

The Trade Emperor Has Always Been Stark Naked

di Paul Krugman

I'd like to apologize for the crude language I used in my [initial reaction](#) to the Court of International Trade ruling basically invalidating Donald Trump's entire tariff policy.

OK, that's a lie. Given the circumstances, I was entirely justified in using a bad word. But by gosh and heavens to Betsy, I'll try to be a bit more decorous today. So here goes.

Punitive tariffs on everyone, including the penguins of uninhabited islands, have been one of the Trump administration's signature policies, along with epic corruption and abductions by masked men claiming to be federal agents. All of these policies have involved blatant violations of the letter of the law, its spirit, or both. But there has been very little effective pushback.

So it came as a shock yesterday when the United States [Court of International Trade](#) suddenly ruled that almost everything Trump has been doing on tariffs is illegal. The Court is clearly right on the merits. But I, like many observers, thought that we were past the point where the merits of cases mattered. It's gratifying to learn that I was wrong.

For the past 90 years U.S. tariff policy has been set through a process of negotiation with other countries — we'll cut our tariffs if you cut yours. The purpose of these negotiations is, in large part, to protect ourselves from our own special interests. Once a trade deal has been struck, Representative Bomfog of Middletown can't insert a special provision benefiting his district's paperclip factory.

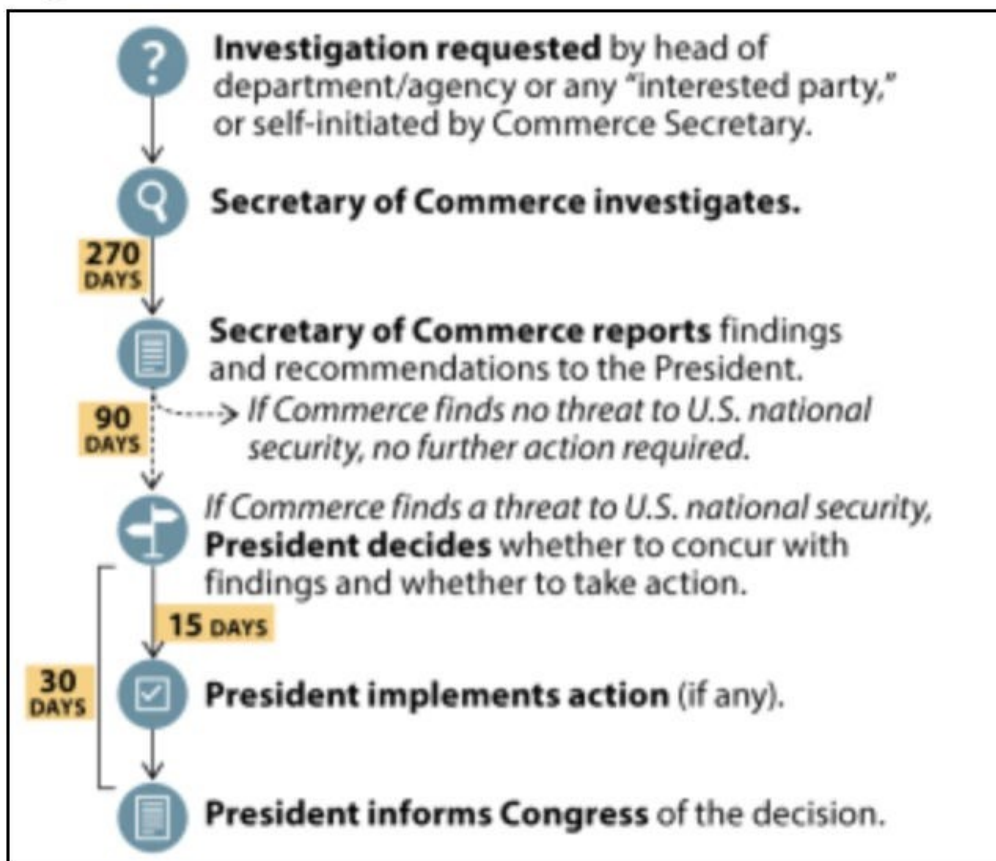
But the rigidity of trade deals can itself be a problem. What if rapid changes in trade create irresistible pressure to do something, but you don't want to renegotiate everything? So U.S. trade law creates some safety valves — conditions under which presidents can unilaterally impose temporary tariffs that relieve some of the political

pressure. The idea was always that presidents, keeping in mind both domestic economic consequences and relations with our allies, would use that discretionary power sparingly.

It was a very clever system, but one utterly unprepared to deal with a president like Donald Trump.

Until he announced the massive “Liberation Day” tariffs on April 2, Trump mainly relied on [Section 232](#) of the 1962 Trade Expansion Act, which empowers the president to impose tariffs when imports “threaten to impair national security.” Such tariffs are supposed to follow a quasi-judicial process in which the Commerce Department investigates the claim, reaches a decision, and the president then chooses whether to act:

