

How Congress and President shape US foreign policy

SUMMARY

The United States Constitution regulates the conduct of American foreign policy through a system of checks and balances. The Constitution provides both Congress and the President, as the legislative and executive branches respectively, with the legal authority to shape relations with foreign nations. It recognises that only the federal government is authorised to conduct foreign policy; that federal courts are competent in cases arising under treaties; and declares treaties the supreme law of the land. The Constitution also lists the powers of Congress, including the 'power of the purse' (namely the ability to tax and spend public money on behalf of the federal government), the power to regulate commerce with foreign nations, the power to declare war and the authority to raise and support the army and navy. At the same time, the President is the Commander-in-Chief of the United States (US) army and navy and, although Congressional action is required to declare war, it is generally agreed that the President has the authority to respond to attacks against the US and to lead the armed forces. While the President's powers are substantial, they are not without limits, due to the role played by the legislative branch.

In light of the discussion of the foreign policy options of the new administration under President Donald Trump, this briefing specifically explores the powers conferred to conclude international agreements, to regulate commerce with foreign nations, to use military force and to declare war. It also explains how Congress performs its oversight – or 'watchdog' – functions with regard to foreign policy, the tools at its disposal, and the role of committees in the process.



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Executive and legislative roles in the United States Constitution

The United States (US) Constitution establishes a broad scenario for developing relations with other countries and leaves the government branches to set precedents. Generally, the Constitution regulates the conduct of American foreign policy by subjecting it – like all federal power – to a system of checks and balances. Consequently, observers of geopolitical strategy followed the 2016 presidential election closely, while the Congressional election proceeded relatively unnoticed. However, while the President's powers are particularly substantial, they are not without limits. The President does not make decisions in a vacuum, but in a context where the legislative branch has its own role to play. The Constitution provides the legal authority to both Congress, the legislative branch and the President, the executive branch, to shape relations with foreign nations; it recognises that only the [federal government](#) – not the states – is authorised to conduct foreign policy, and that [federal courts](#) are competent in cases arising under treaties; it declares treaties the [supreme law](#) of the land.

The Constitution also lists the [powers](#) of Congress, including the 'power of the purse' (i.e. the ability to tax and spend public money on behalf of the federal government), the power to regulate [commerce with foreign nations](#), the power to declare war, and the authority to raise and support the army and navy. The President is the [Commander-in-Chief](#) of the US army and navy, and although Congressional action is required to **declare war**, it is generally agreed that the President has the authority to respond to attacks against the US, and to lead the armed forces. In the course of American history, Congress has declared war five times against 11 nations,¹ and has authorised the use of military force on other occasions, as was the case against Iraq in 2002.

The President also has the legal authority to **make treaties**, and appoint Ambassadors, subject to Senate [advice and consent](#), as well as the authority to receive Ambassadors and other [public ministers](#). While primary responsibility for entering into international agreements lies with the President, these agreements are often not self-executing. They therefore require congressional implementing legislation to give US authorities the domestic legal authority required to enforce and implement the agreement. The President is the nation's chief diplomat, and the [State Department](#) acts as the President's executive agency in the conduct of diplomatic action. The State Department's mission includes, among other things, the preservation of US national security; the promotion of world peace; respect of the rule of law and human rights; and cooperation in international trade organisations. While the Secretary of State does not originate foreign policy, the office-holder is the President's principal foreign policy adviser and as such is expected to conduct diplomacy and coordinate and implement government policies affecting other countries.

Finally, Congress can use its [oversight](#) role to question and influence policy choices, in particular, during the [annual procedure](#) to authorise and allocate funds for the agencies

Congress and President shaping foreign policy cooperatively

In June 1947, Secretary of State George C. **Marshall** proposed US help for European recovery, on the condition that the European states initiate and agree on plans for aid programmes. Western European governments proposed a programme based on four years of US assistance. President Harry S. Truman requested an interim aid programme, which was approved by Congress in 1947; subsequently submitting a longer term European Recovery Program to Congress. This operation allowed Congress sufficient time to hold hearings and create a Select Committee on Foreign Aid that carried out an independent study on Europe needs.

