Circuit then affirmed the CIT's decision in *V.O.S. Selections*, while *Learning Resources* is pending before the D.C. Circuit, with a related certiorari-before-judgment petition pending at the Supreme Court.<sup>121</sup> Regardless of whether the appellate courts overturn the decision limiting the president's tariff authority under IEEPA, a close review of the lower courts' reasoning shows that neither opinion provides a basis for invalidating a presidential decision to use IEEPA to modify existing trade remedies tariffs in a narrowly tailored manner.

### 1. The President May Declare Climate Change a National Emergency under the NEA

When invoking IEEPA authority to exempt certain products from ADD or CVD orders, the president faces procedural and substantive hurdles. Procedurally, the president must issue a declaration of national emergency that adheres to the NEA requirements and consult Congress.<sup>122</sup> In practice, however, the decision to consult Congress rests at the president's discretion, and he may defer such consultation to a time of his choosing.<sup>123</sup>

Declaring a state of emergency involves the president issuing a concise declaration, which does not require extensive substantive details.<sup>124</sup> Before exercising IEEPA powers, the president must transmit a declaration of emergency to Congress and publish it in the Federal Register.<sup>125</sup> Also, the president must consult with Congress in "every possible instance."<sup>126</sup> Additionally, when transmitting the declaration to Congress, the president must identify the triggering circumstances, explain why they pose an unusual and extraordinary threat originating substantially from overseas, outline the actions to be taken, justify the necessity of those actions, and

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Sydney Carruth, *A Dozen States Sue to Stop Trump's Tariffs*, NBC NEWS (Apr. 23, 2025), <https://www.nbcnews.com/politics/trump-administration/dozen-democratic-states-sue-stop-president-trumps-tariffs-rcna202682>.

120. See *Learning Res., Inc. v. Trump*, 784 F. Supp. 3d 209, 215 (D.C. Cir. 2025); *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1358 (Ct. Int'l Trade 2025).

121. CHRISTOPHER ZIRPOLI, CONG. RSCH. SERV., LSB11332, COURT DECISIONS REGARDING TARIFFS IMPOSED UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT (IEEPA) (2025); see generally *V.O.S. Selections*, 149 F.4th 1312.

122. See 50 U.S.C. § 1703(a).

123. See Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1159, 1235 (1987).

124. *Id.*

125. 50 U.S.C. § 1621.

126. 50 U.S.C. § 1703(a).

specify the foreign countries involved and the reasons for targeting them.<sup>127</sup> These statutory prerequisites under the NEA present a low procedural threshold and likely cannot block the president from invoking IEEPA.

The president should declare that global warming poses serious threats to the U.S. economy, including rising sea levels and extreme weather events, significantly jeopardizing U.S. economy and national security.<sup>128</sup> In *Massachusetts v. EPA*, the Supreme Court recognized that “the harms associated with climate change are serious and well recognized” and acknowledged that the rising sea level has already engulfed U.S. coastal land.<sup>129</sup> In addition, most GHG emitters, which are accelerating global warming and intensifying its effects, remain overseas.<sup>130</sup> Consequently, the president can persuasively argue that climate change, caused by substantial foreign sources, constitutes an emergency that compels the president to exercise his emergency authorities.

Critics may argue that the president’s invocation of IEEPA for climate action fails to meet NEA’s emergency criteria, which mandates an explanation of why global warming is considered an unusual and extraordinary threat, considering the indefinite nature of global warming, which lacks a distinct beginning and end.<sup>131</sup> Although legislative history shows that Congress believed that the president could only invoke IEEPA powers temporarily, responding to emergencies that required swift executive action, past emergencies declared by presidents lasted almost nine years on average.<sup>132</sup> Even in the trade context, federal courts have continued to refrain from reviewing the bona fides of a presidential declaration of national emergency. In both *Learning Resources* and *V.O.S. Selections*, neither court opined that President Trump exceeded his statutory authority by declaring structural trade imbalances—an issue which has an indefinite duration—a national emergency.<sup>133</sup> Federal courts’ continued

127. 50 U.S.C. § 1703(b).

128. Mark P. Nevitt, *Is Climate Change a National Emergency?*, 55 U.C. DAVIS L. REV. 591, 642–45 (2021).

129. See *Massachusetts v. EPA*, 549 U.S. 497, 521–23 (2007).

130. See Hannah Ritchie, *Who has contributed most to global CO2 emissions?*, OUR WORLD IN DATA (Oct. 1, 2019), <https://ourworldindata.org/contributed-most-global-co2>.

131. See, e.g., Elizabeth Goitein, *President Biden Shouldn’t Declare Climate Change a National Emergency*, BRENNAN CTR. JUST. (Jan. 29, 2021), <http://climate.gov/news-features/understanding-climate/climate-change-global-sea-level>.

132. See JENNIFER K. ELSEA ET AL., CONG. RSCH. SERV., THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE 9–10, 18 (2023).

133. See *Learning Res., Inc. v. Trump*, 784 F. Supp. 3d 209, 215 (D.C. Cir. 2025); *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1358 (Ct. Int’l Trade 2025).

refusal to cast doubt on the validity of any presidential declaration of a national emergency suggests that the court may view the issue as a nonjusticiable political question.<sup>134</sup> Thus, courts are unlikely to invalidate a national emergency declaration solely because of its indefinite duration.

