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Legal Sidebar

Legal Authority for the President to Impose Tariffs Under the International Emergency Economic Powers Act (IEEPA)

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The International Emergency Economic Powers Act (IEEPA, 50 U.S.C. §§ 1701 *et seq*.) gives the President broad authorities to address declared emergencies concerning certain "unusual and extraordinary" threats to national security, foreign policy, or the economy, including the authority to "regulate" or "prohibit" imports. On February 1, 2025, President Donald Trump invoked IEEPA to impose tariffs on imports from the People's Republic of China (PRC), Canada, and Mexico. The President has subsequently made several modifications to these tariffs, including raising the tariff rate on imports from the PRC on March 3, 2025. On April 2, 2025, President Trump invoked IEEPA to impose "reciprocal tariffs" on imports from almost all U.S. trading partners. These actions represent the first uses of IEEPA to impose tariffs since the law's enactment in 1977.

At least one lawsuit has been filed to challenge tariffs imposed under IEEPA, specifically tariffs imposed against imports from the PRC on February 1 and March 3, 2025. This Legal Sidebar summarizes selected caselaw and current legal debates as to whether the President has legal authority to impose tariffs under IEEPA, and, if so, whether specific tariffs imposed under IEEPA might be successfully challenged in court.

Overview of Statutory Tariff Authorities and IEEPA

The U.S. Constitution gives Congress the power to regulate foreign commerce and impose import tariffs. Congress, in turn, has enacted several laws authorizing the executive branch to impose tariffs in various circumstances. Recent presidential administrations have utilized several of these laws, imposing tariffs on steel and aluminum and automobiles and parts under Section 232 of the Trade Expansion Act of 1962 (Section 232, codified at 19 U.S.C. § 1862), tariffs on solar cell products and washing machines under Section 201 of the Trade Act of 1974 (Section 201, codified at 19 U.S.C. § 2251), and tariffs on many imports from the PRC under Section 301 of the Trade Act of 1974 (Section 301, codified at 19 U.S.C. § 2411), for example. Section 232, Section 201, and Section 301 each require a different executive agency to conduct an investigation and make findings before the executive branch may impose tariffs.

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IEEPA may give the President additional authority to impose tariffs under certain circumstances during specific kinds of national emergencies. IEEPA gives the President extensive economic authorities to address certain emergencies declared under the National Emergencies Act (the NEA, 50 U.S.C. §§ 1601 *et seq.*), including the authority to "regulate" or "prohibit" imports. IEEPA authorizes the President to exercise these authorities if he declares a national emergency "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States." IEEPA requires the President to consult with Congress before and during the exercise of these authorities and to make regular reports to Congress, but—unlike the tariff authorities listed above—does not require any agency to conduct an investigation or make findings of fact before the President acts.

The NEA authorizes the President to declare national emergencies and provides that "[s]uch proclamation[s] shall immediately be transmitted to the Congress and published in the Federal Register." In his February 1, 2025, executive orders invoking IEEPA to impose tariffs on imports from Canada, Mexico, and the PRC, President Trump declared national emergencies relating to illicit drugs and illegal immigration, as well as alleged failures of these countries' governments to alleviate these problems. In his April 2, 2025, executive order imposing "reciprocal" tariffs on imports, President Trump declared a national emergency relating to "a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners' economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits."

An emergency declared under the NEA may be terminated either by presidential proclamation or by enactment into law of a joint resolution of disapproval by Congress. In addition, an emergency automatically terminates on its anniversary unless the President notifies Congress within the 90 days prior to the anniversary that the emergency shall continue and publishes that notice in the *Federal Register*. Depending on these annual notifications, a declared emergency may continue indefinitely.

Yoshida and Tariffs Imposed Under IEEPA's Predecessor

Although no President had used IEEPA to impose tariffs before 2025, in *United States v. Yoshida International, Inc.*, the U.S. government invoked an identical passage in a predecessor statute to defend an emergency tariff President Richard Nixon imposed prior to IEEPA's enactment. *Yoshida* required courts to consider what authority some of the language now found in IEEPA gave the President. As explained below, the appellate court in *Yoshida* held that the statute authorized the President to impose at least some kinds of emergency tariffs, reversing a lower court decision to the contrary.

At stake in *Yoshida* was a temporary 10% tariff (or surcharge) on imports that President Nixon imposed via a proclamation of national emergency for fewer than five months in 1971. The President's stated goal was to ameliorate a balance-of-payments crisis, in which the United States was unable to maintain the fixed exchange rates and convertibility of dollars into gold that underpinned the international monetary system at the time (the Bretton Woods system). Yoshida, an importer faced with having to pay the tariff, claimed the President's action exceeded his statutory authority. Although President Nixon did not cite a specific statutory authority in his proclamation, the government argued that he was authorized to impose the tariff by Section 5(b) of the Trading With the Enemy Act (TWEA), which—as IEEPA does now—authorized the President to "regulate, . . . prevent or prohibit . . . importation" during national emergencies. (As part of the 1977 legislation that created IEEPA, Congress amended TWEA to limit Section 5(b) to a "time of war," placing the peacetime use of these authorities under the new IEEPA.)