The final legislation for the Marshall Plan from 1948 was considered the product of a joint effort by both branches of government.

responsible for foreign policy. Through hearings, investigations and subpoenas² Congress monitors policy developments, and holds the President accountable. One of the most recent investigations looked into the circumstances surrounding the 2012 attacks on the US consulate in Benghazi, leading to the death of the US Ambassador to Libya and one US information officer.

Concluding international agreements

In the United States, the term 'international agreement' pools two major types of agreements: **international treaties** and **executive agreements**.³ In setting its foreign policy priorities, the administration may decide to begin negotiations with a country, withdraw from, or renegotiate, existing international agreements. For instance, President Trump expressed a clear [intention](#) to renegotiate the NAFTA agreement, and issued a Memorandum directing the US Trade Representative (USTR) to withdraw the US from the Trans-Pacific Partnership ([TPP](#)).

According to US law, a treaty is an international agreement whose entry into force with respect to the US requires [two-thirds](#) of the Senate to give advice and consent, as well as Presidential ratification, acting as Chief Diplomat of the US.⁴ Once ratified, a treaty becomes the supreme law of the land,⁵ although a distinction should be made between **self-executing treaties** and **non-self-executing treaties**, which require implementing legislation.⁶ The US government has broad powers to enter into treaties with foreign countries. Indeed, according to the US Supreme Court, [Article 6](#) of the US Constitution confers a treaty power on the US, which 'extends to all proper subjects of negotiation between our government and the governments of other nations ... as it is not perceived that there is any limit to the questions which can be adjusted touching any matter'.⁷ For the first century of US history, around half of all international agreements were made under the constitutional provision of Article 2,⁸ however, from the 1940s, the ratio of executive agreements rose to 94 %. This shift may have occurred due to a necessity to respond to the complex and extremely challenging international context, which often requires rapid action. It may also have resulted de facto, as a progressive erosion of congressional prerogatives, to the benefit of presidential powers.

How Article 2 treaties are concluded

The Constitution gives both the Senate and President a share of treaty power. This [ensures](#) that the Senate can check presidential power and safeguard the sovereignty of the states by giving each of them an equal vote in the treaty making process. The process of concluding Article 2 treaties comprises a number of [steps](#): negotiation, signature, Senate consideration, Senate advice and consent, and finally presidential ratification.

Negotiation and conclusion: While negotiating is a **sole presidential prerogative**,⁹ informal Senate involvement, or at least consultation, during negotiations is often ensured, although not formalised. The practice probably developed to guarantee formal Senate advice and consent at a later stage. The President is also responsible for signing the treaty, signalling that negotiators have reached an agreement, and that the US consents to be bound, once the treaty is ratified.

Consideration by Senate Committee: Following signature, the President may submit a treaty to the Senate for advice and consent. The transmission is accompanied by a presidential message including a detailed description of treaty provisions. The treaty is referred to the Committee on Foreign Relations and placed on the committee calendar. Although the committee is not bound to take any action, if it decides to do so; it may hold

hearings, and invite experts and the administration to provide information related to the treaty. The committee may subsequently present the treaty to the full Senate, or return it to the President. In reporting to the full Senate, the committee proposes a resolution of ratification. Often, a treaty is reported with no conditions, but the Committee may also recommend that the Senate adopt the treaty under certain conditions.¹⁰ If these conditions alter the nature of the treaty, requiring the reopening of negotiations, the President must communicate the conditions to the other treaty parties.

Consideration and vote by the full Senate: The full Senate votes on the treaty, following consideration of the resolution of ratification as proposed by the Committee on Foreign Relations. The vote requires the **agreement of two thirds of the Senators present**. Should the vote fail, the treaty may be returned to the committee or to the President.

Ratification: Should the vote be successful, the President decides whether or not to ratify. The ratification process consists of the **President signing and sealing** an instrument of ratification, which is then exchanged with the treaty counterpart. Following this exchange, the President issues a proclamation declaring the treaty's entry into force.

During the Obama Administration's two terms, 34 treaties were [approved](#) by the Senate (on extradition, mutual legal assistance, tax convention, and defence trade cooperation, among other things), while 109 treaties were approved under the two terms of the George W Bush Administration preceding it.