Where the president may face headwind is in his ability to declare climate change to be an environmental emergency given the NEA's requirement that the declared emergency originate "in whole or in substantial part *outside* the United States."<sup>135</sup> This condition prohibits attributing an emergency to the domestic actions of the U.S. government. To comply with the NEA's foreign-origin requirement, the president must characterize climate change as a foreign threat originating in part from foreign emissions and environmental disruptions. In the case of emission-induced climate change, the primary source of the threat lies overseas, as most of the world's carbon emissions originate outside the United States.<sup>136</sup>

## 2. *Dames & Moore* Requires Judicial Deference to Climate-Driven Tariff Relief

Substantively, the president will likely face legal challenges by employing IEEPA to liberalize trade by exempting products from existing trade remedy orders. Historically, presidents have overwhelmingly used IEEPA to sanction foreign entities by blocking the properties of and prohibiting others from transacting with entities that threaten the U.S. national interests.<sup>137</sup> However, President Jimmy Carter's invocation of IEEPA during the Iran hostage crisis remains a notable exception. As part of the Algiers Accords,<sup>138</sup> President Carter blocked the removal or transfer of all property and interests of the government of Iran arising from legal proceedings against Iranian entities in the United States on the grounds that parties had to settle or resolve their claims at the Iran-United States Claims Tribunal through binding arbitrations.<sup>139</sup> In this instance, the president used his IEEPA authority to benefit foreign entities by suspending the attachment of their assets resulting from legal proceedings in the United States.

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134. Under the political question doctrine, a controversy is nonjusticiable if there is a lack of judicially discoverable and manageable standards for resolving it. *Nixon v. United States*, 506 U.S. 224, 228 (1993).

135. 50 U.S.C. § 1703(b)(2).

136. CRIPPA, M. ET AL., JRC SCIENCE FOR POLICY REPORT GHG EMISSIONS OF ALL WORLD COUNTRIES 5–7 (2024).

137. See ELSEA, *supra* note 132, at 16–23.

138. *Iran-U.S. Claims Tribunal*, U.S. DEP'T OF STATE, <https://www.state.gov/iran-u-s-claims-tribunal/> (last visited Apr. 8, 2024).

139. See *Dames & Moore v. Regan*, 453 U.S. 654, 662–68 (1981).

The Court's reasoning in *Dames & Moore* affirming Carter's actions established a deferential standard of review for the president's exercise of foreign affair powers. In *Dames & Moore*, the Court acknowledged that IEEPA does not contain statutory language that specifically confers power on the president to establish adjudicatory tribunals to resolve property claims between U.S. and foreign nationals.<sup>140</sup> However, the Court nonetheless upheld the president's action for several interlocking considerations.<sup>141</sup>

At the outset, the Court noted the breadth of IEEPA's statutory language, which "delegates broad authority to the president to act in times of national emergency with respect to property of a foreign country."<sup>142</sup> The breadth of this delegation allowed the Court to consider other indications of congressional intent and the president's independent foreign affairs power in interpreting whether the president acted in accordance with the statutory delegation of IEEPA. In reaching a decision in the affirmative, the Court placed heavy emphasis on the impact of Congress's acquiescence over similar executive actions in the past.<sup>143</sup> Based on the fact that Congress had legislated on the subject area of claim settlement by executive agreement without creating restrictions on the executive's authority, the Court concluded that Congress acquiesced to this executive practice.<sup>144</sup> To the Court in *Dames & Moore*, Congress' prolonged refusal to invalidate the president's exercise of a foreign affairs power warranted a conclusion of implicit legislative approval. Moreover, the Court recognized that the inherent power bestowed upon the presidency is in maintaining relations between the U.S. and foreign nations.<sup>145</sup> The Court opined that as the "sole organ of the federal government in the field of international relations,"<sup>146</sup> the president must possess the authority to address "the necessary incident to the resolution of a major foreign policy dispute."<sup>147</sup> In conclusion, the Court in *Dames & Moore* established that, in matters concerning presidential foreign affairs power, prolonged legislative acquiescence can warrant judicial approval of presidential action based on an expansive interpretation of that power.<sup>148</sup>

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140. *Id.* at 675.

141. *Id.*

142. *Id.* at 677.

143. *Id.* at 678–82.

144. *Id.* at 684.

145. *Id.* at 682–83.

146. *Id.* at 661 (citing *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 319–20 (1936)).

147. *Id.* at 688.

148. See David Forte, *The Foreign Affairs Power: The Dames & (and) Moore Case*, 31 CLEV. STATE L. REV. 43, 55 (1982).

### 3. *Learning Resources* and *V.O.S.* Unduly Cabined the Presidential Foreign Affairs Power

Despite the Supreme Court's decision in *Dames & Moore*, which supports an expansive reading of the president's foreign affairs power, recent decisions issued by lower federal courts have invalidated President Trump's claim of unlimited presidential power to levy tariffs on imports under IEEPA.<sup>149</sup> Both *Learning Resources* and *V.O.S. Selections* rested on the conclusion that IEEPA does not grant the president unlimited power to issue tariffs.<sup>150</sup> In *V.O.S. Selections*, the Court of International Trade (CIT) emphasized that Congress, rather than the president, has the power vested by the Constitution to "lay and collect Taxes, Duties, Imposts and Excises" and to "regulate Commerce with foreign Nations."<sup>151</sup> The CIT refused to interpret IEEPA as an unlimited delegation of power for the president to issue tariffs because doing so would render IEEPA an "improper abdication of legislative power," making the statute unconstitutional under the non-delegation doctrine.<sup>152</sup> The Federal Circuit affirmed the CIT's holding that IEEPA's grant of presidential authority to "regulate" imports does not encompass the broad tariffs imposed by President Trump's executive orders.<sup>153</sup> However, the appellate court declined to decide whether IEEPA authorizes more limited tariffs that are qualified in scope and duration, such as those upheld in *Yoshida International v. United States*, a key precedential decision.<sup>154</sup> In *Learning Resources*, the court concluded that IEEPA does not allow the president to levy any tariff following a statutory interpretation analysis.<sup>155</sup> Here, the court emphasized that the power to "regulate . . . importation" under IEEPA does not include the power to tax.<sup>156</sup> Specifically, the court reasoned that under the statute's plain meaning, the power to *regulate* "is to establish rules governing conduct," which differs from a power to "raise revenue through taxes on imports or exports."<sup>157</sup>

149. See *Learning Res., Inc. v. Trump*, 784 F. Supp. 3d 209, 215 (D.C. Cir. 2025); *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1358 (Ct. Int'l Trade 2025).

