Hamiltonian Construction, Jeffersonian Compromises

The Supreme Court ended one tariff regime. Congress should use the ensuing rewrite to reclaim trade power and to rebuild the institutions that govern American economic statecraft.

12:01 a.m., July 24, 2026. At that minute, a federal tax expired. The 10 percent import surcharge imposed five months ago under Section 122 of the Trade Act reached the end of its 150-day statutory life. Congress had not extended it. No court order or presidential concession was required. The clock simply ran out.

Yet the tariff did not leave an empty space at the border. At the same minute, a new regime took effect. Acting under Section 301 of the Trade Act, the U.S. Trade Representative imposed duties of 10 or 12.5 percent on most imports from 60 trading partners, subject to extensive product exemptions, on the theory that those economies had failed to prohibit or effectively police imports made with forced labor. One authority died; another took its place before the body was cold.

To an importer, the handoff may resemble continuity. In law, it is a transformation: a temporary balance-of-payments surcharge has yielded to 60 unfair-trade investigations. The United States has changed the legal foundation of a vast tariff program overnight while leaving unanswered the prior question: Who is responsible for American economic statecraft as a whole?

Congress now has a rare chance to answer. It should reclaim its constitutional control over tariffs. It should also consolidate the nation's scattered economic-security instruments under a strengthened and answerable Treasury Department, while imposing the restraints that such concentration demands. The construction should be Hamiltonian. The compromises must be Jeffersonian.

What the Court Actually Decided

On February 20, the Supreme Court issued its ruling in *Learning Resources, Inc. v. Trump* and *Trump v. V.O.S. Selections, Inc.*, the consolidated challenges to the administration's emergency tariffs. The administration had used the International Emergency Economic Powers Act of 1977 (IEEPA) to levy tariffs on nearly every trading partner. Its argument rested on IEEPA's authorization to "regulate ... importation."

Six justices concluded that those words did not authorize a tax. Chief Justice John Roberts's controlling analysis was conventional statutory interpretation. IEEPA lists nine operative verbs, but never says "tariff," "duty," or "tax." Its neighboring words — "prevent," "prohibit," "nullify," "void" — concern control over transactions, not the raising of revenue. When Congress delegates tariff authority elsewhere, it does so expressly and attaches rates, predicates, and procedures. And if the power to "regulate ... importation" silently included a power to tax imports, the parallel power to regulate exportation would imply a power to tax exports, which the Constitution forbids.

The Court did not invalidate the tariffs on major-questions grounds. Parts II-A-2 and III of Roberts's opinion, which invoked that doctrine, drew only the votes of Justices Gorsuch and Barrett. They are a three-justice plurality, not the holding of the Court. The six-justice holding is narrower and more durable: Congress did not put tariff power in IEEPA.

The Court also refused to define the outer boundary of the President's remaining authority to regulate importation. Embargoes, transaction bans, quotas, and other non-tariff measures were not before it. The decision closed one path without designing what should follow. That task belongs to Congress.

The administration's first answer was the Section 122 surcharge: 10 percent, effective February 24, and limited by statute to 150 days unless Congress acted. Its second answer was yesterday's final Section 301 action, effective at the instant the stopgap expired. Whether those investigations can sustain duties of this breadth will be tested. What is already clear is the governing pattern: authority by improvisation, one statute after another, with no institution charged to account for the cumulative use of American economic power.

Wyden's Necessary but Incomplete Answer

Congress has begun to respond. On July 22, Sen. Ron Wyden (D-Ore.) introduced the Congressional Trade Powers Reform Act of 2026. The bill deserves to be taken on its own terms. It would repeal Sections 122 and 338. Under bill Section 101, proposed Tariff Act Section 1001(a), actions under Trade Expansion Act Section 232 and Trade Act Sections 201, 203, and 301 would go before a new 10-member Joint Committee on Tariffs and Trade and require an enacted joint resolution of approval. Proposed Section 1001(b) and (c) would make an approved action effective 30 days after that resolution's enactment, require it to end no later than 180 days afterward, and permit further 180-day periods only through the same proposal, review, and approval process. The bill would also move USTR outside the Executive Office of the President and create an inspector general for the agency.

The bill is a serious attempt to restore Congress to the first branch of trade policy. Its premise is correct. Article I gives Congress the powers to tax and to regulate commerce with foreign nations. A president should not be able to alter the cost of nearly everything Americans buy by discovering, in a half-century-old statute, words Congress never understood as a blank check.

But the bill answers the question of permission, not the question of architecture. Tariffs are only one part of economic statecraft. Sanctions remain at Treasury's Office of Foreign Assets Control. Dual-use export controls remain at the Commerce Department's Bureau of Industry and Security. Foreign-investment screening belongs to an interagency committee, CFIUS, chaired by Treasury. Trade actions run through USTR, Commerce, the International Trade Commission, the President, Congress, and Customs and Border Protection. Each instrument has a custodian. No officer owns the interaction among them.

A semiconductor export control can change the leverage of a financial sanction. A tariff can redirect supply chains into or away from a sanctions target. An investment-screening decision can protect a technology that export rules still permit to leave. The dollar, the factory, the port, and the payments network are one battlefield. Washington administers them as separate files.

The Department Hamilton Built

In 1789, the United States faced a different crisis with a familiar question. European creditors saw a nation burdened by war debts, without a central fiscal system, a reliable currency, or established public credit. Was the republic economically sustainable?

Congress answered by creating the Treasury. The Act of September 2, 1789 required the Secretary "to make report, and give information to either branch of the legislature, in person or in writing," on matters within the office. Treasury was energetic by design and answerable by design.