Article 2 treaties versus executive agreements

Article 2 treaties are not the only way to conclude international agreements. Under US law, international agreements can be brought into force on a different legal basis than Senate advice and consent. These are known as executive agreements,¹¹ which can be concluded on the basis of:

- (1) existing legislation, or subject to subsequent legislation to be enacted by both chambers of Congress (known as **Congressional executive agreements**). In this case, Congressional authorisation is given in the form of a statute passed by both chambers. The most common use of these types of agreements is in international trade, where Congressional legislation authorises the President to negotiate and enter into agreements to reduce tariffs or other impediments to international trade;
- (2) existing agreement (known as **treaty executive agreements**). For example, the US-Japan [Migratory Birds Convention](#) of 1972 establishes that new species may be added to the list of protected species by a simple exchange of diplomatic notes;
- (3) sole presidential authority, without seeking legislative branch approval (known as **presidential or sole executive agreements**). It is [argued](#) that on this basis, presidential authority is limited to specific cases. The President, as Commander-in-Chief and Chief Diplomat, could conclude armistice agreements as well as certain agreements incidental to the operation of foreign embassies in the form of sole executive agreements. One of the best-known sole executive agreements was concluded between the US and Iran to solve the Iran hostage crisis, known as the '[Algiers Accords](#)', in 1981. Although limited in scope, these agreements may have

Types of international agreements

- **Article II Treaties**, with Senate advice and consent
- **Congressional executive agreements**, requiring legislation by Congress
 - with prior congressional approval
 - with subsequent approval of Congress
- **Treaty executive agreements**
- **Presidential or sole executive agreements**

considerable consequences in political terms, such as the [Litvinov](#) Agreement in 1933 regarding American recognition of the Soviet Union, the ‘destroyers for [Bases Exchange](#)’ with the United Kingdom in 1940,¹² or the Yalta Agreement in 1945.

Regardless of the type of executive agreement, if budget outlay is required, Congress is involved, due to its ‘power of the purse’.

How to determine the type of agreement

[Appendix A](#) of the State Department C-175 Handbook,¹³ lists a number of elements to be considered by the administration, notably:

- the commitments and risks involved into the agreement;
- possible effects on state law;
- past practice in similar cases;
- necessity to enact law to give effect to the agreement;
- Congress preferences;
- proposed duration, and the degree of urgency required to conclude.

These criteria are meant to guide the administration rather than undermine the exercise of presidential discretion. Indeed political considerations may also play a role.

How to terminate international agreements

Terminating international agreements has to be approached from two different legal contexts; **international law** and **US domestic law**. According to international law, a party may withdraw from an agreement either in accordance with the terms of the agreement (usually termination by notice), or, in the absence of specific provisions, in accordance with the [Vienna Convention](#) of 1969.¹⁴ Breach of the treaty by one of the parties or by agreement of all the involved parties may also result in termination of an agreement. Under US domestic law, the first element to note is that the US Constitution contains no specific provision for withdrawal from international agreements, indeed Article 2 only sets a procedure for the President and Senate to make treaties. As Article 6 of the US Constitution recognises treaties as the law of the land, with the same domestic status as federal law, it is assumed that US participation could be terminated if Congress passes a subsequent statute which is inconsistent with the terms of an existing international agreement. In this case, however, only domestic law would be affected, while international obligations would remain unchanged. Practice has been inconsistent over the years, indeed, international agreements have been terminated by the:

- President following Congress authorisation or direction (for instance direction mandating termination by notice of the President);
- President with subsequent congressional approval;
- President following Senate authorisation or direction;
- President with subsequent Senate approval;
- President alone.

Such inconsistency, and the absence of clear legislative norms, raises academic questions, and disputes between the legislative and executive. The debate has focused mainly on the President’s unilateral authority to terminate international agreements, but some observers have also looked at the possibility for [Congress](#) to terminate agreements without presidential support. Reasonable arguments have been put forward to explain why the authority to terminate an agreement should be vested in the President alone, in the President with the Senate, or in Congress. A [CRS study](#) suggests that the President alone has the authority to terminate international obligations, as regardless of the

domestic approval procedure, the President alone consents on behalf of the United States and has 'plenary and exclusive [power] ... as the sole organ of the Federal Government in the field of international relations'.¹⁵ For instance, in 1979, President Jimmy Carter terminated the Mutual Defence Treaty with Taiwan unilaterally. The judicial branch, traditionally reluctant to clarify the issue, dismissed the subsequent case on 'political question'¹⁶ grounds (i.e. the challenge was considered a political, rather than a judicial, question). More recently, in 2002, President George W. Bush terminated the [Anti-Ballistic Missile Treaty](#) with Russia, and the district court also declared this case unsuitable for resolution in the court, due to the 'political question'.¹⁷