150. See *V.O.S. Selections*, 772 F. Supp. 3d at 1358.

151. *Id.*

152. *Id.* at 1372. Under the non-delegation doctrine, a federal statute is unconstitutional if it grants authority to the executive branch without providing an "intelligible principle" to guide the exercise of that authority. See, e.g., *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928).

153. See *V.O.S. Selections, Inc. v. Trump*, 149 F.4th 1312, 1318 (Fed. Cir. 2025).

154. See *id.* at 1330, 1337–38.

155. See *Learning Res., Inc. v. Trump*, 784 F. Supp. 3d 209, 215 (D.C. Cir. 2025).

156. *Id.* at 223.

157. *Id.* at 224. In this case, the court also explicitly applied the major question doctrine on presidential action and held that the IEEPA did not grant the president the power of taxing

On the surface, neither decision contradicts the essential holding of *Dames & Moore*. At the end of the opinion, Justice Rehnquist categorically rejected any argument suggesting that the president holds plenary authority over all matters of foreign affairs.<sup>158</sup> Thus, the lower courts' decisions invalidating President Trump's claim of nonjusticiable presidential foreign affairs power<sup>159</sup> remains consistent with the holding in *Dames & Moore*. However, portions of the lower courts' analyses run counter to the reasoning in past Supreme Court jurisprudence. These inconsistencies will affect how future courts should apply these decisions in delineating the boundaries of presidential authorities under IEEPA.

Also, when the president acts primarily to manage the nation's relations with foreign governments, the action can fall within the foreign affairs power, even if it produces domestic effects.<sup>160</sup> Here, President Trump imposed tariffs on foreign goods to create leverage in trade negotiations and to deter conduct harmful to U.S. interests. Following the imposition of these tariffs, more than a dozen countries entered negotiations with the United States to formulate trade agreements.<sup>161</sup> These events demonstrate that the president employed tariffs as an instrument of diplomacy, acting pursuant to his foreign affairs power. Thus, courts should uphold the president's exercise of tariff power to achieve his foreign affairs objectives, particularly where Congress has acquiesced in the practice.<sup>162</sup>

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ordinary commerce from because the statute does not contain such express delegation. *Id.* Under the major question doctrine, the court should not interpret a statute as granting an executive agency the power to decide issues with deep economic and political significance absent a clear statement from Congress making such a delegation. *See King v. Burwell*, 576 U.S. 473, 486 (2015).

158. *See Dames & Moore v. Regan*, 453 U.S. 654, 688 (1981).

159. *See V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1377 (Ct. Int'l Trade 2025).

160. *See United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 318–20 (1936) (upholding the president's actions in implementing an arms embargo, affecting domestic weapons sellers, against countries engaged in armed conflict in the Chaco region by considering the foreign affairs power of the president).

161. *See Patrick Childress et al., Status of U.S. Bilateral Trade Negotiations as the July 9 Deadline Approaches*, HOLLAND & KNIGHT LLP (July 1, 2025), <https://www.hkllaw.com/en/insights/publications/2025/07/status-of-us-bilateral-trade-negotiations-as-the-deadline-approaches>.

162. *See Dames & Moore*, 453 U.S. at 678–79; *see also FCC v. Consumers' Rsch.*, 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring) (opining that the major question doctrine does not apply in the national security or foreign policy contexts because Congress intends to give the president substantial authority and flexibility to protect America and the American people). Thus, a court should not require a clear-statement rule to permit the president to impose tariffs pursuant to statutory authority when those tariffs are employed as bargaining leverage in advancing foreign policy objectives.

In 1971, President Richard Nixon, claiming authority under the Trading with the Enemy Act (TWEA) § 5(b),<sup>163</sup> declared a national emergency requiring the imposition of a surcharge on dutiable imports, fixing a 10% *ad valorem* duty on virtually all imports to safeguard the U.S. balance of payments.<sup>164</sup> In *Yoshida International v. United States*, the Court of Customs and Patent Appeal (CCPA) upheld the duty surcharge and held that by delegating to the president the authority to regulate importation, the plain reading of the 1971 TWEA statute allows the president to impose an import duty surcharge or employ other means reasonably related to the particular declared emergency.<sup>165</sup>

In 1974, after President Nixon used TWEA to impose duty surcharges, Congress enacted Section 122 of the Trade Act of 1974, which created explicit but narrow stand-alone authority for the president to exercise when needing to correct short-term balance-of-payments shocks without invoking emergency statutes.<sup>166</sup> Based on this legislative history, both *V.O.S. Selections* and *Learning Resources* concluded that Congress enacted Section 122, a statute creating procedural limitations on the President's authority to impose tariffs to protect the U.S. balance of payment, to cabin presidential tariff authority under TWEA.<sup>167</sup> However, if Congress had both the intent and opportunity to restrict presidential tariff authority under TWEA, it could amend the TWEA directly rather than creating a stand-alone authority for the president to impose tariffs.<sup>168</sup> A more plausible reading is that Congress enacted Section 122 to cabin the president's tariff power in balance-of-payments cases, while preserving broader tariff authority for other unforeseen emergencies.<sup>169</sup> Considering that Congress had

163. IEEPA inherited the statutory language verbatim from Section 5(b) of TWEA. *Compare* Trading with The Enemy Act of 1917, 65 Pub. L. No. 91, § 5(b)(1)(B), 40 Stat. 411, *with* International Emergency Economic Powers Act, 95 Pub. L. No. 223, § 203(a)(1)(B), 91 Stat. 1625 (showing the two authorities have identical statutory languages). *See also* *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 576 (C.C.P.A. 1975).