The lower court in *Yoshida* held that TWEA did not give the President any authority to impose tariffs. Specifically, it held that construing the word "regulate" in TWEA Section 5(b) to include tariffs would violate the nondelegation doctrine, the constitutional principle that Congress may not delegate its legislative (lawmaking) power to the executive branch. In a previous tariff case, the U.S. Supreme Court

had held that the nondelegation doctrine requires Congress to set forth an "intelligible principle" to constrain authority it delegates to the President, so that the President is properly restricted to executing rather than making law. In *Yoshida*, the lower court held that interpreting TWEA to include the authority to impose tariffs would fail the "intelligible principle" test because it would allow the President to "determine and fix rates of duty at will . . . without the benefit of standards or guidelines which must accompany any valid delegation of a constitutional power by the Congress."

The U.S. Court of Customs and Patent Appeals (CCPA) reversed the lower court's decision and held that the word "regulate" in TWEA encompassed tariffs that were "appropriately and reasonably related . . . to the particular nature of the emergency declared." Rejecting the lower court's nondelegation analysis, the CCPA reasoned that TWEA must be given broad scope since it is an emergency statute to address "inherently unknown and unknowable problems"; that "emergencies are expected to be shortlived"; and that the Supreme Court has given wider berth to delegations of authority involving foreign affairs. Nonetheless, the CCPA concluded that TWEA did not give the President unlimited authority to impose tariffs, reasoning that each presidential action "must be evaluated on its own facts and circumstances."

The CCPA scrutinized "the particular surcharge [the President imposed] and its relationship to other statutes, as well as [] its relationship to the particular emergency confronted." First, the court noted that the tariff itself "was limited to articles which has been the subject of prior tariff concessions" (i.e., executive actions lowering tariffs) and thus did not raise tariff rates on any articles above maximum rates set by Congress in 1930. Thus, the tariffs did not "fix[] rates in disregard of congressional will." Second, the court stated that the existence of other tariff statutes (such as Section 232), which are "applicable to normal conditions on a continuing basis," did not preclude the President from claiming "broader authority" under a statute designed for "emergency conditions." Third, the court found that the temporary surcharge imposed by President Nixon "had a direct effect on our nation's balance of trade and, in turn, on its balance of payments deficit and its international monetary reserves." Thus, the court found, the measure "bore an eminently reasonable relationship to the emergency confronted."

While the appeal of *Yoshida* was pending before the CCPA, Congress enacted the Trade Act of 1974, Section 122 of which gives the President authority to impose a temporary import surcharge of up to 15% when necessary "to deal with large and serious United States balance-of-payments deficits" such as the one President Nixon had confronted in 1971. In deciding *Yoshida*, the CCPA noted that such a "surcharge imposed after Jan. 3, 1975 must, of course, comply with [Section 122]," but it did not opine on whether TWEA (or IEEPA, which had not yet been enacted) remained a potential source of authority to impose tariffs in other kinds of emergencies.

Legal Debates Over Tariffs Imposed Under IEEPA

U.S. importers who are required to pay tariffs imposed under IEEPA may have standing to sue the federal government to challenge the tariffs, like the plaintiffs in *Yoshida* or more recent challenges to tariffs imposed under other laws. As discussed below, importers might argue that IEEPA does not authorize the President to impose any tariffs or, alternatively, that specific tariffs exceed the President's authority under IEEPA. The lawsuit filed on April 3, 2025, by Emily Ley Paper, Inc. d/b/a Simplified (the Simplified complaint) makes some form of these arguments.

Nondelegation Doctrine

Importers may argue that interpreting IEEPA to permit the President to impose tariffs violates the nondelegation doctrine, which prevents Congress from delegating its legislative power to the executive branch. As noted above, the CCPA held in *Yoshida* that TWEA could be read to allow the President to impose some tariffs without violating the nondelegation doctrine, reversing the lower court decision. *Yoshida* may pose an obstacle to nondelegation challenges to IEEPA to the extent that courts including the

U.S. Court of Appeals for the Federal Circuit (successor to the CCPA) or the U.S. Court of International Trade (the CIT, successor to the lower court in *Yoshida*) might consider the case binding or persuasive precedent. Some federal courts have rejected nondelegation challenges to IEEPA in cases concerning non-tariff uses of the statute.