Paris Agreement

During the 2016 presidential debate, President Donald Trump [questioned](#) the US commitment to a transition to a low-carbon economy and threatened to 'withdraw from the Paris Agreement'. The US became a signatory party to the [Paris Agreement](#) in April 2016, by signature of the Secretary of State. Subsequently, President Barack Obama signed the Agreement's instrument of acceptance, and the US became party to the Agreement upon its entry into force in November 2016. This was considered an executive agreement and not a treaty. The [issue](#) of which provisions to make binding was a central concern for the Obama administration, so that the President could accept the agreement without seeking Senate advice and consent. Additionally, Congress enacted no implementing legislation, and the administration did not declare that its provisions were self-executing. From an international law perspective, Article 28 of the Paris Agreement specifies that a party may notify its intention to withdraw three years from the date on which the agreement entered into force for the given party, to take effect one year from the date of notification.¹⁸ This four year period [could](#) be reduced to one should the US decide to withdraw from the 1992 [United Nation Framework Convention on Climate Change](#) (UNFCCC). Indeed, the Paris Agreement states that withdrawal from the UNFCCC shall also be considered as withdrawal from the Agreement, even though the UNFCCC was considered a treaty and received Senate advice and consent. Thus, under US domestic law, it is unclear what role Congress should play in termination of the Agreement. Finally, even without formal withdrawal, the new administration would appear to have the option to undermine Paris Agreement objectives by refusing to [implement](#) some of its provisions.

Regulating commerce with foreign nations

While the President retains the power to make treaties, Congress has the authority to regulate [commerce](#) with foreign nations, and may exercise its power in other ways, from oversight on international trade policies and programmes to implementing legislation on international trade matters. Although many committees may be involved, depending on their specific jurisdiction, in Congress the primary responsibility for trade matters rests with the House [Ways and Means](#) Committee and the Senate [Finance](#) Committee. To reaffirm Congress's overall constitutional role in initiating and overseeing US trade policy, Congress has enacted [Trade Promotion Authority](#) (TPA) legislation. Also known as 'fast-track', TPA is an expedited procedure that allows Congress to implement trade agreements, providing that the administration fulfils the negotiating objectives and respects certain requirements on notification to and consultation with Congress. In general, expedited procedures may establish time for floor scheduling of bills, limit debate in committees and/or limit the possibility to offer (i.e. table) amendments. In the specific case of trade, the modern form of TPA, introduced in 1974, establishes, among other things, automatic discharge from committee, limited floor debate, and an 'up or down' vote without amendments. This latter is an important element in trade negotiations, as foreign nations may be confident that the negotiated agreement with the executive will not be amended by the legislative branch. Finally, TPA establishes the

process for Congress to withdraw the expedited procedure to an implementing bill, should it consider that TPA requirements have not been fulfilled. In such a case, the implementing bill would be considered under the general rules of procedures, with Congress enabled to offer amendments. The United States is party to 14 international free trade agreements (FTAs) with 20 countries and is also negotiating a Trans-Atlantic Trade and Investment Partnership ([TTIP](#)) with the European Union.

Figure 1 – United States' free trade agreements



Source: CRS, [International Trade and Finance: Overview and Issues for the 115th Congress](#), 21 December 2016.

Regulating tariffs

During the 2016 presidential campaign, President Trump mentioned unilateral withdrawal from a number of trade agreements, but also the possibility of imposing [high tariffs](#) (for example, on Mexico and China). The US Constitution vests the power to impose and collect [taxes](#), duties, imposts and excises, in Congress – and not in the President. Nevertheless, since the 1930s, Congress has adopted legislation to delegate authority to the President to reduce tariffs and has conferred other powers related to trade on the President.¹⁹ A recent CRS [report](#) provides a non-exhaustive list of statutes that would authorise the administration to impose tariffs and/or quotas or regulate commerce. Although the wording of the statutes, as well as the presidential powers and the conditions are inconsistent, the report mentions that most of the acts accompany the delegation of powers with conditions and time limits (see Annex I).