164. Proclamation No. 4074 (Aug. 15, 1971), *reprinted in* 85 Stat. 926 (1972).

165. *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 583-84 (C.C.P.A. 1975). The CCPA later became the U.S. Court of Appeals for the Federal Circuit (Federal Circuit).

166. 19 U.S.C. § 2132.

167. *See V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1373-77 (Ct. Int'l Trade 2025); *Learning Res., Inc. v. Trump*, 784 F. Supp. 3d 209, 215-16 (D.C. Cir. 2025).

168. *See V.O.S. Selections*, 149 F.4th at 1372 (Taranto, J., dissenting) (noting that for one statute to displace another, there must be a "contradiction" or "clear and manifest intent" from Congress).

169. *Id.* at 1369-70 (Taranto, J., dissenting) (emphasizing that emergency statutes, such as IEEPA, are designed to confer powers exceeding those available under ordinary legislation and rejected the view that Congress's enactment of non-emergency tariff statutes reflects an intent to curtail the president's authority in the emergency context).

learned the Federal Circuit’s interpretation of TWEA as authorizing the president to impose qualified tariffs,<sup>170</sup> Congress’s decision not to eliminate the president’s tariff authority when replacing TWEA with IEEPA signals legislative acquiescence to the notion that the president can use tariffs in response to a national emergency.

Second, the CIT in *V.O.S. Selections* concluded that the president cannot use IEEPA to create leverage to pressure a foreign government to change its behavior in order to prevent an emergency in the United States.<sup>171</sup> However, the Court’s conclusion relied on a flawed understanding of country-wide economic sanctions, which the president has legally imposed in the past under IEEPA.<sup>172</sup>

IEEPA allows the president to take emergency measures to “deal with any unusual and extraordinary threat.”<sup>173</sup> The CIT reasoned that the language, *deal with*, signifies that the president can only take actions that have a direct link to the problem it purports to address.<sup>174</sup> The CIT distinguished President Trump’s use of tariffs under IEEPA to pressure foreign governments to curb the flow of illicit drugs into the United States from President Reagan’s use of sanctions under IEEPA to prohibit U.S. persons from traveling to Cuba, which aimed to reduce cash flow to the Cuban regime to undermine its international socialist adventures.<sup>175</sup> The distinction ostensibly lies in the length of the causal chain. The CIT believed that while the reduction in cash flow could directly undermine Cuba’s communist adventures, the retaliatory tariffs could only operate through an indirect process in removing drug trafficking by pressuring foreign governments to remove illicit drug production or trafficking.<sup>176</sup>

However, the CIT’s analysis mischaracterized how economic sanctions function.<sup>177</sup> Economic sanctions generally restrict U.S. persons

170. *Id.* at 1366 (Taranto, J., dissenting).

171. *See V.O.S. Selections*, 772 F. Supp. 3d at 1380–82.

172. *See, e.g.,* *Regan v. Wald*, 468 U.S. 222, 224–25 (1984) (upholding the president’s imposition of country-wide sanction against Cuba under TWEA, which prohibited U.S. persons from engaging in travel-related transactions with Cuba nationals).

173. 50 U.S.C. § 1701(a).

174. *See V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1381 (Ct. Int’l Trade 2025).

175. *Id.*

176. *See id.* at 1381–82.

177. The conventional rationale for economic sanctions stand on the presumption that economic sanctions coerce states into changing their behavior by imposing economic pain that makes the cost of resistance greater than the cost of compliance. *See generally* Jonathan Masters, *What Are Economic Sanctions?*, COUNCIL ON FOREIGN RELS. (June 24, 2024), <https://www.cfr.org/background/what-are-economic-sanctions/>.

from transacting with sanctioned targets.<sup>178</sup> Assuming a country-wide sanction can reduce the inflow of U.S. dollars to a sanctioned country, such as in the Cuban sanction context, this reduction alone cannot derail the government from pursuing its pre-determined objectives.<sup>179</sup> In reality, sanctions primarily work to pressure foreign governments to change course by weakening their domestic support through denying their population the economic benefits of trade with U.S. persons.<sup>180</sup> Thus, country-wide sanctions imposed under IEEPA rely primarily on their indirect socio-economic impacts to pressure the foreign government into taking actions that would help alleviate the national emergency in the United States.

In *Dames & Moore*, the Supreme Court held that IEEPA authorized the president to create a “bargaining chip” to advance the president’s diplomatic objectives during a national emergency.<sup>181</sup> Retaliatory tariffs function under the same logic as traditional sanctions: they impose costs on foreign governments to encourage behavioral change. The tariffs increase the economic costs of foreign countries’ decision to refuse to cooperate to curtail illicit drug trafficking to the United States, pressuring their governments to work with the United States to *deal with* the national emergency caused by drug trafficking.<sup>182</sup> Thus, the leverage rationale relied on by the Trump Administration to levy retaliatory tariffs under IEEPA remains consistent with how presidents used IEEPA to impose country-wide sanctions in the past to pressure foreign governments to change course, which the Supreme Court has sustained.<sup>183</sup> As a result, the Court did not preclude the use of IEEPA to create leverage to pressure foreign governments to cooperate with the U.S. government to mitigate a national emergency.

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178. See *Basic Information on OFAC and Sanctions*, OFF. FOREIGN ASSETS CONTROL (Aug. 27, 2024), <https://ofac.treasury.gov/faqs/topic/1501>.

179. Modern states, even the ones with weak or unpopular governments, can often resist external pressure of sanctions by using nationalism to augment domestic support or shifting the economic burden onto disenfranchised groups to mitigate impacts of these sanctions on their decision making. See Robert Pape, *Why Economic Sanctions Do Not Work*, 22 INT’L SEC. 90, 93 (1997).

