

What is the Plan B on tariffs?

301

Target *specific countries* with Section 301 tariffs for unreasonable/discriminatory acts, policies, or practices that burden U.S. commerce.

Why would this make sense as the Plan B? This is a traditional trade tool for investigating and retaliating against unfair trade practices. It would make sense for addressing nontariff barriers.

Why might this not be used? 1. **Procedural restrictions.** It requires an investigation that could take months. Does USTR have the resources to launch 193 separate investigations to keep the current reciprocal tariff regime? 2. Limited to unfair trade practices – not Greenland, fentanyl, raising revenue, etc.

Recent 301 investigations

- **China's** Forced Technology Transfer Policies and Practices (initiated August 24, 2017)
- **EU** Large Civil Aircraft Dispute (initiated April 12, 2019)
- Digital Services Taxes in 11 nations: **Brazil, India, Indonesia, Italy, Spain, Turkey, UK** (initiated July 10, 2019, June 5, 2020)
- **Vietnam** Timber (initiated October 2, 2020)
- **Vietnam** Currency (initiated October 2, 2020)
- **China's** Targeting the Maritime, Logistics, and Shipbuilding Sectors for Dominance (initiated April 17, 2024)
- **Nicaragua** Labor Rights, Human Rights, and Rule of Law (initiated December 10, 2024)
- **China's** Targeting of the Semiconductor Industry for Dominance (initiated December 23, 2024)
- **Brazil's** Digital Trade and Electronic Payment Services; Unfair, Preferential Tariffs; Anti-Corruption Enforcement; Intellectual Property Protection; Ethanol Market Access; and Illegal Deforestation (initiated July 15, 2025)
- **China's** Implementation of Commitments Under the Phase One Agreement (initiated October 24, 2025)

What is the Plan B on tariffs?

232

Target *specific products* with Section 232 tariffs if those imports threaten U.S. national security.

Why would this make sense as the Plan B? 1. This is a traditional trade tool that would allow for an easy pivot to a more strategic and targeted approach. 2. Would give more control to Commerce Secretary Lutnick.

Why might this not be used? 1. **Procedural restrictions**. It requires an investigation that could take months. 2. It would not be a good tool for reciprocal tariffs on every country: it is hard to argue every product in the world is a threat to U.S. national security.

Key Prior 232 investigations

Steel (2018)

Aluminum (2018)

Automobiles and auto parts (2018)

232 investigations started in 2025

Copper (March 10)

Timber and Lumber (March 10)

Semiconductors and Semiconductor Manufacturing Equipment (April 1)

Pharmaceuticals and Pharmaceutical Ingredients (April 1)

Medium-Duty Trucks, Heavy-Duty Trucks, Medium- and Heavy-Duty Truck (April 22)

Processed Critical Minerals and Derivative Products (April 22)

Commercial Aircraft and Jet Engines (May 1)

Polysilicon and its Derivatives (July 1)

Unmanned Aircraft Systems and Their Parts and Components (July 1)

Wind Turbines (August 13)

Personal Protective Equipment, Medical Consumables, Medical Equipment (Sept 2)

Robotics and Industrial Machinery (Sept 2)

What is the Plan B on tariffs?

122

Use Section 122 of the Trade Act of 1974 to put in place *immediate tariffs* of up to 15 percent for 150 days on countries with which the U.S. runs large balance-of-payments deficits.

Why would this make sense as the Plan B? 1. Immediate tariffs, no hearings needed. Could focus on all trade deficit countries, which is one of the major concerns highlighted by the administration. 2. This might be the logical tool for targeting trade deficits (balance of payments).

Why might this not be used?

- **Congress must step in and approve the tariffs after 150 days!!**
- Would be limited to only the trade deficit issue ... not fentanyl, Brazil corruption, Greenland, etc.
- Limited duties: could only do 15 percent tariffs

“We also have a backup plan that is really solid. We can put a 10 percent tariff on right away to make up most of the room and then use things like the 301 authorities [and] the 232 authorities to backfill the things that we’ve already achieved with these great deals with countries ... There's a special authority in circumstances like this, where there's a 10 percent tariff that could last for six months, **which would give you time to sort of iron things out.**”

– White House National Economic Council Director Kevin Hassett on Fox Business, January 16, 2026

What is the Plan B on tariffs?

338

Use Section 338 of the Trade Act of 1930 to impose *immediate tariffs* of up to 50 percent on countries that discriminate against the U.S. If the country continues to discriminate, the President could block imports from that country.

Why would this make sense as the Plan B? Immediate tariffs, no hearing needed. Broad authority – 50% tariffs, full import bans.

Why might this not be used?

- Legal challenge? No president has ever used Section 338. Is Section 301, a more recent law, now the legal tool for addressing discriminatory trade practices? Has Section 301 superseded 338?
- **These practices must uniquely disadvantage U.S. exporters and not be applied to all countries.**
- Would be limited to certain discriminatory trade practices ... not fentanyl, Greenland, raising revenue, etc.

“Well, what if the President tomorrow were to say, I'm reissuing these executives orders and -- and I'm invoking, in addition to other authorities, Section 338 of the Tariff Act of 1930 ... If that were to happen and it might be a realistic possibility, you think, well, okay, then the government would continue to try to collect these tariffs and the plaintiffs here would have to go back to the Court of International Trade or the district court and challenge it again, and it would have to progress through those lower courts and come back to us when, a year from now, six months from now, while the tariffs continue to be collected and the amount that's at stake mounts into the billions? I mean, what are we at now? A hundred billion? We get up to -- up to a trillion?” – **Justice Alito, Supreme Court Oral Arguments, Nov 5, 2025**

What is the Plan B on tariffs?

IEEPA

Put in place a complex system of import licenses through IEEPA.

Why would this make sense as the Plan B? The text of IEEPA does not include the word “tariffs” but it does include “licenses.” The President could require companies to obtain a license to sell in the U.S. (basically a quota system).

Why might this not be used? 1. Logistical nightmare for the administration (unless it does a more strategic approach). 2. Debate over license fees vs. licenses. Does the fee have to be a nominal amount? Would a huge fee to raise revenue be seen as effectively a tariff?

"I don't know what the Supreme Court is going to do. I think, to me, [IEEPA] reads so plainly — couldn't be plainer. You are allowed to do a license [under IEEPA]. Tariff is probably less severe than what a license can be.”

– **President Trump, January 21, 2026**

JUSTICE BARRETT: Could the President regulate commerce under IEEPA by using a licensing fee?

MR. KATYAL: Not a fee. So I should have said this earlier, but license is different from a licensing fee. IEEPA and TWEA authorize licenses, not license fees. And no president has ever charged, to my knowledge, fees under those two statutes for the licenses. So fee is impermissible. License is okay.

JUSTICE BARRETT: Fee is permissible if they cover the cost of the scheme?

MR. KATYAL: Might be. Might be ... but, once they start revenue-raising, you implicate the most serious concerns ...

- **Supreme Court Oral Arguments, November 5, 2025**