Declaring war and the use of military force

The [Constitution](#) divides powers pertaining to warfare between Congress and the President. Article 1, Section 8 grants Congress the power to declare war, while Article 2, Section 2, authorises the President, as Commander-in-Chief, to lead all the armed forces. Thus, while Congress makes decisions regarding the declaring and funding of an operation, the President directs it.

While it is generally agreed that, as Commander-in-Chief, the President has the power to utilise the armed forces as the President deems necessary when the US faces an attack, presidential authorisation to deploy forces (US troops) abroad without congressional

authorisation or a declaration of war (which, as explained above, is a congressional power) has been controversial. While Presidents have, de facto, used their authority to send US troops into combat or into situations of imminent hostilities in the past, this remains an issue of concern today.

The issue of presidential use of armed forces without congressional authorisation was addressed in the 1973 [War Powers Resolution](#), which was passed by Congress [overriding](#) the veto of President Richard Nixon. The resolution aimed at establishing procedures for both the executive and legislative branch to share decisions regarding involvement in war or deployment of US armed forces in hostile situations. Under this law, the President must:

- consult with Congress before sending US troops into hostile situations;
- report commitment of US forces to Congress within 24 hours;
- end military action within 60 days if Congress does not declare war or authorise the use of force.

According to the Congressional Research Service, from 1975 to 2012, presidents have submitted more than 130 reports related to [deployment of US forces](#), as required by the resolution. However, only a single occasion, the 1975 Mayaguez incident, cited action triggering the sixty-day time limit.

Congress retains the ‘power of the purse’ when it comes to the approval, modification or rejection of [defence spending](#) (the Department of Defense budget). The [National Defense Authorization Act](#) (NDAA) is an annual federal law specifying the Department of Defense budget and expenditures. It advances the vital funding and authorities that America’s military requires. In addition, Congress oversees the defence budget primarily through [defense appropriations](#) bills.

[Experts](#) argue that powers related to warfare remain ‘spelled out more clearly for Congress but in practice are dominated by presidential action’.

Contribution to the North Atlantic Treaty Organization (NATO)

During his campaign, and as President-elect, Donald Trump criticised NATO as ‘obsolete’, leading to speculation that he would consider decreasing US contributions to the alliance. However, in his first presidential address to Congress, on 28 February 2017, President Trump said his administration ‘strongly supports’ NATO, but reiterated his appeal to ‘partners to meet their [financial obligations](#)’. However, US participation in NATO is also subject to congressional approval, as it is directly linked to budgetary approval. For example, in 2015, the Obama administration requested, and Congress appropriated, about US\$1 billion for a new [European Reassurance Initiative](#) (ERI) in the Department of Defense (DOD) Overseas Contingency Operations account. This was a contribution to increased US military activities under [Operation Atlantic Resolve](#). In 2016, the administration requested, and received, US\$789.3 million for ERI. The ERI aims at enhancing US military activities, including increased military presence in Europe; additional bilateral and multilateral exercises, and training with allies and partners; enhanced prepositioning of US equipment; and intensified efforts to build partner capacity for newer NATO members and other partners. In its proposed budget for the 2017 financial year, the Obama administration requested US\$3.4 billion (a fourfold increase) in funding for the ERI, primarily to enable ‘a quicker and more robust response in support of NATO’s common defence’. The 2017 budget is currently funded with a [stop-gap](#) measure. When a full budget is passed (possibly in April 2017), Congress’s response to the request will be clearer. President Trump’s proposed budget for 2018 increases [defence spending](#) by US\$54 million.

Congressional oversight of foreign policy

Congress has the constitutional power to scrutinise, and the authority to promote, a democratically accountable foreign policy. In doing so, Congress informs public opinion about presidential use of force, global strategic choices, and federal spending priorities, and ensures that the administration does not depart from congressional intent. In this respect, mention should also be made of the [Case-Zablocki Act](#) of 1972, also known as the Case Act, which requires the Secretary of State to transmit to Congress all international agreements other than treaties no later than 60 days after their entry into force.²⁰

A recent book²¹ by Linda L. Fowler, Professor of Government at Dartmouth College, looks at the formal public hearings of the two Senate Committees ([Armed Services](#) and [Foreign Relations](#)) from 1947 to 2008, to assess whether or not Congress was effective in performing its scrutiny of international affairs.²² The analysis concludes that, although congressional involvement in foreign policy is important, it has multiple motivations and not always aligned goals. Congress is often driven by crises and perceived threats to national interests, but contrary to possible expectations, oversight does not only happen in times of divided government (i.e. to maintain the constitutional remit of the executive). For instance, in 2004, the Senate conducted public hearings on the Iraq War and investigated abuse of detainees at Baghdad's Abu Ghraib Prison. The number of hearings only increased when Democrats took control of Congress in 2007. Fowler argues for a reassessment of congressional powers on war, and proposes reform to encourage Senate watchdogs to improve public deliberation on decisions of war and peace.