180. See *id.*

181. See *Dames & Moore v. Regan*, 453 U.S. 654, 673 (1981).

182. See *V.O.S. Selections, Inc. v. United States*, 772 F. Supp. 3d 1350, 1381–82 (Ct. Int’l Trade 2025).

183. *Regan v. Wald*, 468 U.S. 222, 243 (1984) (sustaining “the President’s decision to curtail the flow of hard currency to Cuba—currency that could then be used in support of Cuban adventurism—by restricting travel”).

4. A Criteria-Bound Tariff Exclusion Plan Can Survive Judicial Scrutiny

A court should uphold a president's action to invoke IEEPA to modify trade remedy duties by applying the deferential standard of review proffered under *Dames & Moore*, which requires courts to uphold presidential actions where legislative practice signals acquiescence and the action advances foreign affairs objectives.<sup>184</sup>

This proposed use of IEEPA directly engages the president's foreign affairs power. By leveraging tariffs as penalties, the president can incentivize major GHG emitting countries to enter into international agreements through diplomacy. This approach mirrors the application of country-wide sanctions, which presidents have long used to pressure foreign governments to change course.

Also, contrary to the conclusions reached by the *V.O.S. Selections* and *Learning Resources* courts, Congress has not expressly limited the president's emergency tariff power. Courts should interpret that prolonged legislative inaction as tacit authorization for the president to modify tariffs on selected types of merchandise. Lastly, under the proposal, the president should not use IEEPA to issue long-term tariffs changes for broad arrays of products, which would offend Congress' power to lay taxes and duties. Instead, the president should only exercise this statutory power to modify administrative tariffs created through the trade remedies proceedings on a temporary basis according to strict regulatory guidelines reasonably calculated to address the climate change emergency. The narrow focus of the presidential action would allow it to fall within the Executive's domain and avoid the constitutional concerns that courts have raised when the president attempts to unilaterally impose broad new trade rules.<sup>185</sup>

In conclusion, this proposed use of IEEPA adheres to statutory and constitutional limits, reinforces the president's diplomatic flexibility, and reflects a disciplined, calibrated exercise of emergency powers, which a court must uphold under *Dames & Moore*. Under this proposal,

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184. See *Dames & Moore v. Regan*, 453 U.S. 654, 675-88 (1981); see also Forte, *supra* note 148, at 55.

185. See *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 583-84 (C.C.P.A. 1975) (affirming the president's imposition of tariffs, limited in scope and duration, to address a balance-of-payments national emergency); see also *Dames & Moore*, 453 U.S. at 684-85. In *Dames & Moore*, the Court held that the temporary suspension of claims in federal courts did not constitute an unlawful deprivation of the federal courts' power to adjudicate cases and controversies under Art. III of the constitution. Similarly, a temporary modification of duties administratively imposed through trade-remedy proceedings does not constitute an unlawful intrusion on Congress's tariff power under Article I.

the president need not wait for legislative gridlock to clear. Instead, he can act decisively to use IEEPA as a diplomatic tool in the fight against climate change.

C. *Policy Recommendations on Using Section 318 to Lower Tariffs on Renewable Energy Products*

Section 318 of the Tariff Act of 1930 provides the second legal pathway for the president to alter the effects of trade remedies proceedings on renewable energy products. The Tariff Act of 1930 includes a rarely used emergency provision that allows the president to authorize the Secretary of the Treasury to permit the duty-free importation of certain products in times of emergencies.<sup>186</sup> Given the severe impact of global warming on the U.S. economy and security, the president could revive this statute, using it as a strategic policy instrument to modify existing trade remedies orders on imported renewable energy products. This action would encourage the United States to shift towards renewable energy, mitigate GHG emissions, and decrease global warming.

Facing increasing foreign competition and domestic pressure to maintain wages, Congress enacted the Tariff Act of 1930, furthering a trade protectionist agenda by raising the average tariff of U.S. imports by approximately 20%.<sup>187</sup> In Section 318 of the Act, however, lawmakers retained an emergency provision to grant the president the authority to facilitate the duty-free importation of emergency supplies for use in relief efforts.<sup>188</sup> Including an emergency provision within the general tariff-raising legislation of the interwar era likely reflected congressional apprehensions over the availability of wartime supplies.

Section 318 stipulates the following:

Whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time herein prescribed for the performance of any act, and may authorize the Secretary of the Treasury to permit, under such regulations as the Secretary of the Treasury may prescribe, the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work. The Secretary of the Treasury shall

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186. See Tariff Act of 1930, 71 Pub. L. No. 361, 46 Stat. 590, § 318; 19 U.S.C. § 1318.

187. See Brian Duignan, *Smoot-Hawley Tariff Act*, <https://www.britannica.com/topic/Smoot-Hawley-Tariff-Act> (last visited Feb. 20, 2026).

188. See Tariff Act of 1930, 71 Pub. L. 361, 46 Stat. 590, § 318; 19 U.S.C. § 1318.

report to the Congress any action taken under the provisions of this section.<sup>189</sup>

Following Reorganization Plan No. 3, as of January 1980, the Secretary of Commerce assumed specific functions previously held by the Secretary of the Treasury related to Section 318.<sup>190</sup> After October 2006, if the execution of the president's proclamation involves the removal of existing ADD or CVD orders, the Commerce Secretary should implement the duty reduction pursuant to 19 C.F.R. 358, a regulation issued by Commerce as authorized under Section 318(a) of the Tariff Act. When the president invokes Section 318 to adjust import duties in other circumstances, the secretary can conduct new rulemaking to implement the duty-free importation of emergency relief products.<sup>191</sup>

Section 318 used broad statutory language to convey vast discretion to the executive branch in selecting emergency supplies to receive duty-free treatment. However, the statutory language does not explicitly state whether the legislation grants such discretion to the president or merely to the secretary, who may select emergency supplies after receiving the president's permission.<sup>192</sup> If this discretion rests solely with the president, he can directly select emergency supplies or choose to delegate such authority to the secretary. If it also rests with the secretary, the president cannot bypass the secretary and unilaterally select emergency supplies.

