ECONOMIC NOTES

TAXATION SERIES

The Legal Battle Over Trump's Tariffs: Implications for Canada

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with the collaboration
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SEPTEMBER 2026

MEI Ideas for a More Prosperous Society

Since returning to power in January 2025, President Donald Trump has sought to impose massive tariffs on imports from Canada, as well as numerous other trading partners. This policy is simultaneously harmful, unjust, illegal, and damaging to the US, Canadian, and world economies. It is also needlessly poisoning US relations with Canada and other crucial allies.

Trump's initial tariffs were invalidated by the US Supreme Court, and more recent ones may well also be struck down. But even if invalidated by courts, illegal tariffs and associated economic uncertainty may still persist for many months. Canada would do well to recognize that these US tariffs are unpopular and rest on shaky legal ground, and try to capitalize on the resulting opportunities.

THE STORY SO FAR

In February 2025, President Trump tried to use the *International Emergency Economic Powers Act* of 1977 (IEEPA) to impose 25% tariffs on Canada, ostensibly to combat the smuggling of fentanyl across the US-Canadian border. On April 2, 2025, he invoked the same law to impose general 10% tariffs against most US trading partners around the world, plus additional massive tariffs against several dozen nations, supposedly to combat trade deficits. After extensive litigation, the US Supreme Court eventually invalidated these tariffs, in a case I helped litigate on behalf of five small businesses (eventually consolidated with two other cases).[1]

The Supreme Court held that the IEEPA does not authorize the imposition of tariffs at all and emphasized that under the US Constitution, tariffs are a congressional power, not an executive one. The Court also held that the president is not entitled to unlimited power to "impose tariffs on imports from any country, of any product, at any rate, for any amount of time."[2] Three Supreme Court justices and two lower court rulings also concluded the IEEPA tariffs run afoul of the "major questions doctrine," which requires Congress to speak clearly when authorizing the executive to make "decisions of vast economic and political significance."

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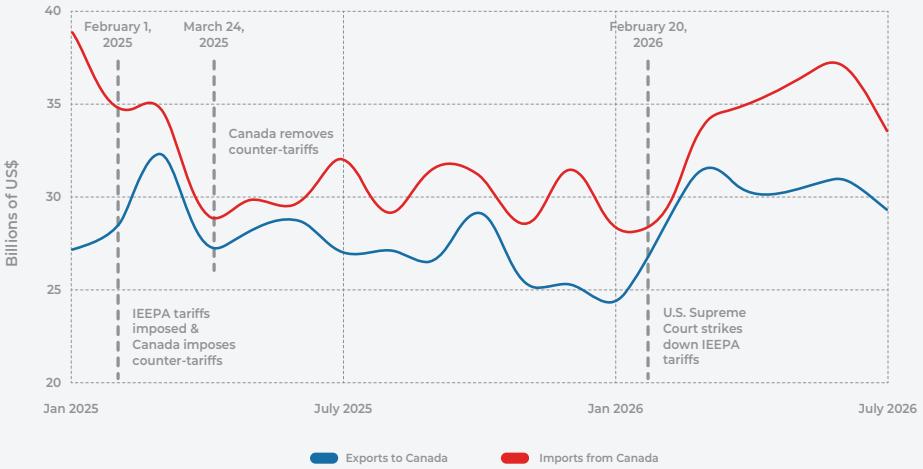
Immediately after the Supreme Court's ruling, the president tried to use Section 122 of the *Trade Act* of 1974 to impose similar 10% tariffs on imports from around the world (though Canadian imports were largely exempted). The US Court of International Trade rightly invalidated these tariffs on the grounds that Section 122 can only be used in response to a balance-of-payments crisis of a kind that generally cannot occur under a flexible exchange rate regime, and that Trump's interpretation of Section 122 would, if accepted, create an unconstitutional delegation of legislative power to the executive.[3] The case is currently on appeal to the US Court of Appeals for the Federal Circuit.

Figure 1 illustrates the effects of the IEEPA tariffs on US trade with Canada. US imports from

and exports to Canada declined following the imposition of the tariffs, while trade rebounded immediately after the Supreme Court struck down the IEEPA tariffs.

FIGURE 1

IEEPA Tariff Impact on United States Trade with Canada



Source: U.S. Census Bureau, "Trade in Goods with Canada," International Trade, 2024, accessed September 8, 2026.