The Commission on Security and Cooperation in Europe – The Helsinki Commission

Congressional oversight on foreign policy can sometimes be achieved through a specific approach. In 1976, the Commission on Security and Cooperation in Europe, also known as the [Helsinki Commission](#), was created to promote human rights, military security, and economic cooperation in Europe, Eurasia, and North America. The Commission, which is an independent US government agency, counts 21 commissioners: nine members from the Senate, and nine from the House of Representatives (five from the majority and four from the minority in both chambers), who serve for the duration of the Congress from which they are appointed. Three commissioners come from the executive branch and are appointed by the President: one each from the Department of State, the Department of Defence, and the Department of Commerce.

Several foreign policy experts [argue](#) that presidents have accumulated power at the expense of Congress in recent years, especially during times of war or national emergency. They attribute this to the spirit and wording of the Constitution itself, and to the reluctance of the judicial branch to clarify foreign policy related questions. Most [academics](#) seem to concur that congressional oversight is a key element to maintaining balance in the shaping of US foreign policy.

Main references

E. Chemerinsky, *Constitutional Law, Principles and Policies*, 4th edition, Wolters Kluwer, 2011.

[Treaties and other International Agreements: The role of the United States Senate](#), a study prepared for the Committee on Foreign Relations United States Senate by the Congressional Research Service, January 2001.

G. S. Krutz and J. S. Peake, [Treaties and Executive Agreements: A History](#), The University of Michigan Press, 2009.

M. J. Garcia, [International Law and Agreements: Their Effect upon U.S. Law](#), CRS, 18 February 2015.

R. F. Grimmett, [War Powers Resolution: Presidential Compliance](#), CRS, 25 September 2012.

Endnotes

- ¹ 1812 war with Great Britain, 1846 war with Mexico, 1898 war with Spain, 1971 World War I with Germany and Hungary, 1941 World War II with Japan, Germany, Italy, Bulgaria, Hungary, Romania.
- ² Subpoena power is defined as the 'authority granted to House and Senate committees by the rules of their respective houses to issue legal orders requiring individuals to appear and testify, or to produce documents pertinent to the committee's functions, or both'.
- ³ According to a 2015 [CRS report](#), over 17 300 executive agreements have been concluded by the US since 1939 (out of 18 500 since 1789) compared to 1 100 treaties that have been ratified by the US.
- ⁴ The article reads: 'He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur'.
- ⁵ *Whitney v. Robertson*, 1888. 'Both statutes and treaties are declared to be the supreme law of the land, and no superior efficacy is given to either over the other'.
- ⁶ In the latter, more precisely, it is the legislation, not the treaty, which becomes law of the land.
- ⁷ *Geofroy v. Riggs*, 1890.
- ⁸ G. Krutz and J. Peake: [Treaty Politics and the Rise of Executive Agreements International commitments in a System of Shared Powers](#), University of Michigan Press, 2009, p. 24.
- ⁹ *United States v. Curtiss–Wright Export Corp*, 1936.
- ¹⁰ A 2001 CRS [report](#) lists four main types of conditions: 1) Amendments, requiring the consent of the other treaty parties; 2) Reservations changing US obligations thus also requiring the consent of the other treaty parties; 3) Understanding clarifying and interpreting the text without modifying it; 4) Declarations expressing Senate position on a given issue.
- ¹¹ Executive Agreements can be used for any purpose, meaning that anything that can be done by treaty can be done by executive agreement.
- ¹² In 1940, thanks to the Destroyer-Bases Agreement, President Roosevelt extended American involvement in World War II. The US agreed to loan the United Kingdom 50 naval destroyers, and the US obtained 99 year free leases to develop military bases in Caribbean and Newfoundland locations in exchange.
- ¹³ Article 721.3 Appendix A, The Handbook on Treaties and Other International Agreements (The C-175 Handbook), US Department of State.
- ¹⁴ Although the US has not ratified the Vienna Convention, in many aspects, it is considered to [reflect](#) customary international law.
- ¹⁵ *United States v. Curtiss–Wright Export Corp*, 1936.
- ¹⁶ *Goldwater v. Carter*, 1979. Several members of Congress challenged the President's right to drop out of the mutual defence agreement with Taiwan and went to court. While the Court of Appeal stated that unilateral presidential action was sufficient to terminate a treaty, four Justices of the Supreme Court found the case *non justiciable*. See *Baker v. Carr*, 1962, in particular Justice Curtis' opinion.
- ¹⁷ *Kucinich v. Bush*, 2002.
- ¹⁸ J. A. Leggett, R. K. Lattanzio, Climate Change: Frequently Asked Questions about the 2015 Paris Agreement, CRS, 5 October 2016.
- ¹⁹ In these cases, presidential actions under this delegated authority may be challenged in court, to check whether the delegation of powers was constitutional or whether the President acted within the scope of the powers specifically delegated by Congress.
- ²⁰ Should the President consider the disclosure of an executive agreement prejudicial to the US security, the act will be transmitted to the Senate Foreign Relations and House International Relations Committees with a security classification.
- ²¹ L. L. Fowler, Watchdogs on the hill, the decline of congressional oversight of U.S. foreign relations, Princeton University Press, 2015.
- ²² Together the Senate Armed services and Foreign Relations Committees conducted 3 257 public hearings and 2 124 executive sessions for a total of 5 381 observations and 11 276 formal hearing days.