Hamilton made the written report an instrument of government. His reports on public credit, a national bank, and manufactures joined diagnosis to institutional construction and submitted both to Congress. In the Report on Manufactures, he argued that "the independence and security of a Country" were bound to the capacity to provide the essentials of national supply. Economic security was present at Treasury's creation.

The title's vocabulary belongs to a later debate. Herbert Croly's *The Promise of American Life* is commonly distilled as a call for Hamiltonian means in service of Jeffersonian ends. Croly never wrote that aphorism; it is a scholarly paraphrase of his attempt to combine national administrative capacity with democratic purpose. "Hamiltonian" here means construction with sufficient capacity, not presidential license. "Jeffersonian" means the concessions that make that capacity legitimate, not a government too weak to act.

Much of that department was later dispersed. Monetary authority moved to the Federal Reserve; the modern settlement of central-bank independence was secured by the Treasury-Fed Accord of 1951. Customs enforcement and other badges moved elsewhere. Export control grew in Commerce. The dispersal occurred for reasons, often good ones. Its cumulative result, however, was never designed.

Congress has also shown that the movement can run in reverse. In the Consolidated Appropriations Act, 2005 — enacted December 8, 2004, not in the Intelligence Reform and Terrorism Prevention Act signed nine days later — it created Treasury's Office of Terrorism and Financial Intelligence. Now codified at [31 U.S.C. § 312], TFI joined sanctions, financial intelligence, and terrorist-financing work under one Under Secretary. It became the institutional center of American financial warfare. Congress has consolidated economic power in Treasury before, by ordinary statute, and made it answerable to a named official.

The Construction and the Compromises

Congress should do so again. A new economic-statecraft title should place sanctions, dual-use export controls, investment screening, and the administration of congressionally authorized tariff actions within a Treasury-led structure. Technical personnel and mission-specific offices should remain intact. Trade negotiation can remain with a separate USTR. Customs can continue to collect at the border. But the Treasury Secretary should set the strategy, decide the sequence, and answer for the whole.

Hamilton's defense of unity in [Federalist No. 70] is frequently invoked for power and too rarely for responsibility. "Decision, activity, secrecy, and dispatch" are advantages of a single executive. So is the inability to hide failure among colleagues. The lesson is that powers already granted should have a visible steward operating within limits Congress writes.

Those limits are the Jeffersonian part of the bargain.

First, the Federal Reserve must remain untouched. The consolidation should cover economic statecraft, not monetary policy, bank supervision, or the independence secured in 1951. That boundary should appear in the statute's first substantive section, not in legislative history or assurances from its sponsors.

Second, delegated coercive authorities should expire automatically. Wyden's 180-day reauthorization model offers a starting point. Congress may choose different periods for different instruments, but emergency authorities should not become permanent merely because a veto makes them difficult to end. Renewal should require affirmative law, not inertia.

Third, Congress should revive Hamilton's method through a statutory annual Report on American Capacity. The report should inventory every active economic-security measure; identify its legal authority and policy objective; assess effects on U.S. workers, firms, allies, supply chains, humanitarian interests, and the international role of the dollar; measure progress toward a defined end state; disclose interagency disagreement; and identify the personnel and technology needed for execution. Its unclassified portion should be public. The Secretary should testify on it before the relevant committees. A classified annex can protect intelligence; it cannot substitute for an account.

Fourth, calibration should be law. Treasury's own [2021 Sanctions Review] warned that sanctions had become a tool of first resort and called for clear objectives, multilateral coordination, mitigation of unintended consequences, enforceability, and reversibility. Those criteria should govern the entire arsenal. Before imposing or renewing a measure, the responsible officer should have to explain why this tool, at this scale, against this target, advances a stated strategy better than the alternatives.

Finally, authority must be matched by capacity. Moving export-control responsibilities without their engineers, licensing experts, enforcement agents, data, and appropriations would produce only a new letterhead. The 2004 TFI statute included special hiring authority. A modern consolidation should likewise protect specialized career services, authorize competitive technical hiring, phase transfers, and require independent implementation audits.

The objections are substantial. Treasury could become too powerful. A merger could bury Commerce's technical expertise beneath financial logic. A more capable sanctions apparatus could hasten efforts to evade the dollar. Reorganization could consume years while China and other competitors continue to act. Each is a specification for the statute: preserve expert components, resource the transfer, measure dollar-system risk, stage implementation, and force power to return to Congress.

The strongest objection is the danger of making abuse efficient. [Emergency-powers reformers] have long warned that IEEPA, intended for "rare and brief" emergencies, now supports declarations that can persist for decades with little practical means for Congress to terminate them. A consolidated department without hard limits would turn a dispersed danger into a disciplined one. The answer must be law, not confidence in Treasury's institutional temperament: no new reservoir of raw power, affirmative reauthorization, meaningful notice and process for American targets, judicial review, and reports detailed enough for Congress to judge results. Consolidation is defensible only if it gives legislators more leverage than they possess today.

Nor is another coordinating council enough. Councils can reconcile advice; they cannot own outcomes. When every department participates, every department can explain why another was responsible. Unity without restraint is dangerous. Restraint without ownership is impotence. The statute must provide both at once.

The traditional account of the Compromise of 1790 ends at a dinner table: Hamilton won federal assumption of state debts; Jefferson and Madison won the permanent capital on the Potomac. Historians properly caution that Jefferson's later telling may overstate one dinner's decisiveness. The political truth nevertheless remains. Hamilton's financial construction endured because it was joined to a concession that made it survivable.

Congress faces the same design problem now. It should accept Wyden's first principle: tariff power must return to the legislature. Then it should finish the work his bill begins by giving the nation's economic instruments one accountable home, and by binding that home with independence for the Fed, statutory sunsets, calibrated use, and government by report.

At 12:01 this morning, the United States wielded economic power. The question is whether anyone will govern it.