The Supreme Court has not struck down any law as violating the "intelligible principle" formulation of the nondelegation doctrine since 1935, causing the CCPA to observe in *Yoshida* that the doctrine was in a "state of suspended animation." A year after the CCPA's decision in *Yoshida*, the Supreme Court upheld another tariff authority, Section 232, against a nondelegation challenge. (In 2019, one CIT judge expressed reservations that, notwithstanding this Supreme Court precedent, Section 232 provided "virtually unbridled discretion to the President with respect to the power over trade that is reserved by the Constitution to Congress . . . in violation of the separation of powers.")

At least five current Supreme Court Justices have indicated some willingness to reconsider the Court's approach to the nondelegation doctrine. In March 2025, the Court heard arguments in a case raising nondelegation questions in the context of a telecommunications program. The Court's decision in that or future cases could provide signals as to the viability of constitutional challenges to IEEPA or statutes that expressly authorize tariffs.

The Supreme Court has not previously decided a nondelegation challenge to IEEPA, although it has upheld a broad range of presidential actions exercised under the statute. In *Dames & Moore v. Regan*, the Supreme Court upheld several actions President Jimmy Carter took after declaring an emergency under IEEPA regarding the Iran hostage crisis. The Court held that the text of IEEPA did not authorize one such action—the suspension of legal claims by U.S. persons against the government of Iran—but that IEEPA's "tenor" nonetheless supported the President's constitutional power to take such action. Since IEEPA granted the President broad authorities, the court reasoned that the statute "indicat[ed] congressional acceptance of a broad scope for executive action," reinforcing the President's Article II powers. The Court also reasoned that a "history of [congressional] acquiescence in executive claims settlement" between U.S. citizens and foreign countries supported the President's actions under the so-called *Youngstown* framework, which the Court sometimes uses to determine the scope of executive power.

The Court's reasoning in *Dames & Moore* might not apply to the use of IEEPA as a tariff authority, since the Constitution expressly gives Congress the power to impose tariffs and regulate foreign commerce, potentially undercutting claims of inherent presidential power in these fields. In *Yoshida*, for instance—noting that President Nixon's proclamation invoked "the authority vested in him by the Constitution and the statutes" of the United States—the CCPA cautioned that this statement "was clearly in error" if it "was intended to indicate the view that the Constitution vests in the President any power to set tariffs or to lay duties or to regulate foreign commerce."

Major Questions Doctrine

Some lawyers contend that, according to a principle of statutory interpretation known as the "major questions doctrine," IEEPA should not be construed to allow the President to impose tariffs. Under the major questions doctrine, agencies must have "clear congressional authorization" to exercise authority having such extraordinary "history and breadth" or "economic and political significance" that there is "reason to hesitate before concluding that Congress meant to confer such authority." Cases are more likely to present major-question concerns, for example, where an agency "discover[s] in a long-extant statute an unheralded power representing a transformative expansion in its regulatory authority." In recent years, the Supreme Court has applied the major questions doctrine to overrule certain executive agency actions including, for instance, executive action to cancel student loans.

Some analysts argue that the major questions doctrine should preclude the use of IEEPA to impose tariffs, since the statute does not specifically authorize "tariffs" or "duties," was never used to impose tariffs

before 2025, and would significantly affect U.S. trading relations and economic conditions if it were construed to allow tariffs. While the Supreme Court has typically applied the major questions doctrine to actions by executive agencies rather than the President, some contend that the doctrine should apply equally to presidential action since it rests on broadly applicable concerns with the separation of powers and the need for Congress to define delegated authority with clarity.

Opponents of this view might argue, as one commentator put it, that "the power to block or regulate imports encompasses the power to put a tariff on imports." Relatedly, a court might not consider tariff authorities under IEEPA to be "unheralded," given that IEEPA was enacted after *Yoshida* held that the same language in TWEA authorized certain tariffs. (As noted above, however, *Yoshida* also stated that future tariffs addressing balance-of-payments emergencies would be governed by Section 122.)

Challenges to Specific Emergencies or Tariffs Imposed Under IEEPA

Assuming that IEEPA authorizes the President to impose tariffs in at least some cases, plaintiffs might argue that specific tariffs exceed the scope of the President's IEEPA authorities. *Yoshida* suggests some of the forms this argument could take as well as some challenges it might face.

As an initial matter, courts may be reluctant or unwilling to review the President's determination that there exists an "unusual and extraordinary threat" constituting an emergency under IEEPA, potentially treating this as a nonjusticiable political question. The U.S. Court of Appeals for the Ninth Circuit, noting the government's interest in national security, has stated that courts "owe unique deference to the executive branch's determination that we face 'an unusual and extraordinary threat to the national security' of the United States." Likewise, one U.S. district court faced with a challenge to an emergency declaration regarding access of foreign parties to U.S. goods and technology opined that the court "cannot question the President's political decision to deem this threat 'unusual and extraordinary.'" On the other hand, plaintiffs might argue that IEEPA's "unusual and extraordinary threat" requirement provides justiciable limits on the President's authority—both as a textual matter and to avoid giving the statute an interpretation that would fail the "intelligible principle" test under the nondelegation doctrine.