The historical application of Section 318 supports the first interpretation of the statute. In May 1946, recognizing the significant challenge World War II veterans faced in obtaining housing upon returning from abroad, Congress enacted the Veterans' Emergency Housing Act, which declared a national housing emergency.<sup>193</sup> In October, President Harry Truman invoked Section 318 and ordered the importation free of duty of certain timber or lumber products suitable for housing constructions.<sup>194</sup>

Although President Truman invoked the statute after Congress declared a national emergency, he likely could have done so even without such a declaration from Congress. Section 2(c) of the Emergency Housing Act states that "the executive agencies of the government shall exercise their

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189. 19 U.S.C. § 1318(a).

190. *See generally* Exec. Order No. 12,188, 45 Fed. Reg. 989, 989-93 (Jan. 4, 1980); Reorganization Plan No. 3 of 1979, *reprinted in* 93 Stat. 1381 (1979).

191. *See* 19 C.F.R. § 358.103 (2013).

192. *See* 19 U.S.C. § 1318(a).

193. *See* L.B. WHEILDON, NATIONAL HOUSING EMERGENCY, 1946-1947 (1946); *See* Veterans' Emergency Housing Act of 1946, 79 Pub. L. No. 79-388, § 1, 60 Stat. 207, ch. 268, 2d Sess. (1946).

194. Proclamation No. 2708, 11 Fed. Reg. 12359 (Oct. 25, 1946).

emergency power and other powers for the purpose of aiding in the solution of the problems created by the existing housing emergency.”<sup>195</sup> This provision implies a congressional mandate for the use of the emergency statutory powers already granted to the executive branch. This congressional endorsement undoubtedly bolstered the legitimacy of Truman’s subsequent executive proclamation of a national emergency. However, no statutory language indicates that the president can only issue such a proclamation following a congressional declaration of emergency.

Therefore, when President Truman invoked Section 318 in 1946, he did not delegate authority to the Treasury Secretary; instead, through an executive proclamation, he instructed the Secretary to grant duty-free treatment to products selected by the Housing Expediter. Although the Emergency Housing Act established the Office of the Housing Expediter, it did not grant the Expediter the authority to select emergency relief supplies under Section 318.<sup>196</sup> Only by drawing discretionary power from President Truman’s executive proclamation could the Expediter gain the power to select such supplies. Subsequently, instead of selecting emergency supplies on a discretionary basis, the Treasury Secretary merely formulated procedural rules for importers to apply for duty-free treatment of the goods selected by the Expediter.<sup>197</sup> Thus, President Truman utilized his discretionary power to select emergency relief supplies independently from the Treasury Secretary.

Moreover, President Truman and his administration independently exercised their power under Section 318 of the 1930 Tariff Act without depending on any further authorizations provided by the Emergency Housing Act. While the proclamation mentioned the enactment of the Emergency Housing Act, it did not draw upon any statutory authority from the Act to support the president’s planned actions; instead, it referred to the Act merely as one of the considerations the president took into account when issuing the proclamation.<sup>198</sup> Following President Truman’s proclamation, the Department of Treasury issued a regulation allowing collectors of customs to admit the subject products duty-free.<sup>199</sup> The regulation drew

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195. Veterans’ Emergency Housing Act of 1946, 79 Pub. L. No. 79-388, § 2(c), 60 Stat. 207, ch. 268, 2d Sess. (1946).

196. *See* Veterans’ Emergency Housing Act of 1946, 79 Pub. L. No. 79-388, § 2(b), 60 Stat. 207, ch. 268, 2d Sess. (1946).

197. *See* Importation Free of Duty of Food, Clothing, and Medical, Surgical and Other Supplies Under Emergency Proclamation of the President, 11 Fed. Reg. 13457, 13460–61 (Nov. 14, 1946).

198. *See* Proclamation No. 2708, 11 Fed. Reg. 12359 (Oct. 25, 1946).

199. *See id.*

statutory authority solely from the president's proclamation rather than the Emergency Housing Act.<sup>200</sup>

Before invoking the emergency power, the president must declare an emergency. As discussed in the session regarding the utility of the president's IEEPA authority, considering the disastrous consequences of global warming, the president likely can also declare climate change to be a national emergency pursuant to the NEA prior to invoking Section 318. Section 318 allows the president to declare an emergency "by reason of a state of war, or otherwise,"<sup>201</sup> placing little limit on the president's discretion to determine whether an emergency has occurred. Previously, presidents declared states of emergency, invoking Section 318 when the country faced challenges, such as the housing crisis.<sup>202</sup> Considering the challenges presented to the U.S. economy and security by rising sea levels and extreme weather conditions, the president likely can declare global warming a national emergency based on a reasonable exercise of his discretion, warranted by the statutory regime of the NEA and Section 318.

After declaring a state of emergency, the president can direct the Commerce Secretary to issue regulations allowing the importation of certain renewable energy products duty-free.<sup>203</sup> Section 318 allows the president to authorize the secretary to permit "the importation free of duty of food, clothing, and medical, surgical, and *other supplies* for use in emergency relief work."<sup>204</sup> Applying traditional principles of statutory construction, including the ordinary meaning of words and the interpretive canons of *noscitur a sociis*,<sup>205</sup> reveals a compelling basis for including green energy products within the regulatory definition, particularly in the context of global warming as a recognized emergency.

First, the ordinary meaning of the term *supplies* is broad. The American Heritage Dictionary defines "supply" as "materials or provisions stored and dispensed when needed,"<sup>206</sup> which can cover a broad range of products. Also, the use of the plural term *other supplies* connotes that the items

200. *See id.*

201. 19 U.S.C. § 1318(a) (emphasis added).

