

Learning about Legislation #18 - Tariffs

News broke this week that President Trump was going to impose tariffs on foreign made washing machines and solar panels. A tariff is a set amount of money, expressed as a percentage of the cost of the item, that is levied by US Customs when a foreign-produced item is imported into the United States. The real question, though, is whether the President has the right to unilaterally introduce or change a tariff.

The Constitution is clear on this issue. It states, in Article I, "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." This is referred to as the Origination Clause, or alternately, the Revenue Clause. And tariffs clearly fall under the category of raising revenue, along with implementation of taxes or assessing fines. Thus, all tariffs should originate in the House of Representatives.

What complicates the issue is that the President holds the power to negotiate treaties with foreign powers. To that end, the Congress often grants the President explicit but limited powers to negotiate tariff levels as a part of treaty-making. As the blog [Perspectives on Trade](#) notes, "the most recent authorization was the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, also known as Trade Promotion Authority, which provided for tariff negotiations in the Trans-Pacific Partnership (TPP) Agreement." The ultimate authority on the tariff still resides in Congress even in that situation, as it is the Senate who has to ratify whatever treaty the President may make.

There are other tariff-related powers that Congress has granted to the President through legislative action, however these can only be used when certain thresholds have been met. Even so, they have not given the President the power to declare a tariff outright. As the [Congressional Research Service white paper](#) on this topic observes, "Congress provided for legislative implementation of international trade agreements under an expedited procedure, so long as certain criteria were met. Over the past few decades, Congress has continued to enact various provisions governing the negotiation and implementation of trade agreements, but has not delegated to the President a general authority to modify tariff rates."

There is the possibility that this GOP controlled Congress will decide to introduce tariff-related legislation along the lines of what President Trump suggested to avoid any conflict over the Origination Clause. However, if they don't, we should all expect these Trump tariffs to land in the court system.