Courts could potentially review whether the President's actions under IEEPA—e.g., specific tariffs—are a legally permissible means of addressing a declared emergency. The Simplified complaint claims, for example, that IEEPA's provision that its authorities "may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared . . . and may not be exercised for any other purpose" requires a sufficient link between the declared emergency and actions taken in response. In *Yoshida*, the CCPA held that, in using TWEA, "[t]he President's choice of means of execution must . . . bear a reasonable relation to the particular emergency itself." The Court differentiated judicial review of this relationship from review of the emergency declaration: "Though courts will not normally review the essentially political questions surrounding the declaration . . . of a national emergency, they will not hesitate to review the actions taken in response . . . ."

One legal scholar argues that the tariffs President Trump imposed in February 2025 on imports from the PRC, Canada, and Mexico fail *Yoshida*'s "reasonable relation" test because—in contrast to President Nixon's emergency surcharge—they are arguably not sufficiently connected to the declared emergencies concerning illicit drugs and illegal immigration, do not contain temporal limitations, and are not limited by maximum rates set by Congress. As another argument, the Simplified complaint claims that "other presidential statements" provide evidence that the February and March tariffs on imports from the PRC were imposed for reasons other than to address the declared emergency regarding illicit drugs.

In addition to disputing claims that tariffs imposed under IEEPA are not sufficiently connected to their underlying emergencies, the government might invoke post-*Yoshida* Supreme Court precedent holding that, "where a statute . . . commits decision-making to the discretion of the President, judicial review of the President's decision is not available." Proponents of the 2025 IEEPA tariffs might contend that IEEPA

commits the choice of appropriate means to address a declared emergency to the President and does not permit judicial review of this determination.

Considerations for Congress

Congress holds the constitutional power over foreign commerce and import tariffs. Independent of how federal courts might decide nondelegation, major-questions, or fact-specific challenges to tariffs imposed under IEEPA, Congress has the power to clarify, limit, or possibly augment the President's authority under the statute. As the CCPA observed in *Yoshida*, "[w]hether the pendulum of power should now begin to swing further in the direction of the Congress is a matter of policy, reserved to the people and their elected representatives in the Congress."

Members may consider whether presidential authority to impose tariffs under IEEPA allows Congress to maintain a meaningful degree of control over foreign trade and tariffs. One bill in the 119th Congress would amend IEEPA to include an express prohibition on using the statute "to impose duties, tariff-rate quotas, or other quotas on articles entering the United States." Alternatively, Congress could amend IEEPA so that it explicitly authorizes such actions, possibly with procedural requirements or limits on the magnitude or duration of tariffs. By amending IEEPA to include express authority for tariffs, Congress could potentially foreclose legal challenges based on the major questions doctrine.

As noted, the NEA provides that Congress may terminate a national emergency—and any authorities the President exercises thereunder—by enacting into law a joint resolution of disapproval. Among other procedures, the NEA generally provides that a joint resolution to terminate a national emergency "shall be referred to the appropriate committee of the House of Representatives or the Senate," reported out by that committee within 15 calendar days, and then voted on by that house of Congress within 3 calendar days. In March 2025, the House of Representatives adopted a rule that effectively turns off the NEA's procedures in the House for the remainder of the first session of the 119th Congress—specifically, for joint resolutions to terminate national emergencies declared by the President on February 1, 2025—by providing that each remaining day in the session "shall not constitute a calendar day" with respect to such resolutions. This language prevents individual Members from forcing the House to vote in relation to such a resolution. On April 2, 2025, the Senate passed a joint resolution of disapproval to terminate the emergency declared on February 1, 2025, with respect to Canada.

Joint resolutions of disapproval may be of limited practical use, as they must be presented to the President to become law, requiring a two-thirds majority of each house to overcome a presidential veto. (The NEA previously allowed termination of an emergency via a "concurrent resolution" that did not require presentment to the President, but Congress amended the law following a Supreme Court decision that held a "legislative veto" to be unconstitutional.) Certain legislative proposals would increase congressional control over the use of IEEPA to impose tariffs by requiring enactment of a joint resolution of approval to impose tariffs on certain trading partners or to impose any tariffs under IEEPA and various other statutes, either with or without giving the President "temporary authority" to impose tariffs unilaterally for a limited time. Such proposals would allow a simple majority of either house of Congress to override the imposition of some or all tariffs under IEEPA.

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