Trump has also sought to use Section 301 of the 1974 Act to impose 10-12.5% tariffs on sixty US trading partners, including Canada, the European Union and many more. These tariffs were instituted on the pretext that all these countries allow the importation of goods made with "forced labor" in ways that somehow burden US exports. Section 301 allows the U.S. Trade Representative (USTR) to impose tariffs if it finds, after an investigation, that "an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce."[4]

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In this case, the "forced labor" investigation is a blatant sham designed to reach a predetermined conclusion;[5] nor is there any real proof that the policies in question meaningfully burden US exports. In addition, the administration's interpretation of Section 301 violates both major questions of doctrine and constitutional constraints on the delegation of legislative power to the executive; Trump is trying to use Section 301 to claim the virtually unlimited tariff power the Supreme Court rejected in the IEEPA case.[6]

Three lawsuits challenging the Section 301 tariffs have already been filed (including one filed by 25 state governments, and another by the Liberty Justice Center, the public interest organization I had worked with on the IEEPA case, on behalf of small business importers).[7] The Court of International Trade is likely to make a decision within the next few weeks. Here, too, there is a significant likelihood the courts will ultimately rule against the president.

Most recently, Trump has tried to use Section 338 of the notorious 1930 Smoot-Hawley tariff Act (which severely exacerbated the Great Depression) to try to impose 50% tariffs on various Canadian imports. Section 338 has never been used. Trump's attempt to exhume it may well also be struck down in court, because Section 338 has been superseded by later laws and because his invocation of it does not meet the provision's own requirements.[8] In addition, his broad interpretation of Section 338 is subject to challenge based on the major questions and nondelegation doctrines;[9] the latter constrains delegations of legislative power to the executive. At the time of writing, no legal challenges to the Section 338 tariffs have yet been filed, but it is likely some will be filed soon, by state governments, importers, or others.

UNJUSTIFIABLE AND UNPOPULAR

There is no justifiable defense for President Trump's tariff policy, which has undermined a trade relationship and alliance that, in recent decades, was largely free of protectionist impediments. But Canadians should keep in mind that all or most of the new Trump tariffs may well be invalidated in court, just as the IEEPA tariffs were.

In addition, the president's tariffs—both those against Canada and his more general tariff policy—are deeply unpopular in the US, because most Americans have come to understand that they raise prices and damage the US economy. A recent Ipsos poll found that 57% oppose the tariffs against Canada, while only 20% support them.[10] (The same poll found that 63% oppose Trump's effort to rename Lake Ontario, while only 14% support it.) Another recent survey found that 58% oppose new tariffs against Canada, while only 26% support them.[11]

Moreover, a March 2026 Ipsos survey found that 55% of Americans have a "favorable" view of Canada, compared to only 10% who view it unfavorably.[12] Indeed, Canada is much more popular in the United States than is Donald Trump, who has highly negative approval ratings.[13] That creates an opportunity for Canada to work with American opponents of the tariffs in order to end them.

Despite their unpopularity and the likelihood of defeat in court, the tariffs could still inflict harm and create uncertainty lasting for many months. It can take a long time for courts to resolve these cases (as the IEEPA case shows, having taken ten months from start to finish). Moreover, if the courts fail to block the tariffs until appellate litigation concludes, billions of dollars of illegal tariffs might be collected in the meantime, causing extensive economic damage. Trump used the IEEPA tariffs to collect some US$166 billion in illegal payments before the Supreme Court finally stopped him; even now, not all of the illegally collected funds have yet been refunded.[14] But the courts might reduce such damage by refusing to stay early rulings against the new illegal tariffs.[15]

In addition, Canada should work with Americans who oppose the tariffs in order to enact new legislation—possibly including a new CUSMA trade agreement—that clearly blocks the unilateral imposition of future tariffs by the executive, so that no future president can repeat Trump's harmful actions. The new agreement should also require that any court decisions striking down illegal tariffs take immediate effect and not be stayed until appellate litigation concludes, which would limit the harmful impact of illegal tariffs. Such reforms almost certainly will not happen while Trump is in office, as he can veto legislation he opposes, and a veto override requires a two-thirds majority in both houses of Congress. But he has only about two years to go, much of which time is likely to be a "lame duck" period.