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Annex I

**Statutes available to the US President to reduce tariffs and other trade-related powers
(non-exhaustive list)**

Congressional Statute	Conditions	Presidential powers
Limited powers or subject to conditions		
Tariff Act of 1930	When the President finds the public interest is served if the country discriminates	New or additional duties if certain conditions are met
Trade Expansion Act of 1962, Section 232(b)	Finding of an adverse impact on national security from imports	Impose tariffs or quotas as needed to offset the adverse impact, subject to procedural requirements
Trade Act of 1974, Section 122	Fundamental US balance of payments deficit	Impose tariffs up to 15 %, or quantitative restrictions, or both for a maximum of 150 days against one or more countries with large balance of payments surpluses
Trade Act of 1974, Section 301	Foreign country denies the US its trade agreement rights or carries out practices that are unjustifiable, unreasonable, or discriminatory	Modification of tariff rates
Trade Act of 1974, Section 501	After considering certain conditions	Authorisation to grant certain duty preferences to articles from any beneficiary developing country
NAFTA Implementation Act of 1993, Section 201	When the President determines it necessary within the confines of the agreement	Proclamation of tariffs (modification, rate reduction, additional duties)
Uruguay Round Agreement of 1994, Section 111	When the President determines it necessary within the confines of the agreement	Proclamation of tariffs (modification, rate reduction, additional duties)
Dominican Republican-Central America Free Trade of 2005, Section 201	When the President determines it necessary within the confines of the agreement (limited tariff-reduction authority under the implementing legislation of the FTA	Proclamation of tariffs (modification or continuation of any duties, additional duties)
Bipartisan Congressional Trade Priorities and Accountability Act of 2015, section 103	When the President determines that existing duties or import restrictions of foreign countries are a burden for US trade	Proclamation of tariffs (modification or continuation of any duties, additional duties). However the President shall notify his intention to Congress and the delegation of authority is subject to a number of restrictions.
Almost unlimited powers		
Trading with the Enemy Act of 1917, Section 5	During time of war	Fairly broad authority (investigate, regulate, direct and compel, nullify, void), plus the power to freeze and seize foreign-owned assets of all kinds
International Emergency Economic Powers Act of 1977, Section 203	National emergency to deal with an unusual and extraordinary threat outside the US	Fairly broad authority (investigate, regulate, direct and compel, nullify, void), however the President in every possible instance shall consult the Congress.

Source: C. Devereaux Lewis, [Presidential Authority over Trade: Imposing Tariffs and Duties](#), CRS, 9 December 2016.