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Turbulence Ahead: Tariff and Trade Policy Shifts Are Expected Amid Looming Supreme Court Decision

Contributing Partner

Brooks E. Allen / Washington, D.C.

Counsel

Cynthia C. Galvez / Washington, D.C.

Associate

Jacob F. Bell / Washington, D.C.

This article is from Skadden's *2026 Insights*.

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One Manhattan West
New York, NY 10001
212.735.3000

Key Points

- The U.S. Supreme Court is currently reviewing the legal authority underpinning some of President Trump's signature trade actions. At oral argument in November 2025, the Court appeared skeptical of the administration's novel use of these emergency powers.
- If the Court rules against the Trump administration, the president may rely on new and existing alternative tariff authorities to accomplish much of his trade agenda, albeit in some cases subject to greater procedural requirements.
- The administration will likely continue to pursue trade negotiations regardless of the outcome of the Court case and press for changes to the USMCA.
- The sharp increase in Section 232 investigations over the past year will likely continue and result in new duties on many of the industries targeted, covering significant segments of the economy.

Transformative Trade Policies

From the perspective of tariffs and trade policy, 2025 was a year that many companies would prefer to put in the rearview mirror. There was an explosion of tariffs, from those imposed by President Donald Trump under the International Emergency Economic Powers Act (IEEPA) to an array of sectoral tariffs implemented under other authorities, such as Section 232 of the Trade Expansion Act of 1962 (Section 232).

It was a year of pervasive uncertainty, of tariffs threatened and withdrawn, raised and reduced. Trade agreements that were bedrock elements of the commercial landscape, such as the United States-Mexico-Canada Agreement (USMCA), began to look fragile amid the tariffs that seemed to vitiate hard-won tariff preferences.

At the same time, new trade framework agreements were struck, offering the potential for new market access, but typically without formal, legally binding text to fall back on.

We expect to see many of these same dynamics — uncertainty, changing tariff programs and structures, a shifting trade agreement landscape — continue in 2026. It is possible that with midterm congressional elections looming, we will see President Trump moderate his tariff policies somewhat as political concerns over the cost of living continue to grow. But we expect him to reach in the first instance for tools that do not require tampering with or restraining his core tariff programs, such as tax credits and subsidies. He may also integrate carve-outs and exemptions into his tariff programs.

IEEPA Tariff Litigation

In 2025, President Trump invoked IEEPA to impose a series of sweeping tariffs, including:

- Tariffs on China, Canada and Mexico in connection with their alleged complicity in the flow of fentanyl into the U.S.
- "Reciprocal" or "baseline" tariffs on virtually all countries.

The actions represented an untested assertion of authority, as IEEPA had never previously been used to impose tariffs.

On November 5, 2025, the U.S. Supreme Court heard oral arguments in a consolidated set of cases challenging the legality of the IEEPA tariffs after several lower

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courts held the measures to be unlawful. While questions asked during oral arguments are not necessarily indicative of how the Court will eventually resolve a case, a majority of justices individually expressed skepticism about whether IEEPA could be read to authorize tariffs. Many observers expect an opinion to be released by early 2026.

The justices devoted scant attention to the issue of how to provide refunds of duties that importers have already paid if the Court strikes down the tariffs. One justice described the refund issue as a "mess." While there are well-established procedures for refunds in conventional customs matters, the unprecedented nature of the IEEPA tariffs adds uncertainty to how potential reimbursement would be resolved.

The details of any refund process would depend on the scope of the Court's ruling, the perspective of the lower courts on remand and the administration's approach, including whether it elects to create a uniform refund program through rulemaking. Among the key issues for any refund program, and one briefly addressed during oral arguments, is whether relief would be retroactive or merely apply prospectively.

Potential Alternative Tariff Authorities

Even if the Supreme Court invalidates the IEEPA tariffs, the president would still be equipped with alternative authorities to impose duties.

The Trump administration has already made frequent use of Section 301 of the Trade Act of 1974 (Section 301) and Section 232. Section 301 allows the Office of the U.S. Trade Representative (USTR) to impose duties in response to foreign trade practices that are "unreasonable" or discriminatory, whereas Section 232 allows the president to target imports that pose national security risks.