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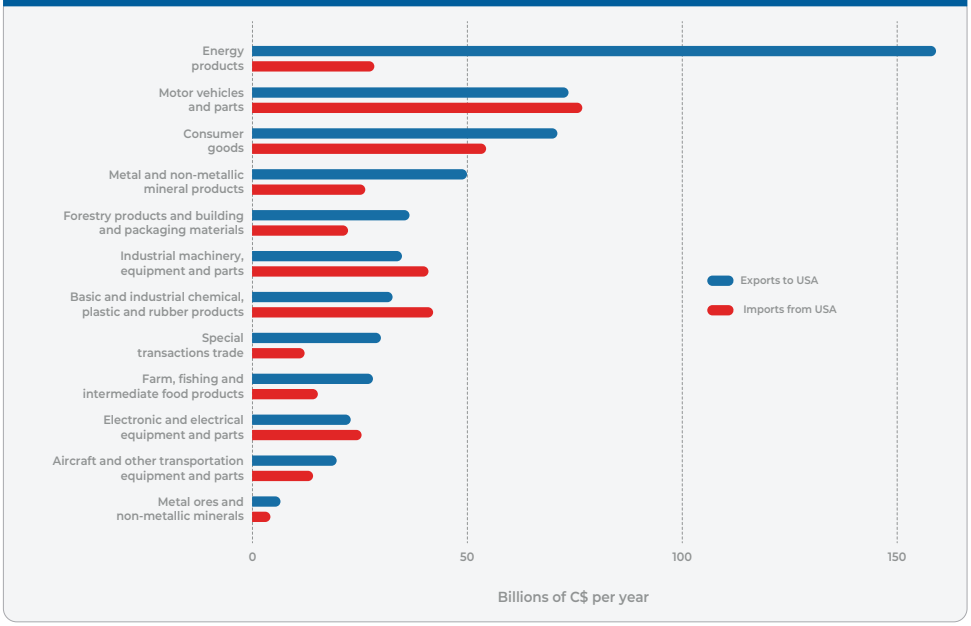
COUNTERPRODUCTIVE COUNTER-TARIFFS

In light of the potential success of litigation and future negotiations, Canadians should carefully consider the extent to which counter-tariffs (recently imposed by the Liberal government led by Prime Minister Mark Carney) are the right approach.[16] Canadians' desire to hit back at Trump is entirely understandable. If he were the only one likely to suffer, there could be no argument against it. But as Canadian economist Vincent Geloso explained in a recent MEI paper, counter-tariffs harm Canadian consumers, and the Canadian economy generally, and are unlikely to effectively influence US policy.[17]

Figure 2 illustrates the importance of US-Canada trade to the Canadian economy. In 2025, energy, motor vehicles and parts, and consumer goods were the largest categories of Canadian exports to the United States, while motor vehicles and parts, consumer goods, and industrial chemicals were among the largest categories of imports from the United States.

FIGURE 2

Canada Exports and Imports with the USA (2025)



Source: Statistics Canada. Table 12-10-0171-01. Canadian international merchandise trade by country and by product section, customs-based, annual (x 1,000), August 4, 2026.

In addition, counter-tariffs might weaken one of the legal arguments against the Section 338 tariffs, which focuses on the requirement that Section 338 be used to counter discriminatory trading-partner tariffs against American goods.[18] Most of the Canadian trade restrictions initially targeted by Trump do not actually treat US imports less favorably than others; but the new counter-tariffs necessarily do discriminate against US imports. The plaintiffs might still win this argument, on the basis that there were few or no discriminatory Canadian tariffs when the Section 338 levies were imposed by Trump. But it is hard to predict how a court would handle this particular point.

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In sum, Trump's tariffs against Canada are harmful, illegal, and indefensible. Canadians, like Americans, should carefully consider how to get rid of them as fast as possible, minimize the damage they inflict, and prevent a recurrence of similar abuses.

This Economic Note was prepared by **Ilya Somin**, Professor of Law at George Mason University and Senior Fellow at the MEI, in collaboration with **Renaud Brossard**, Vice President of Communications at the MEI. The MEI's Taxation Series aims to shine a light on the fiscal policies of governments and to study their effect on economic growth and the standard of living of citizens.

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