202. *See, e.g.*, Importation Free of Duty of Food, Clothing, and Medical, Surgical and Other Supplies Under Emergency Proclamation of the President, 11 Fed. Reg. 13457, 13460–61 (Nov. 14, 1946).

203. *See* Reorganization Plan No. 3 of 1979, *reprinted in* 93 Stat. 1381 (1979) (Section 318 of the Tariff Act originally delegated authority to the Secretary of the Treasury. However, in 1979, pursuant to Reorganization Plan No. 3, Congress transferred this authority to the Secretary of Commerce).

204. 19 U.S.C. § 1318(a) (emphasis added).

205. *Noscitur a sociis* means "it is known by its associates."

206. *Supply*, AMERICAN HERITAGE DICTIONARY (5th ed. 2022).

enumerated before it are illustrative rather than exhaustive. Importantly, the quantifying phrase “for use in emergency relief work” indicates that the unifying feature of the enumerated items, including *other supplies* is the utility in emergency response.

Facing the proliferation of climate-related disasters, ranging from heatwaves and floods to wildfires and power outages, has revealed the acute need for resilient, off-grid energy solutions.<sup>207</sup> In such situations, green energy products are not merely tools of long-term mitigation; they serve as immediate instruments of relief. Solar panels deployed in disaster-stricken areas can restore power, run water systems, and support emergency response operations.<sup>208</sup> Thus, their utility in saving human life and supporting critical infrastructure places them squarely within the ordinary understanding of “emergency relief supplies.”

Moreover, the interpretive canon of *noscitur a sociis* reinforces this reading. The canon instructs that general terms following a list of specific ones should be interpreted in light of the common theme shared by the specifics.<sup>209</sup> In the phrase “food, clothing, and medical, surgical, and other supplies,” the commonality among the listed items is not their material composition, but their role in enabling human survival. Each item addresses important human needs, such as nutrition, protection, or medical care. The term *other supplies* should thus encompass goods that also serve an essential role during emergencies. Given that solar panels can restore power for critical infrastructures when tradition power sources fail,<sup>210</sup> their inclusion under the term *other supplies* is consistent with this common functional thread of emergency response. Thus, statutory interpretation principles strongly support the conclusion that the president has broad discretion in selecting the supplies that should receive duty-free treatment, so long as the choices help to address the climate change emergency. The president can direct the Commerce Secretary to lower tariffs for renewable products, such as solar panels and wind towers, to promote the development of renewable energy generation in the United States. The increased use of renewable energy sources reduces dependence on fossil fuels, which contributes to the reduction of U.S. GHG emissions, leading to the mitigation and relief of global warming.

The president can invoke Section 318 to allow entities to import certain renewable energy products duty-free on an ad hoc basis when the

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207. See Alex Tabibi, *Solar Power for Disaster Recovery and Emergency Relief*, GREEN.ORG (Jan. 30, 2024), <https://green.org/2024/01/30/solar-power-for-disaster-recovery-and-emergency-relief>.

208. See U.S. DEP’T OF ENERGY, COUNTING ON SOLAR POWER FOR DISASTER RELIEF 1 (1999).

209. 73 AM. JUR. 2D Statutes § 117 (2025).

210. See Tabibi, *supra* note 207.

president identifies an acute shortage in the U.S. market, preventing delays in developing renewable energy facilities. The president can adopt such a measure after declaring an energy shortage to be a national emergency.

Should the president declare global warming to be an emergency, rather than identifying specific products for Commerce to accord duty-free treatment, the president could direct the agency to enact a new regulation. This regulation would outline procedures enabling the U.S. government to adjust its existing trade remedies regime, allowing it to systematically address the effects of climate change and curbing its future progression. In this context, the Secretary, potentially in consultation with other federal agencies, could evaluate the climate impact of current trade remedies programs on various renewable energy products and propose a new rule to allow the duty-free importation of products that alleviate the effects of climate change. This approach would facilitate a more flexible response to the pressing issue of climate change and ensure that trade policies align with environmental sustainability goals.

D. *The Legality of Using Section 318 to Modify Trade Remedies Orders*

Although critics of the president's action may argue that he cannot show renewable energy products constitute emergency relief supplies under Section 318, case law suggests that the president should have board discretion when determining the contour of emergency reliefs under the context of international trade. In *Maple Leaf Fish Co. v. United States*, the appellant challenged the president's decision to impose safeguard duties on products claimed to be outside the scope of the investigation, contending that the available facts did not support the finding that its imports caused serious injury to the domestic industry.<sup>211</sup> The Court of Appeals for the Federal Circuit (CAFC) explained that courts have only a limited role in reviewing international trade controversies "involving the President and foreign affairs" and can only intervene if there is "a clear misconstruction of the governing statute, a significant procedural violation, or action outside delegated authority."<sup>212</sup>

Section 203 of the Trade Act of 1974 grants the president broad discretion to determine whether and how to provide safeguard relief. If the ITC delivers an affirmative finding that domestic industry has suffered a serious injury, the statute authorizes the president to take "all

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211. *See* *Maple Leaf Fish Co. v. United States*, 762 F.2d 86, 88 (Fed. Cir. 1985) (upholding the president's decision to impose additional duties on frozen mushrooms).

212. *Id.* at 89.

appropriate and feasible action” that the president believes would benefit the United States’ economic and social interests by considering nine non-dispositive factors.<sup>213</sup> Unlike the Section 201 safeguard provisions, Section 318 does not explicitly allow the president to select emergency relief supplies based solely on his discretion. On the other hand, Section 318 does not enumerate any factors that the president must consider when considering what constitutes supplies for use in emergency relief work. The lack of standard signals that a court would have no law to apply if a party chose to challenge the president’s determinations and thus must defer to the president’s fact-finding discretions as the CAFC did in *Maple Leaf Fish Co.*<sup>214</sup> Thus, as long as the president’s selection of duty-free supplies bears a reasonable relation to emergency relief, a court should sustain the president’s finding.<sup>215</sup> Considering the critical role affordable renewable energy products play in replacing fossil fuel energy and mitigating GHG emissions, the president likely can authorize the Secretary to permit the duty-free importation of renewable energy products to relieve the environmental emergency caused by climate change.