The powers conferred by both statutes are subject to certain procedural requirements, in contrast with IEEPA. Sections 301 and 232 require USTR and the Department of Commerce, respectively, to conduct investigations before imposing a remedy, whereas under IEEPA, the president can take action immediately, without conducting an investigation or making factual findings.

In other words, Sections 301 and 232 cannot be used to suddenly impose new tariffs, or increase or decrease existing tariff rates.

The administration could also leverage long-dormant statutes such as:

- Section 122 of the Trade Act of 1974, which authorizes the president to impose tariffs up to 15% and for 150 days in response to balance-of-payments deficits.
- Section 338 of the Tariff Act of 1930, which allows tariffs up to 50% on goods from countries that engage in discriminatory trade practices.

Trade Agreements

On April 2, 2025, President Trump imposed a 10% "baseline" tariff on all goods imported from most countries, with nearly 60 additional countries subject to typically higher "reciprocal" tariffs.

The action brought many governments to the negotiating table to avert steep levies, ushering in a wave of bilateral arrangements with varying degrees of legal weight and finality. These agreements often took the form of nonbinding framework agreements that remain subject to further negotiation.

Characterized broadly, the trade partners agreed to:

- Reduce tariff barriers on U.S. products.
- Open market access through recognition of U.S. safety certifications.
- Commit to substantial investments in the U.S.

In some cases, these partners agreed to align certain trade policies (*e.g.*, regarding China) with those of the U.S. In return, the U.S. backed down from many of the larger tariffs it had initially proposed.

The Supreme Court's upcoming IEEPA ruling could place these bilateral trade deals under additional scrutiny. Limitations on the president's tariff powers could prompt trade partners to reopen negotiations or modify their bargaining position in ongoing negotiations.

2026 will also be a crucial year for the USMCA. The three parties to the treaty are slated to conduct a joint review in July 2026 to determine whether to extend it. The three governments are already engaged in discussions about how to modify the agreement before it can be extended.

The Trump administration has floated a range of ideas, including some that would involve far-reaching changes, such as scrapping the trilateral USMCA and replacing it with two bilateral agreements. Other possible changes include tightening rules of origin, modifying Canada's dairy regime and taking coordinated steps to counter China's trade policies and influence.

Section 232 Investigations

The Trump administration made unprecedented use of Section 232 investigations in 2025, leveraging them as a tool for "supply chain sovereignty," and targeting intermediate goods and advanced technologies. As discussed above, Section 232 allows Commerce to investigate imports that may give rise to national security concerns and provide recommendations to the president, who can impose tariffs or other measures with respect to such imports.

Section 232 arguably is the president's most durable trade authority, and the one that is perhaps least amenable to judicial review.

Commerce has launched or relaunched roughly 17 Section 232 investigations, including into:

- Robotics and industrial machinery
- Pharmaceuticals
- Semiconductors
- Critical minerals
- Polysilicon
- Unmanned aircraft systems

The administration has already converted findings into action, imposing tariffs on copper, steel, aluminum (as well as "derivative" products made from these three metals) and lumber.

In 2026 we may see tariffs, quotas and other measures imposed following investigations into, among other products, semiconductors, robotics, polysilicon and pharmaceuticals.

We could also see new investigations initiated, depending on the outcome of the Supreme Court's ruling on IEEPA.

Final Thoughts

The coming year will be pivotal for U.S. trade policy. The Supreme Court's decision on the IEEPA tariffs will determine whether the administration may continue to rely on these emergency economic powers or shift to other statutory authorities.

Regardless of the outcome, the Trump administration retains ample tools — particularly Sections 122, 232 and 301 — to impose new duties, shape supply chains and pressure trading partners.

Many governments have already entered bilateral negotiations to mitigate tariff exposure, and these arrangements may face renewed scrutiny if the Court limits the president's tariff powers. Companies should expect continued volatility as the administration adjusts tariff measures and bilateral commitments in response to legal and geopolitical developments.

At the same time, the surge in Section 232 investigations signals that national security-based trade restrictions will remain a central policy instrument. With several major investigations concluding in 2026 — and with more investigations likely to be initiated if IEEPA authorities are curtailed — importers should prepare for additional restrictions in the year ahead.