Figure 1. Overview of Section 232 Process



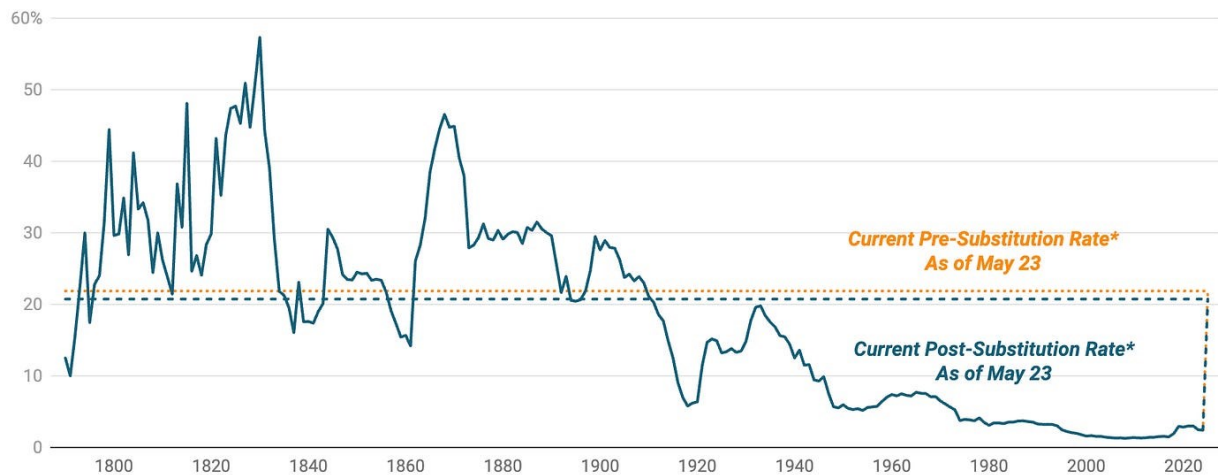
Source: CRS graphic based on 19 U.S.C. §1862.

But hey, this is the Trump administration, so if the president wants his flunkies' officials' opinion, he'll tell them what it is. The result has been a series of absurd claims — Canadian aluminum is a national security threat? — but no real pushback.

But Trump wanted to do much more:

Figure 2. U.S. Average Effective Tariff Rate Since 1790

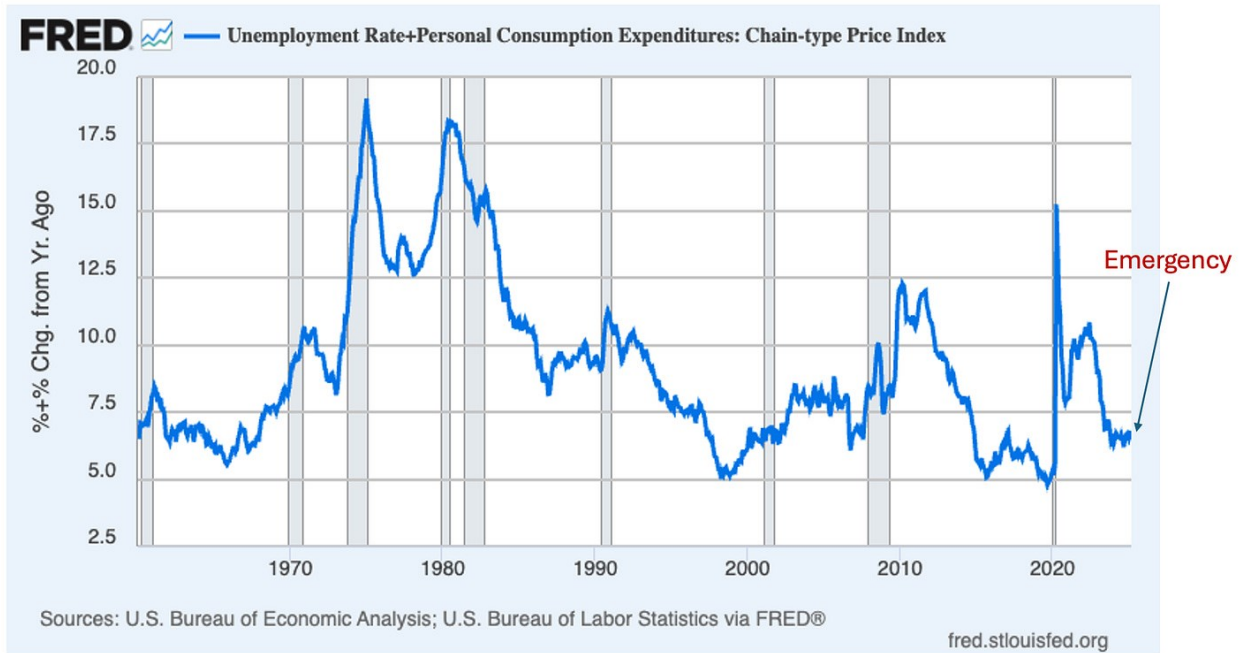
Customs duty revenue as a percent of goods imports



Section 232 and a grab-bag of other measures weren't going to be enough to get there. So Trump invoked the [International Emergency Economic Powers Act of 1977](#), which gives the president very broad powers under emergency conditions. And so he went ahead tariffing everyone, penguins included.

It turns out, however, that really major tariff changes are subject not to a quasi-judicial process involving MAGA loyalists, but to an actual judicial process involving the Court of International Trade, which is a real court populated by real judges appointed for life.

And the Court, to almost everyone's surprise, decided to do its job. It basically said to Trump, "What is this economic emergency of which you speak?" Take a crude but useful measure of the state of the U.S. economy, the "misery index" — the sum of unemployment and inflation:



Do you see an emergency there? I don't, and neither did the Court, which as I understand it demanded that Trump call off his trade war immediately — do not pass Go, do not collect \$2 billion in crypto.

Presumably the Trumpists will try to undo this judgment, one way or another — exploiting other loopholes in the law, maybe trying to bully the Court into submission, maybe just defying the Court altogether. But this is a huge political defeat, and Trump has nobody to blame except his own overreach. You can bet that trade negotiators around the world are snickering, and maybe celebrating with [TACOs](#) for lunch.