After receiving authorization from the president, the Commerce Secretary can exempt the renewable energy products from existing ADD or CVD duty orders pursuant to existing Commerce regulation.<sup>216</sup> The regulation requires the importer to submit a detailed request to

213. 19 U.S.C. § 2253(a).

214. In *Loper Bright Enterprises v. Raimondo*, the Supreme Court overruled the longstanding *Chevron* doctrine, which required courts to defer to reasonable agency interpretations of ambiguous statutes. 603 U.S. 369, 412–13 (2024). The Court held that such deference violates the Administrative Procedure Act by allowing agencies, rather than courts, to determine the law’s meaning. *See id.* This decision creates tension with the deferential standard applied in *Maple Leaf Fish Co.*, where courts upheld broad presidential and agency discretion under the trade statutes, effectively insulating escape-clause determinations from judicial scrutiny. 762 F.2d 86, 90. Although the *Maple Leaf* court did not expressly invoke *Chevron*, *see id.*, both the Court of International Trade and the Federal Circuit have since treated *Maple Leaf* as embodying a trade-specific analogue to *Chevron* deference. *See, e.g.,* PrimeSource Bldg. Prods. v. United States, 59 F.4th 1255, 1260 (Fed. Cir. 2023) (indicating that the Federal Circuit had repeatedly relied on the *Maple Leaf* standard to review non-constitutional challenges to presidential actions concerning trade). Thus, while *Maple Leaf* technically stands independent of *Chevron*, its continued force may be called into question following *Loper Bright*.

215. In *Auxin Solar v. United States*, the CIT held that 19 U.S.C. § 1318(a) does not authorize the duty-free importation of solar cells and modules, reasoning that these products are not ‘supplies for use in emergency relief work’ within the statute’s scope. *See* No. 23-00274, 2025 LX 394651, at \*23. The court reached this conclusion by relying on traditional tools of statutory construction and legislative history, but it failed to assess the lawfulness of the president’s action under the *Maple Leaf* standard. *See id.* at 14–29. This omission likely warrants reversal.

216. *See* 19 C.F.R. § 358.103 (2013).

Commerce containing, among other things, information regarding the to-be-imported products and the ADD or CVD orders affecting these products.<sup>217</sup> If approved for duty-free importation as a product for emergency relief work, the Secretary will notify the requester, publish the determination, and instruct CBP to permit entry of the merchandise without applying ADD and CVD.<sup>218</sup> The regulation does not explicitly require the Secretary to predicate his or her determination upon a finding that the selected product constitutes an emergency relief supply. 19 C.F.R. § 358.102 defines supplies for use in emergency relief work as “food, clothing, and medical, surgical, and *other supplies* for use in emergency relief work.” In the final rule publication, Commerce refused to limit the definition to food, clothing, medical, and surgical supplies because “identification of needed supplies will be dependent on the circumstances of an actual declared emergency.”<sup>219</sup> Thus, if the president declares global warming to be a national emergency, 19 C.F.R. Part 358 itself presents no obstacle that would prevent the Commerce Secretary from permitting the importation free of duties of renewable energy products. In practice, the president can directly select the products that he or she determines should receive duty-free treatment as supplies to relieve climate change. By doing so, the president can deprive the Secretary of the discretion to select which products should constitute an emergency relief supply, ensuring the renewable energy products selected by the president would receive duty-free treatment.

Section 318 stipulates that the president “may authorize the [Secretary] to permit, under such regulations as the [Secretary] may prescribe, the importation free of duty of . . . supplies for use in emergency relief work.”<sup>220</sup> A plain reading of the statute indicates that Section 318 delegates to the Commerce Secretary the rulemaking authority to establish regulations governing whether to select a product as an emergency relief eligible for duty-free importation. Although Commerce has already established a rule for exempting products from existing ADD and CVD orders, Commerce, pursuant to Section 318, can promulgate new rules through agency rulemaking if new procedures can more appropriately address the global warming emergency.

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217. 19 C.F.R. § 358.104 (2013).

218. *Id.*

219. Procedures for Importation of Supplies for Use in Emergency Relief Work, 71 Fed. Reg. 63230–31 (Oct. 30, 2006).

220. 19 U.S.C. § 1318(a).

VIII. CONCLUSION

Maintaining a hospitable environment, the largest common good shared by all, presents the most serious collective action problem for humankind. Politicians face significant pressure when making policy choices to achieve long-term climate goals at the expense of short-term economic growth. No president of the United States would allow foreign producers alone to supply the U.S. transition to renewable energy sources. However, as the United States has begun actively subsidizing the development of its domestic renewable energy industries, loosening import restrictions and allowing U.S. energy consumers to reap the benefits of affordable renewable energy products could tangibly accelerate the U.S. transition to green energy without jeopardizing its domestic industries. By lowering the remedial duties imposed on renewable energy products, the president can provide economic benefits to the installation and servicing sectors of the renewable energy industry by making the equipment more affordable and appealing to consumers.

This Note demonstrates that a willing administration has policy tools at its disposal to bypass legislative gridlocks and modify existing trade remedies measures through the broad emergency authorities that Congress has granted to the president. After declaring a national emergency, the president can choose to use IEEPA or Section 318 of the Tariff Act to regulate trade or permit U.S. entities to import certain renewable energy products duty-free and modify existing trade remedies orders. The president should exercise these authorities and engage in multilateral negotiations with the United States' trading partners to promote green subsidies and improve U.S. consumers' access to more affordable renewable energy products to facilitate the U.S. transition to green energy. This Note aims to provide additional legal solutions for the president to utilize the existing statutory toolbox to achieve this goal.